

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8617 HOUSE JUDICIARY

OFFICE OF THE GOVERNOR

Division of Elections
P.O. Box 110017
Juneau, Alaska 99811-0017
PHONE (907) 465-4611

SPONSOR STATEMENT FROM DIV. OF ELECTIONS ON HB 349

The proposed legislation addresses two important issues:

- **The need to adjust current state Elections Law to assure preclearance by the US Justice Department and to make further adjustments to meet the requirements of the National Voter Registration Act of 1993 (NVRA).**

The US Justice department's preclearance of the state's response to the NVRA is required and the Department has expressed concern in certain areas with prior legislation. The proposed legislation addresses those areas of concern. Specifically:

The perception that Alaska "purges" a voter too early. Section 7 of the proposed CS for HB 349/ SB 182 assures there is no change in voter status before the time set out in federal law for purging.

The perception that a voter must vote a counted ballot to avoid removal from the rolls. Section 7 amends current law to include "appears to vote." Current law suggests that a vote actually must be counted. This result is not allowed by the NVRA, which instead uses the "appears to vote" language. (We have suggested additional explanatory language to Legislative Legal Counsel Jack Chenoweth to indicate what "appears to vote" intends.)

The requirement for an oath on registration materials. Section 2 allows a person to attest to the truth of the information provided on registration materials, and to certify understanding of the penalty for false statements. Section 12 allows a similar declaration of voter qualification instead of requiring an oath from voter's voting a questioned ballot.

[Assistant Attorney General Kathleen Strasbaugh will try to be available to answer committee member's questions on the NVRA issues.]

- **The following recommendations by the many citizens and state and municipal elections officials participating in the Election Policy Transition Team.**

Expand voter registration opportunities. Section 1, Section 3, Section 5 allow registration, correction or updating of registration materials by increasingly available electronic methods, including FAX and the internet process.

Increase public trust in the election process. Section 10 clarifies the requirements for the Election Supervisors' conduct.

Correct statute language to reflect modern election practice. Several sections are "housekeeping" sections which better describe modern ballots, the protection of ballot secrecy, current ballot tabulation, and computer processing in elections.

Simplify the personal representative's role in helping an elderly or disabled person to vote. Section 20 reduces the number of trips that a personal representative must make to assist a voter.

Allow a pilot project for total by-mail elections where feasible. Section 40 allows this recommendation. The division would further recommend elimination of line 21 so that the project is NOT limited to rural areas having less than 200 voters, at least in the initial test program.

[Div. of Elections Diane Shriner will be available to answer committee members questions on the proposed legislation.]

Thank you very much for your consideration of this proposed legislation.

TONY KNOWLES
GOVERNOR



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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

May 12, 1995

The Honorable Gail Phillips
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Phillips:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that implements most of the proposals contained in my Administration's Election Policy Transition Team Report that require changes to existing law. In addition, the bill makes some changes to state law that are required by federal statutes and makes a number of "housekeeping" amendments that the division of elections has recommended.

It is apparent that the state needs to adjust elections policies and procedures in an effort to boost public confidence that Alaska elections are conducted fairly and efficiently. One of Lieutenant Governor Ulmer's first acts was to appoint a panel of respected Alaskans (the Election Policy Transition Team), most of whom have expertise in the area of elections, to look into state elections policies and to make recommendations for change. In deciding whether a change is warranted, the transition team was requested to ask the following questions about the change:

- Does it increase public trust?
- Does it provide better service to the public?
- Does it encourage participation in the electoral process?
- Does it reduce state spending?

On March 20, 1995, the lieutenant governor released the report of the panel to the public. The report is a thorough and thoughtful document, and contains many excellent suggestions for improving elections policy. Several important recommendations were

The Honorable Gail Phillips

May 12, 1995

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included in SB 5, which recently passed the legislature. I am pleased to be able to transmit this bill, which implements the rest of those suggestions.

Section 13 of the bill simplifies the process of absentee voting by personal representative for a voter with a disability, a process that is currently very burdensome for both the voter and the personal representative and that discourages this sort of absentee voting. A personal representative now must make several trips between the voter and election officials in order for a voter with a disability to use this method of voting. Section 13 would streamline the procedure, allowing the personal representative to accomplish in a single round trip all of the steps necessary to allow a voter with a disability to vote.

In addition, sec. 13 of the bill makes several changes required by federal law. It removes the current prohibition on a candidate acting as a personal representative, and it adds a provision prohibiting a voter's employer, an agent of the employer, or an officer or agent of the voter's union, from acting as the voter's personal representative. It also removes the current requirement that a voter's ballot application under this section be accompanied by a letter or statement regarding the voter's disability from a physician or from two qualified voters. Instead, the voter's personal representative will supply a statement regarding the voter's disability.

Sections 30 and 31 of the bill double the fees that must be paid by candidates and parties filing material for inclusion in the official election pamphlet. These fees have not been changed since 1980. Even with the doubled fees, the cost of producing the pamphlet will be approximately 10 times the amount collected in fees.

Section 32 repeals a provision (AS 15.05.040), enacted in 1960 and not changed since, regarding voter disqualification for unsound mind. That provision is inconsistent with the federal Americans with Disabilities Act and with state statutes on guardianship.

Section 33 of the bill authorizes a pilot program for voting by mail, in the 1996 primary and general elections, in small rural precincts (those with no more than 200 registered voters). Under current law, the elections director may conduct an election by mail only if the election is held at a time other than when a primary, general, or municipal election is held. Based on the experience of other states that have used mail balloting, the transition team believes that allowing voting by mail in rural precincts will increase turnout, save money, and eliminate operational problems. Section 33 of the bill authorizes the director to conduct this voluntary pilot program in the 1996 primary and general elections in no more than 10 precincts, to test the application of this program in Alaska.

The Honorable Gail Phillips

May 12, 1995

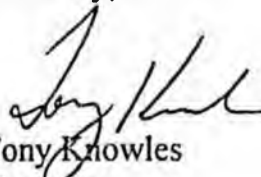
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The remaining sections of the bill, except for the effective date section, were recommended by the division of elections either to conform the elections statutes to current practices or to enable the division to conduct elections more efficiently and effectively.

Representatives of my Administration will be available as the bill makes its way through the legislative process to explain what the provisions of this bill would accomplish, how they change existing law, and why the changes are necessary.

I would appreciate your assistance in facilitating the consideration and passage of this bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tony Knowles', written in a cursive style.

Tony Knowles
Governor

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 349

Revision Date: 1/23/96 Dept. Affected: Office of the Governor
 Title: An Act relating to elections; relating to the BRU: Elective Operations
division of elections, ... Component: Elections
 Sponsor: House Rules by request
 Requester: Governor COMPONENT SERIAL NO. 21

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

HB 349 does not have a fiscal impact on the Division of Elections.

Sergeant

Prepared by: Dana LaTour *D. LaTour*
 Division: Division of Elections

Phone: 465-5347
 Date: 1/23/96

Approved by
 Commissioner: Lt. Governor Fran Ulmer *Fran Ulmer*
 Agency: Office of the Lt. Governor

Date: 1/23/96

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Walt Wilson

hear

Diane
3051

February 5, 1996

The Honorable Jeannette A. James
House State Affairs Committee
State Capitol, Room 102
Juneau, Alaska 99811

RE: House Bill 349, relating to elections administration and voter registration

Dear Representative James:

HB 349 (and its companion bill SB 182) were introduced to make changes in the elections laws as recommended to the Election Policy Transition Team by Alaskan citizens. Among the important subjects addressed by this bill are voter registration, absentee voting, absentee voting by personal representative, and establishment of a pilot program for voting by mail in primary and general elections.

The bill also addresses concerns expressed by the United States Department of Justice regarding Alaska's compliance with the National Voter Registration Act of 1993 (NVRA), the so called "motor-voter" Act. HB 349 will eliminate the present requirement for an oath in voter registration and other specific voting procedures. Another important section would bring our purge procedures into compliance with those set forth in the NVRA.

Finally, HB 349 recommends changes to the Corrupt Practices Act making state law consistent with federal law concerning the validity of voter incentive programs. The provisions of HB 349 will help assure citizens vote as a means of participation in our democratic form of government, not because they will receive a direct pecuniary benefit.

The Honorable Jeanette A. James
February 5, 1996
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HB 349 is the product of extensive citizen and division review. I believe that it is a fair and needed response to the issue of improving both the perception and actual functioning of the electoral process. I ask that you and your committee give it your prompt attention. Thank you for your consideration.

Sincerely,

Sandra J. Stout, Director
Division of Elections

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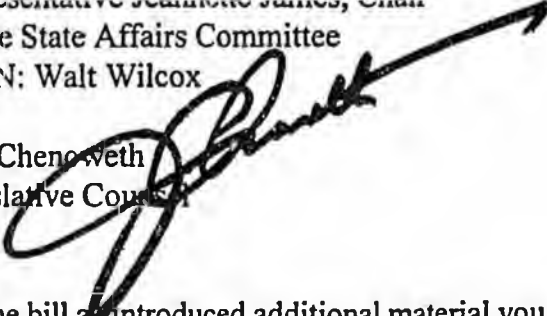
MEMORANDUM

March 20, 1996

SUBJECT: Draft CSHB 349 (STA) (Work Order No. 9-LS0051\C)

TO: Representative Jeannette James, Chair
House State Affairs Committee
ATTN: Walt Wilcox

FROM: Jack Chenoweth
Legislative Council



The draft incorporates into the bill additional material you furnished to me that had been prepared by the Department of Law.

Please note the following:

1. The material you furnished proposed repeal of AS 15.07.170 but does not take into account the effect of that repeal on AS 15.07.190. This draft addresses both statute sections.
2. In addition to the change requested in AS 15.07.130(b), I propose to amend the notice provision, AS 15.07.130(d), to make the notice track the requirement.
3. In my judgment, the committee would do well to find clear language to substitute for "appear[s] to vote" in the places where that phrase is inserted. I don't know what the department is intending when it makes reference to a voter who is to "appear to vote." By this language, is a voter being required to personally present him- or herself (that is, "appear personally") at a polling place in order to cast a vote? May that prospective voter not cast an absentee ballot? Suppose, in an election in which a voter is cautioned to "appear to vote," the voter's precinct is one in which the entire ballot is conducted by mail? Does the provision mean something other than "attempt to vote an election ballot" even if the ballot, for whatever reason, is not valid and consequently is not counted?

JBC:lmb
96-065.lmb

CS FOR HOUSE BILL NO. 349()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to elections, to the division of elections, and to voter
2 registration procedures; and providing for an effective date."

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

4 * Section 1. AS 15.07.050 is amended to read:

5 Sec. 15.07.050. MANNER OF REGISTRATION [IN PERSON OR BY
6 MAIL]. Registration may be made

7 (1) in person before a registration official or through a voter registration
8 agency;

9 (2) [, OR MAY BE MADE] by mail; or

10 (3) by facsimile transmission or another method of electronic
11 transmission that the director approves.

12 * Sec. 2. AS 15.07.060(a) is amended to read:

13 (a) Each applicant who requests registration or reregistration shall supply the
14 following information [UNDER OATH]:

- 1 (1) name and sex;
- 2 (2) address and other necessary information establishing residence,
3 including the term of residence in the state and in the district, if requested;
- 4 (3) whether the applicant has previously been registered to vote in
5 another jurisdiction, and, if so, the jurisdiction and the address of the previous
6 registration;
- 7 (4) a declaration that the registrant will be 18 years of age or older
8 within 90 days of the date of registration;
- 9 (5) a declaration that the registrant is a citizen of the United States;
- 10 (6) date of application;
- 11 (7) signature or mark;
- 12 (8) any former name under which the applicant was registered to
13 vote in the state;
- 14 (9) an attestation that the information provided by the applicant
15 in (1) - (8) of this subsection is true; and
- 16 (10) a certification that the applicant understands that a false
17 statement on the application may make the applicant subject to prosecution for
18 a misdemeanor under this title or AS 11.

19 * Sec. 3. AS 15.07.070(b) is amended to read:

20 (b) To register by mail or by facsimile or other electronic transmission
21 approved by the director under AS 15.07.050, the director, the area election
22 supervisor, or a voter registration agency shall furnish, at no cost to the voter, forms
23 prepared by the director on which the registration information required under
24 AS 15.07.060 shall be inserted by the voter, or by a person on behalf of the voter if
25 the voter is physically incapacitated. The director may require proof of identification
26 of the applicant as required by regulations adopted by the director under AS 44.62 (
27 [THE] Administrative Procedure Act) [(AS 44.62)]. Upon receipt and approval of the
28 completed registration forms the director or the election supervisor shall forward to the
29 voter an acknowledgment in the form of a registration card, and the voter's name shall
30 immediately be placed on the master register located in the office of the director and
31 on the district register located in the office of the election supervisor. If the

1 registration is denied, the voter shall immediately be informed in writing that
2 registration was denied and the reason for denial.

3 * Sec. 4. AS 15.07.070(c) is amended to read:

4 (c) The names of persons submitting completed registration forms by mail that
5 are postmarked at least 30 days before the next election, or submitting completed
6 registration forms by facsimile or other electronic transmission approved by the
7 director under AS 15.07.050 that are received at least 30 days before the next
8 election, shall be placed on the official registration list for that election. If a
9 registration form received by mail less than 30 days before an election does not have
10 a legible and dated postmark, the name of the person submitting the form shall be
11 placed on the official registration list for that election if the form was signed and dated
12 by the person at least 30 days before the election and if the form is received by the
13 director or election supervisor at least 25 days before the election. The name of a
14 person submitting a completed registration form by mail or by facsimile or other
15 electronic transmission that does not meet the applicable requirements of this
16 subsection may not be placed on the official registration list for that election but shall
17 be placed on the master register after that election.

18 * Sec. 5. AS 15.07.070(f) is amended to read:

19 (f) Incomplete or inaccurate registration forms may not be accepted. A person
20 who submitted an incomplete or inaccurate registration form may register by
21 reexecuting and resubmitting a registration form in person, [OR] by mail, or by
22 facsimile or other electronic transmission approved by the director under
23 AS 15.07.050. The requirements of (c) or (d) of this section apply to a registration
24 form resubmitted under this subsection.

25 * Sec. 6. AS 15.07.070(h) is amended to read:

26 (h) The director shall design the form of the voter's certificate appearing on
27 the [LARGE] envelope that is used for voting a questioned ballot so that all
28 information required for registration by AS 15.07.060(a) may be obtained from a voter
29 who votes a questioned ballot. If the voter voting a questioned ballot has completed
30 all information on the voter registration portion of the questioned ballot voter's
31 certificate, the director shall place the name of the voter on the official registration list.

1 * Sec. 7. AS 15.07.130(b) is amended to read:

2 (b) When a registered voter has not indicated in writing a desire to remain
3 registered within the preceding four [TWO] calendar years and has neither [NOT]
4 voted nor appeared to vote in the last two general elections [A LOCAL,
5 REGIONAL SCHOOL BOARD, PRIMARY, SPECIAL, OR GENERAL ELECTION
6 AT LEAST ONCE IN TWO CONSECUTIVE CALENDAR YEARS], the voter shall
7 be advised by a notice sent by forwardable mail to the voter's last known address that
8 registration will be inactivated unless the voter responds to the notice at least 30 days
9 before the date of the next primary election on a form furnished by the director. The
10 director shall maintain on the master register the name of a voter whose registration
11 is inactivated. The director shall cancel a voter's inactive registration after the second
12 general election that occurs after the registration becomes inactive if the voter does not
13 vote or appear to vote [EITHER A QUESTIONED BALLOT OR AN ABSENTEE
14 BALLOT THAT IS COUNTED UNDER AS 15.15.198(b) AT OR BEFORE THAT
15 ELECTION].

16 * Sec. 8. AS 15.07.130(d) is amended to read:

17 (d) The notice described in (b) of this section must include a postage prepaid
18 and pre-addressed return card on which the voter may state the voter's current address.
19 The notice must indicate

20 (1) that the voter should return the card not later than 30 days before
21 the next primary election if the voter did not change residence;

22 (2) that the voter may vote only a questioned or absentee ballot if the
23 voter does not return the card at least 30 days before the next primary election;

24 (3) that the voter's registration will be cancelled if the voter does not
25 vote or appear to vote in an election held during the period beginning on the date of
26 the notice and ending on the day after the date of the second general election that
27 occurs after the date of notice; and

28 (4) how the voter can continue to be eligible to vote if the voter has
29 changed residence.

30 * Sec. 9. AS 15.07.190 is amended to read:

1 Sec. 15.07.190. VIOLATIONS. A person who violates AS 15.07.180
2 [AS 15.07.170 OR 15.07.180] is guilty of a misdemeanor and upon conviction is
3 punishable by imprisonment for not more than one year, or by a fine of not more than
4 \$1,000, or by both.

5 * Sec. 10. AS 15.10.110 is amended to read:

6 Sec. 15.10.110. APPOINTMENT OF ELECTION SUPERVISORS. The
7 director shall appoint election supervisors, including one in each of the municipalities
8 of Juneau, Anchorage, Fairbanks, and Nome, to assist in the administration of elections
9 in the election districts designated by the director. The director may appoint as an
10 election supervisor a person who is a qualified voter in the area over which the person
11 has jurisdiction and who meets the applicable requirements of AS 15.10.105(b)
12 [DOES NOT HOLD AN OFFICE IN A POLITICAL PARTY]. An election supervisor
13 is entitled to receive compensation in an amount that is comparable to that received
14 for similar state employment as determined by the director.

15 * Sec. 11. AS 15.15.030(5) is amended to read:

16 (5) The state general election ballot shall be printed on white paper
17 with the names of the candidates and their party designations placed in separate
18 sections under the office designation to which they were nominated. The party
19 affiliation, if any, shall be designated after the name of the candidate. The lieutenant
20 governor and the governor shall be included under the same section. Provision shall
21 be made for voting for write-in and no-party candidates within each section. [THE
22 SQUARES APPEARING ON THE BALLOTS SHALL MEASURE 1/4 INCH ON
23 EACH SIDE.]

24 * Sec. 12. AS 15.15.140(a) is amended to read:

25 (a) If the election board receives an insufficient number of official [PAPER
26 BALLOTS, OFFICIAL PUNCH-CARD] ballots [,] or official election materials, it
27 shall provide and the voters may use unmarked substitute ballots or other election
28 materials to indicate the intent of the voter.

29 * Sec. 13. AS 15.15.198(b) is amended to read:

30 (b) A person whose registration is inactive under AS 15.07.130(b) and who
31 votes a questioned or absentee ballot shall have the ballot counted if

1 (1) the person was registered to vote for either of the two most recent
2 general elections;

3 (2) the person signs [UNDER OATH] a statement to that effect; and

4 (3) the earlier registration is verified by the director.

5 * Sec. 14. AS 15.15.210 is amended to read:

6 Sec. 15.15.210. QUESTIONING OF VOTERS OF SUSPECT
7 QUALIFICATION. Every election judge and election clerk shall question, and every
8 watcher and any other person qualified to vote in the precinct may question a person
9 attempting to vote if the questioner has good reason to suspect that the questioned
10 person is not qualified to vote. All questions regarding a person's qualifications to
11 vote shall be made in writing setting out the reason the person has been questioned.
12 A questioned person before voting shall subscribe to a declaration [AN OATH OR
13 AFFIRMATION] in a form provided by the director attesting to the fact that in each
14 particular the person meets all the qualifications of a voter, is not disqualified, and has
15 not voted at the same election, and certifying that the person understands that a
16 false statement on the declaration may subject the person to prosecution for a
17 misdemeanor under this title or AS 11. The questioned person shall also state the
18 place from which that person came immediately before living in the precinct where
19 offering to vote and the length of time of residence in the former place. After the
20 questioned person has executed the declaration [OATH OR AFFIRMATION], the
21 person may vote. If the questioned person refuses to execute the declaration [OATH
22 OR AFFIRMATION], the person may not vote.

23 * Sec. 15. AS 15.15.215(a) is amended to read:

24 (a) A voter who casts a questioned ballot shall vote the ballot in the same
25 manner as prescribed for other voters. The [AFTER THE ELECTION JUDGE
26 REMOVES THE NUMBERED STUB FROM THE BALLOT, THE] voter shall insert
27 the ballot into a secrecy sleeve, the election judge shall remove the numbered stub
28 from the ballot, and the voter shall [SMALL ENVELOPE AND] put the secrecy
29 sleeve [SMALL ENVELOPE] into an [A LARGER] envelope on which the statement
30 the voter previously signed is located. The envelope [THESE LARGER
31 ENVELOPES] shall be sealed and deposited in the ballot box. When the ballot box

1 is opened, the [THESE] envelopes shall be segregated, counted, compared to the
2 voting list, and delivered to the official or body supervising the election. The merits
3 of the question shall be determined by this official or body in accordance with the
4 procedure prescribed for questioned votes in AS 15.20.207.

5 * Sec. 16. AS 15.15.440 is amended to read:

6 Sec. 15.15.440. DATES FOR OPENING AND CLOSING STATE BALLOT
7 COUNTING REVIEW. The state ballot counting review shall begin no earlier
8 [LATER] than 11 days after an [THE] election and no later than 16 days after an
9 election, and shall be continued [DAILY] until completed. The director may designate
10 the hours each day during which the state ballot counting review board is to conduct
11 its ballot counting review. The director shall close the review when the director is
12 satisfied that no missing precinct certificate of election would, if received, change the
13 result of the election. If no election certificate has been received from a precinct, the
14 director may secure from the election supervisors and may count a certified copy of
15 the duplicate election certificate of the precinct. If no election materials have been
16 received, but election results have been received by telephone, telegram or radio, the
17 director shall count the election results so received. If the director has reason to
18 believe that a missing precinct certificate, if received, would affect the result of the
19 election, the director shall await the receipt of the certificate until the close of business
20 on the 15th day after the date of election. A certificate not actually delivered to the
21 director by the close of business on the 15th day after the election may not be counted
22 at the state ballot counting review.

23 * Sec. 17. AS 15.20.010 is repealed and reenacted to read:

24 Sec. 15.20.010. PERSONS WHO MAY VOTE ABSENTEE. At any election
25 a qualified voter may vote an absentee ballot for any reason.

26 * Sec. 18. AS 15.20.030 is amended to read:

27 Sec. 15.20.030. PREPARATION OF BALLOTS, ENVELOPES, AND OTHER
28 MATERIAL. The director shall provide ballots for use as absentee ballots in all
29 districts. The director shall provide a secrecy sleeve [SMALL ENVELOPE] in which
30 the voter shall initially place the marked ballot, and ~~shall~~ provide an [A LARGER]
31 envelope [,] with the prescribed voter's certificate on it [THE BACK], in which the

1 secrecy sleeve [SMALL ENVELOPE] with ballot enclosed shall be placed. The
2 director shall prescribe the form of and prepare the voter's certificate, envelopes, and
3 other material used in absentee voting. The voter's certificate shall include an oath,
4 for use when required, that the voter is a qualified voter in all respects, a blank for the
5 voter's signature, a certification that the affiant properly executed the marking of the
6 ballot and gave the voter's identity, blanks for the attesting official or witnesses, and
7 a place for recording the date the envelope was sealed and witnessed.

8 * Sec. 19. AS 15.20.061(c) is amended to read:

9 (c) On receipt of an absentee ballot in person the voter shall proceed to mark
10 the ballot in secret, to place the ballot in the secrecy sleeve [SMALL ENVELOPE],
11 to place the secrecy sleeve [SMALL ENVELOPE] in the [LARGER] envelope
12 provided, and to sign the voter's certificate on the [BACK OF THE LARGER]
13 envelope in the presence of the election official who shall sign as attesting official and
14 date that signature. The election official shall then accept the ballot.

15 * Sec. 20. AS 15.20.071 is repealed and reenacted to read:

16 Sec. 15.20.071. ABSENTEE VOTING BY PERSONAL REPRESENTATIVE.

17 (a) A qualified voter with a disability who, because of that disability, is unable to go
18 to a polling place to vote may vote an absentee ballot through a personal
19 representative.

20 (b) A personal representative may apply in writing to the following election
21 officials, at the times specified, for an absentee ballot on behalf of a voter who is
22 eligible under (a) of this section:

23 (1) to an absentee voting official on or after the 15th day before an
24 election up to and including the day of the election;

25 (2) to an election supervisor

26 (A) after a date announced by the director under
27 AS 15.20.048(b); and

28 (B) on or after the 15th day before an election up to and
29 including the day of the election;

30 (3) to an absentee voting official at an absentee voting station
31 designated under AS 15.20.045(b) at a time when the absentee voting station is in

1 operation;

2 (4) to a member of a precinct election board on election day.

3 (c) The application by the personal representative shall be signed by the
4 personal representative and must include the following:

5 (1) the full name and full residence address of the personal
6 representative;

7 (2) the full name and full residence address of the voter on whose
8 behalf the personal representative is applying for an absentee ballot;

9 (3) a form of identification for the personal representative that meets
10 the requirements for identification established by the director under AS 15.20.081(f)
11 for absentee voting by mail; and

12 (4) a statement signed by the personal representative that the voter for
13 whom the personal representative is applying for an absentee ballot will be unable to
14 go to the polling place because of a disability.

15 (d) Upon receipt of a written application from a personal representative that
16 meets the requirements of (c) of this section, the election official shall issue the
17 absentee ballot and other absentee voting material to the personal representative.

18 (e) The personal representative shall deliver the absentee ballot and other
19 absentee voting materials to the voter as soon as practicable. The voter shall proceed
20 to mark the ballot in secret, to place the ballot in the secrecy sleeve, and to place the
21 secrecy sleeve in the envelope provided. On the voter's certificate portion of the
22 envelope, the voter shall state the name of the personal representative who applied for
23 the absentee ballot, shall state that because of a disability the voter is unable to go to
24 a polling place to vote, and shall sign the voter's certificate in the presence of the
25 personal representative and provide a form of identification for the voter that meets the
26 requirements for identification established by the director under AS 15.20.081(f) for
27 absentee voting by mail. The personal representative shall witness and date the
28 signature of the voter. The voter shall mark the ballot, and complete and sign the
29 voter's certificate, not later than election day. The voter shall return the absentee
30 ballot to the personal representative who shall deliver the ballot to the election official
31 who provided the ballot. The absentee ballot must be returned to the election official

1 not later than 8:00 p.m. on election day.

2 (f) Notwithstanding (e) of this section, if a qualified voter's disability
3 precludes the voter from performing any of the requirements of (e) of this section, the
4 personal representative may perform those requirements on the voter's behalf.

5 (g) An election official shall keep a record of the name and signature of each
6 personal representative requesting an absentee ballot and the name of the voter on
7 whose behalf the ballot is requested. The election official shall record the date that
8 the absentee ballot is provided and the date that the ballot is returned to the election
9 official.

10 (h) The voter's employer, an agent of the voter's employer, or an officer or
11 agent of the voter's union may not act as a personal representative for that voter.

12 * Sec. 21. AS 15.20.081(d) is amended to read:

13 (d) Upon receipt of an absentee ballot by mail, the voter, in the presence of
14 a notary public, commissioned officer of the armed forces including the National
15 Guard, district judge or magistrate, United States postal official, registration official,
16 or other person qualified to administer oaths, may proceed to mark the ballot in secret,
17 to place the ballot in the secrecy sleeve [SMALL ENVELOPE], to place the secrecy
18 sleeve [SMALL ENVELOPE] in the [LARGER] envelope provided, and to sign the
19 voter's certificate on the [BACK OF THE LARGER] envelope in the presence of an
20 official listed in this subsection who shall sign as attesting official and shall date the
21 signature. If none of the officials listed in this subsection is reasonably accessible, an
22 absentee voter shall sign the voter's certificate in the presence of two persons over the
23 age of 18 years, who shall sign as witnesses and attest to the date on which the voter
24 signed the certificate in their presence, and, in addition, the voter shall provide the
25 certification prescribed in AS 09.63.020.

26 * Sec. 22. AS 15.20.190(a) is amended to read:

27 (a) Thirty days before [PRIOR TO] the date of an election, the election
28 supervisors shall appoint, in the same manner provided for the appointment of election
29 judges prescribed in AS 15.10.150, district absentee ballot counting boards and district
30 questioned ballot counting boards, each composed of at least four members. At least
31 one member of each board must be a member of the same political party of which

1 the governor is a member, and at least one member of each board must be a
2 member of the political party whose candidate for governor received the second
3 largest number of votes in the preceding gubernatorial election [, TWO FROM
4 EACH POLITICAL PARTY]. The district boards shall assist the election supervisors
5 in counting the absentee and questioned ballots and shall receive the same
6 compensation paid election judges under AS 15.15.380.

7 * Sec. 23. AS 15.20.201(b) is amended to read:

8 (b) Counting of absentee ballots that [WHICH] have been reviewed shall
9 begin at 8:00 p.m., local time, on the day of the election at places designated by each
10 election supervisor and shall continue until all absentee ballots reviewed and eligible
11 for counting have been counted. The counting teams shall report the count of absentee
12 ballots to the district absentee ballot counting board. An election supervisor or an
13 election official may not count [REMOVE] absentee ballots [FROM THE SMALL,
14 INNER ENVELOPES] before 8:00 p.m., local time, on the day of the election.
15 Counting of the absentee ballots shall continue at times designated by the election
16 supervisor until all absentee ballots are counted.

17 * Sec. 24. AS 15.20.203(c) is amended to read:

18 (c) Any person present at the district absentee ballot counting review may
19 challenge the name of an absentee voter when read from the voter's certificate on the
20 [BACK OF THE LARGE] envelope if the person has good reason to suspect that the
21 challenged voter is not qualified to vote, is disqualified, or has voted at the same
22 election. The person making the challenge shall specify the basis of the challenge in
23 writing. The district absentee ballot counting board by majority vote may refuse to
24 accept and count the absentee ballot of a person properly challenged on grounds listed
25 in (b) of this section.

26 * Sec. 25. AS 15.20.203(e) is amended to read:

27 (e) If an absentee ballot is not rejected, the [LARGE] envelope shall be opened
28 and the secrecy sleeve [SMALL ENVELOPE] containing the absentee ballot shall be
29 placed in a container and mixed with other secrecy sleeves [SMALL ENVELOPES].

30 * Sec. 26. AS 15.20.203(f) is amended to read:

31 (f) The secrecy sleeves [SMALL ENVELOPES] shall be drawn from the

1 container, the absentee ballots shall be removed from the secrecy sleeves
2 [OPENED], and the absentee ballots counted at the times specified in AS 15.20.201
3 and according to the rules for determining properly marked ballots in AS 15.15.360.

4 * Sec. 27. AS 15.20.207(c) is amended to read:

5 (c) Any person present at the district questioned ballot review may challenge
6 the name of a questioned voter when read from the voter's certificate on the [BACK
7 OF THE LARGE] envelope if the person has good reason to suspect that the
8 questioned voter is not qualified to vote, is disqualified, or has voted at the same
9 election. The person making the challenge shall specify the basis of the challenge in
10 writing. The district questioned ballot counting board by majority vote may refuse to
11 accept and count the questioned ballot of a person properly challenged under grounds
12 listed in (b) of this section.

13 * Sec. 28. AS 15.20.207(e) is amended to read:

14 (e) If a questioned ballot is not rejected, the [LARGE] envelope shall be
15 opened and the secrecy sleeve [SMALL ENVELOPE] containing the questioned ballot
16 shall be placed in a container and mixed with other secrecy sleeves [SMALL
17 ENVELOPES] containing questioned ballots.

18 * Sec. 29. AS 15.20.207(f) is amended to read:

19 (f) The secrecy sleeves [SMALL ENVELOPES] shall be drawn from the
20 container, the questioned ballots shall be removed from the secrecy sleeves
21 [OPENED], and the questioned ballots counted at the times specified in AS 15.20.205
22 and according to the rules for determining properly marked ballots in AS 15.15.360.

23 * Sec. 30. AS 15.20.207(g) is amended to read:

24 (g) Upon completion of the questioned ballot review, the election supervisor
25 shall prepare an election certificate for execution by the district questioned ballot
26 counting board, and shall forward the original certificate and returns to the director as
27 soon as the count is completed but no later than the 11th [NINTH] day following the
28 election.

29 * Sec. 31. AS 15.20.620(c) is amended to read:

30 (c) As a security precaution, after the computer has been tested as prescribed
31 in (b)(2) and (4) of this section,

1 (1) the vote-counting task shall remain isolated from nonrelated
2 processing tasks;

3 (2) [PROCESSING NOT CONCERNED WITH VOTE COUNTING
4 SHALL BE LIMITED TO TASKS WHICH ARE CRITICAL TO THE COMPUTER
5 CENTER AND SHALL BE AGREED UPON IN ADVANCE BY THE MANAGER
6 OF THE COMPUTER CENTER AND THE DIRECTOR;

7 (3)] reasonable computer security controls shall be in effect to assure
8 the integrity of the vote-counting process; and

9 (3) [(4)] access to the computer counting area shall be controlled by the
10 data processing review board until the vote-counting process is terminated.

11 * Sec. 32. AS 15.20.620(f) is amended to read:

12 (f) At any time during the count, party representatives or members of the data
13 processing review board may request a listing of the parameter coding that
14 [PROGRAM SOURCE CODE WHICH] comprises the instructions to be executed by
15 the computer.

16 * Sec. 33. AS 15.20.640(a) is amended to read:

17 (a) Immediately after the polls have closed, the ballot box shall be opened by
18 election board members in full view of all persons present, and all ballots shall be
19 removed [FROM THE BALLOT ENVELOPES].

20 * Sec. 34. AS 15.20.700(c) is amended to read:

21 (c) The backup documentation for each counting session [BALLOT IMAGE
22 MAGNETIC TAPE WHICH CONTAINS AN EXACT IMAGE OF EACH COUNTED
23 BALLOT] shall be retained in a secure manner by the election supervisor until the
24 director determines that it is no longer needed.

25 * Sec. 35. AS 15.20.740 is amended to read:

26 Sec. 15.20.740. QUESTIONED PUNCH-CARD BALLOTS. The procedure
27 for reviewing and counting questioned punch-card ballots is the same procedure
28 established in AS 15.20.205 and 15.20.207 for hand-marked ballots except that
29 questioned punch-card ballots may be processed by the computer from the third
30 through the 10th [EIGHTH] day following the election. The data processing review
31 board shall supervise the count and shall follow the procedure established in

1 AS 15.20.680 and 15.20.685.

2 * Sec. 36. AS 15.20.800(d) is amended to read:

3 (d) The voter may cast the ballot under AS 15.20.081(d) - (f)
4 [AS 15.20.081(d) - (e)].

5 * Sec. 37. AS 15.58.060(a) is amended to read:

6 (a) Each general election candidate shall pay to the lieutenant governor at the
7 time of filing material under this chapter the following:

8 (1) President or Vice-President of the United States, United States
9 senator, United States representative, governor, lieutenant governor, supreme court
10 justice and court of appeals judge, \$300 [\$150] each;

11 (2) superior court judge and district court judge, \$150 [\$75] each;

12 (3) state senator and state representative, \$100 [\$50] each.

13 * Sec. 38. AS 15.58.060(b) is amended to read:

14 (b) The state chair [CHAIRMAN] or executive committee of a political party
15 shall pay to the lieutenant governor at the time of filing material under this chapter
16 \$600 [\$300] for each page purchased.

17 * Sec. 39. AS 15.05.040 and AS 15.07.170 are repealed.

18 * Sec. 40. PILOT PROGRAM FOR VOTING BY MAIL IN PRIMARY AND GENERAL
19 ELECTIONS. (a) Notwithstanding AS 15.20.800(a), the director of elections may permit
20 voting by mail for the 1996 primary and general elections in not more than 10 precincts that
21 are located in a rural area of the state and that have no more than 200 registered voters.
22 Voting by mail under this section is subject to the provisions of AS 15.20.800(b) - (e).

23 (b) The director of elections may not open a polling place in a precinct in which the
24 director conducts an election by mail under this section. However, the director shall assure
25 that in each precinct in which the director conducts an election by mail under this section at
26 least one absentee voting official is appointed. Along with each ballot that is mailed to a
27 voter in a precinct under this section, the director shall include a notice giving the name of
28 the absentee voting officials for the precinct and explaining that the voter may go to an
29 absentee voting official for assistance in casting the ballot.

30 (c) Before implementing this section, the director of elections shall consult with the
31 officials of a municipality, village, Native village, or other government or tribal entity to

1 ascertain whether the municipality, village, Native village, or other government or tribal entity
2 is interested in participating in the pilot program authorized by this section.

3 (d) The director may adopt regulations to implement and interpret this section.

4 * Sec. 41. This Act takes effect immediately under AS 01.10.070(c).

HB

359

(7)

HOUSE COMMITTEE REPORT

Date Referred to Committee: March 11, 1996

FURTHER REFERRALS:

Date of Committee Action: 3/18/96

The JUDICIARY Committee considered:

HB 359

HOUSE BILL NO. 359

APPOINTMENT PROCESS FOR BDS & COMM'NS

"An Act relating to the appointment and confirmation process for members of certain boards, commissions, and similar bodies; relating to terms of certain appointees; and providing for an effective date."

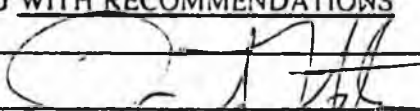
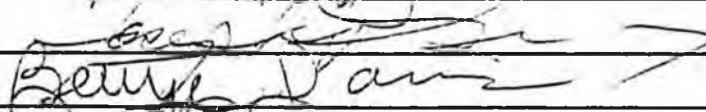
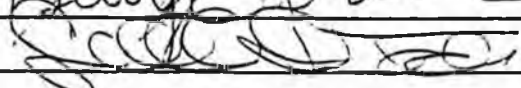
recommends it be replaced with the following committee substitute CSH 3 359 (JUD) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

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

zero fiscal note(s) _____ zero fiscal note(s) GOV (3.11.96)

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
		✓	✓	
<u>Brian Hester</u>	✓			
<u>Brian Hester</u>	✓			
	✓		✓	
<u>Brian Hester</u>				
				
<u>Brian Hester</u>				

CHAIR'S SIGNATURE Brian Hester

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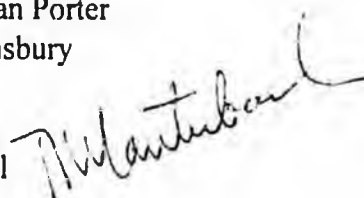
MEMORANDUM

March 15, 1996

SUBJECT: CSHB 359() ("K" version)

TO: Representative Brian Porter
Attn: Patrick Lounsbury

FROM: Terri Lauterbach
Legislative Counsel



As you have requested, this memorandum contains a description of the changes that would be made under sec. 14 of this bill.

In general, section 14 amends AS 39.05.080 by making a number of changes to the basic law governing the presentment and confirmation process for members of boards and commissions. These changes do not affect other positions for which confirmation may be required (department heads). More particularly, this section's changes may be described as follows:

Sec. 39.05.080 (lead-in language): Provides that any aspect of the general procedure in AS 39.05.080 may be modified by the legislature (by law) for any specific board or commission.

Sec. 39.05.080(1): The first sentence clarifies that a governor is not required to present names of persons appointed by a previous governor and that only a presentment during session satisfies the presentment requirement. In other words, "lame duck" appointments would not have to be presented by the next governor, and there would not be an issue in the future about whether a letter to the clerk or secretary during a legislative interim amounted to presentment. The second sentence of this paragraph requires the governor to present to the legislature within 30 days of its convening the names of persons appointed who have not previously been confirmed and the names of persons to be appointed to fill a position that will expire March 1 of that session. (Section 12 of the bill puts almost all terms on a March 1 basis.) The third sentence provides that an appointment made after 30 days of the session have passed, but while session is still in progress, must be presented within 5 calendar days.

Representative Brian Porter

March 15, 1996

Page 2

Sec. 39.05.080(2) and (3): No change from current law except to clarify that the governor is the "appointing authority." Use of the term "appointing authority" has been obsolete for some time. This is just a technical change.

Sec. 39.05.080(4). The first new sentence in this paragraph provides that the duration of an appointment made during the legislature's interim ends when a new regular session convenes, but, under the second new sentence, the appointee can be reappointed and presented for confirmation during that session. This language has the effect of allowing a new governor to appoint new people in the place of "lame duck" interim appointees - or the new governor can reappoint the interim appointees. (When governors don't change, the governor will have the same choice as well). This means that an interim appointee will be removable without cause (by not being reappointed) when session begins, even if cause for dismissal would normally have to be given. The third new sentence clarifies that if an appointee begins service during an interim and is reappointed when the new session starts, those two periods of service will be considered to be service for one part of the term (rather than two parts) for purposes of laws that limit how many terms or parts of terms a person may serve consecutively. The fourth new sentence provides that an unrepresented appointment made during the session expires at the end of the legislative session during which it should have been presented unless it expires sooner (such as when an appointment to fill the end of a term expires on March 1). The fifth sentence prohibits the same governor from reappointing an unrepresented appointee after session adjourns but would allow a future governor to appoint that person.

I hope this clarifies the legal effects of section 14. If you have further questions about this section, please let me know.

TML:klb
96-196.klb

Enclosure

CS FOR HOUSE BILL NO. 359()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES PORTER, Green

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the appointment and confirmation process for members of
2 certain boards, commissions, and similar bodies; relating to terms of certain
3 appointees; and providing for an effective date."

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

5 * Section 1. AS 08.01.035 is amended to read:

6 Sec. 08.01.035. APPOINTMENTS AND TERMS. Members of boards subject
7 to this chapter are appointed for staggered terms of four years. Except as provided in
8 AS 39.05.080(4), a [A] member of a board serves until a successor is appointed. Except
9 as provided in AS 39.05.080(4), an [AN] appointment to fill a vacancy on a board is
10 for the remainder of the unexpired term. A member who has served all or part of two
11 successive terms on a board may not be reappointed to that board unless four years have
12 elapsed since the person has last served on the board.

13 * Sec. 2. AS 08.04.040 is amended to read:

14 Sec. 08.04.040. VACANCY ON BOARD. A vacancy shall be filled by

1 appointment for the unexpired term, except as provided in AS 39.05.080(4), and all
2 vacancies shall be filled within 60 days. Except as provided in AS 39.05.080(4), after
3 [AFTER] the expiration of a member's term of office a member continues to serve until
4 a successor is appointed and qualifies, formally advises the board of acceptance of the
5 appointment, and appears at the next meeting of the board.

6 * Sec. 3. AS 08.65.010(b) is amended to read:

7 (b) The board consists of five members appointed by the governor subject to
8 confirmation by the legislature in joint session. Members serve for staggered terms of
9 four years and, except as provided in AS 39.05.080(4), each member serves until a
10 successor is appointed and qualified. The board consists of two members who are
11 certified in this state as direct-entry midwives, one physician licensed by the State
12 Medical Board in this state who has an obstetrical practice or has specialized training in
13 obstetrics, one certified nurse midwife licensed by the Board of Nursing in this state, and
14 one public member.

15 * Sec. 4. AS 14.07.095 is amended to read:

16 Sec. 14.07.095. TERM OF OFFICE. The members of the board shall be
17 appointed for overlapping five-year terms commencing on the March 1 following the
18 date of the member's [FEBRUARY 1 OF THE YEAR OF] appointment. Except as
19 provided in AS 39.05.080(4), a [A] member appointed to fill a vacancy serves for the
20 unexpired term of the member whose vacancy is filled. A vacancy occurring during a
21 term of office is filled in the same manner as the original appointment.

22 * Sec. 5. AS 14.20.420(a) is amended to read:

23 (a) The term of office for each member of the commission is three years and,
24 except as provided in AS 14.20.420(4), each member serves until a successor is
25 appointed.

26 * Sec. 6. AS 14.20.420(b) is amended to read:

27 (b) Vacancies shall be filled by appointment by the governor and, except as
28 provided in AS 39.05.080(4), an appointment to fill a vacancy is for the unexpired
29 term.

30 * Sec. 7. AS 15.13.020(h) is amended to read:

31 (h) A vacancy on the commission shall be filled through the appropriate
32 appointing method for the position within 30 days after the occurrence of the vacancy.

1 Except as provided in AS 39.05.080(4), the [THE] appointee shall serve for the
2 remaining term of the appointee's predecessor.

3 * Sec. 8. AS 16.05.221(c) is amended to read:

4 (c) Members of the Board of Fisheries or Board of Game serve staggered terms
5 of three years and, except as provided in AS 39.05.080(4), each member serves until
6 a successor is appointed. An appointment to fill a vacancy in the membership of the
7 Board of Fisheries or Board of Game shall be made in the same manner as the original
8 appointment and, except as provided in AS 39.05.080(4), an appointment to fill a
9 vacancy is for the balance of the unexpired term.

10 * Sec. 9. AS 16.43.030(b) is amended to read:

11 (b) A vacancy on the commission shall be filled by appointment by the governor
12 and the appointment shall be confirmed by the legislature in joint session. Except as
13 provided in AS 39.05.080(4), a [A] member selected to fill a vacancy shall hold office
14 for the balance of the full term for which the member's predecessor on the commission
15 was appointed.

16 * Sec. 10. AS 31.05.007(b) is amended to read:

17 (b) A vacancy arising in the office of a commissioner shall be filled by
18 appointment by the governor and confirmed by the legislature in joint session, and,
19 except as provided in AS 39.05.080(4), an appointee selected to fill a vacancy shall
20 hold office for the balance of the full term for which the predecessor on the commission
21 was appointed.

22 * Sec. 11. AS 38.06.025(e) is amended to read:

23 (e) Vacancies in public membership shall be filled in the same manner as
24 original appointment. Except as provided in AS 39.05.080(4), an [AN] appointee to
25 fill a vacancy shall hold office for the balance of the term for which the predecessor on
26 the board was appointed. A vacancy in board membership does not impair the authority
27 of a quorum of the board members to exercise all the powers and duties of the board.

28 * Sec. 12. AS 39.05 is amended by adding a new section to read:

29 Sec. 39.05.053. TERMS OF OFFICE. The term of office of a position or
30 membership ends on March 1 of the year when the position's or membership's term
31 expires except as otherwise provided in a law relating to positions or memberships on
32 a specific board or commission.

1 * Sec. 13. AS 39.05.060(d) is amended to read:

2 (d) A vacancy occurring during a term of office is filled in the same manner as
3 the original appointment is made and, except as provided in AS 39.05.080(4), is filled
4 for the balance of the unexpired term. Except as otherwise provided by law, each
5 [EACH] member holds office at the pleasure of the governor notwithstanding the
6 member's term.

7 * Sec. 14. AS 39.05.080 is amended to read:

8 Sec. 39.05.080. PROCEDURE FOR ALL APPOINTMENTS. Except as
9 otherwise provided in a law relating to the positions or memberships on a specific
10 board or commission, appointment to a position or membership [APPOINTMENTS]
11 shall be made in the following manner:

12 (1) Each governor shall present to the legislature the names of the
13 persons appointed by that governor; only presentment that occurs during the time
14 that the legislature is in regular session satisfies this requirement. The governor
15 [APPOINTING AUTHORITY] shall, within the first 30 days after [OF THE
16 CONVENING OF] the legislature convenes in regular session, present to the legislature
17 for confirmation the names of the following persons: (A) persons appointed to a position
18 or membership who have not previously been confirmed by the legislature, and (B) [OR
19 EITHER HOUSE OF IT; (B) PERSONS APPOINTED SUBJECT TO
20 CONFIRMATION TO FILL AN EXISTING POSITION OR MEMBERSHIP
21 VACANCY; (C)] persons to be appointed [SUBJECT TO CONFIRMATION] to fill a
22 position or membership the term of which will [SHALL] expire March 1 during that
23 [BEFORE JULY 2, FOLLOWING THE] session of the legislature. If an appointment
24 is made after the first 30 days of the convening of the regular session [DEADLINE]
25 but while the legislature is in regular session, the governor [APPOINTING
26 AUTHORITY] shall, within five calendar days after the appointment is made, present
27 to the legislature for confirmation the name of the person appointed. The deadline may
28 be extended by the legislature by the approval of a concurrent resolution.

29 (2) When appointments are presented to the legislature for confirmation,

30 (A) the presiding officer of each house shall assign the name of
31 each appointee to a standing committee of that house for a hearing, report, and
32 recommendation; standing committees of the two houses assigned the same

1 person's name for consideration may meet jointly to consider the qualifications
2 of the person appointed and may issue either a separate or a joint report and
3 recommendation concerning that person; then

4 (B) the legislature shall, before the end of the session in which
5 the appointments are presented, in joint session assembled, act on the
6 appointments by confirming or declining to confirm by a majority vote of all of
7 the members the appointments presented.

8 (3) When the legislature declines to confirm an appointment, the
9 legislature shall notify the governor [APPOINTING AUTHORITY] of its action and a
10 vacancy in the position or membership exists which the governor [APPOINTING
11 AUTHORITY] shall fill by making a new appointment. The new appointment shall be
12 presented for confirmation to the legislature within 20 calendar days following receipt
13 by the governor [APPOINTING AUTHORITY] of the legislature's notification of its
14 refusal to confirm the prior appointment. The governor [IF THE NAME OF A
15 PERSON IS SUBMITTED AND IS NOT CONFIRMED, THE APPOINTING
16 AUTHORITY] may not appoint [, UPON RESUBMISSION OF APPOINTMENTS,
17 SUBMIT] again the same [NAME OF THE] person whose confirmation was refused for
18 the same position or membership during the session of the legislature at which
19 confirmation was refused. The person whose name is refused for appointment by the
20 legislature may not thereafter be appointed to the same position or membership during
21 the interim between legislative sessions. Failure of the legislature to act to confirm or
22 decline to confirm an appointment during the session in which the appointment was
23 presented is tantamount to a declination of confirmation on the day the session adjourns.

24 (4) Pending confirmation or rejection of appointment by the legislature,
25 persons appointed shall exercise the functions, [AND] have the powers, and be charged
26 with the duties prescribed by law for the appointive positions or membership. However,
27 the duration of an appointment made during the time period between regular
28 sessions of the legislature ends on the first day of the next regular session. An
29 appointee whose appointment ends on the first day of the next regular session under
30 this paragraph does not serve until a successor is appointed but may be
31 reappointed. For the purpose of applying laws that limit the number of terms or
32 parts of terms that may be served by a member of a board or commission, the part

1 of the term of office that is served under an interim appointment immediately
2 before the member is reappointed under this paragraph is considered to be merged
3 with the part of the term of office that is served immediately after reappointment
4 so that the two periods of service constitute only one part of a term. The duration
5 of an appointment made during a regular session of the legislature and not
6 presented to the legislature by the governor during that session ends no later than
7 the last day of that session. The same governor may not again appoint the same
8 person to the same position or membership if the person's appointment ends
9 because of the governor's failure to present the person's name for confirmation.

10 * Sec. 15. AS 39.23.200(a) is amended to read:

11 (a) The State Officers Compensation Commission is established. The
12 commission is composed of seven members appointed by the governor subject to
13 confirmation by a majority of the legislature in joint session. Members serve for
14 staggered terms of four years. Commission membership shall include at least one
15 business executive, one representative of a nonpartisan voters' organization, one person
16 with experience in public administration, and one representative of a labor organization.
17 Except as provided in AS 39.05.080(4), a [A] vacancy shall be filled for the balance
18 of the unexpired term. A commission member may serve no more than two complete
19 consecutive terms.

20 * Sec. 16. AS 41.35.330 is amended to read:

21 Sec. 41.35.330. TERM OF OFFICE. The term of office for a member of the
22 commission is three years, except for those who are members by virtue of their positions
23 with the state, who serve for as long as they remain in the position by virtue of which
24 they are members of the commission. Except as provided in AS 39.05.080(4), a [A]
25 member appointed to fill a vacancy serves for the unexpired term of the member
26 succeeded.

27 * Sec. 17. AS 42.05.030(b) is amended to read:

28 (b) A vacancy arising in the office of commissioner shall be filled by
29 appointment by the governor and confirmed by the legislature in joint session. Except
30 as provided in AS 39.05.080(4), an [AN] appointee selected to fill a vacancy shall hold
31 office for the balance of the full term for which the appointee's predecessor on the
32 commission was appointed.

1 * Sec. 18. AS 42.40.040(a) is amended to read:

2 (a) Except for the commissioner of commerce and economic development and
3 the commissioner of transportation and public facilities, a vacancy on the board is filled
4 by appointment by the governor, and the appointment must be confirmed by the members
5 of the legislature in joint session. Except as provided in AS 39.05.080(4), a [A]
6 member appointed to fill a vacancy holds office for the balance of the term for which
7 the member's predecessor was appointed.

8 * Sec. 19. AS 46.15.200 is amended to read:

9 Sec. 46.15.200. TERM OF OFFICE. The term of office for members of the
10 board is four years. If a vacancy occurs, the governor shall fill it by appointment for the
11 unexpired term, subject to AS 39.05.080(4). The appointment shall be submitted to the
12 legislature for confirmation at the next regular [OR SPECIAL] session.

13 * Sec. 20. AS 08.36.020; AS 08.80.020; and AS 08.88.026 are repealed.

14 * Sec. 21. TRANSITIONAL PROVISIONS. In order to implement the changes made in this
15 Act, and notwithstanding other provisions of law that may limit the years or terms of positions
16 or memberships, the terms of office of positions or memberships, as defined in AS 39.05.200,
17 that exist on the effective date of this Act are extended to the March 1 next following the date
18 that the term would have expired without the changes made in this Act. This section does not
19 apply to terms of office that would have expired on March 1 even if this Act had not taken
20 effect.

21 * Sec. 22. This Act takes effect January 1, 1997.

Alaska State Legislature

Representative Brian S. Porter

CHAIRMAN
HOUSE JUDICIARY COMMITTEE

MEMBER
HOUSE LABOR & COMMERCE COMMITTEE
HOUSE STATE AFFAIRS COMMITTEE
INTERNATIONAL TRADE & TOURISM
COMMITTEE

MEMBER
FINANCE SUBCOMMITTEES
DEPARTMENT OF LAW
DEPARTMENT OF EDUCATION
COURTS



DISTRICT 20

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SPONSOR STATEMENT

Lamenting the appointment process for Boards and Commissions the Governor and legislature endured last year, HB 359 is designed to take the politics out of the presentment and appointment process.

Simply stated the Governor would present to the legislature within 30 days of convening the names of persons appointed who have not previously been confirmed and the names of persons to be appointed. An appointment made after 30 days of the session, but while session is still in progress, must be presented within 5 calendar days. Concurrently, the duration of an appointment made during the interim ends when a new regular session convenes, but can be reappointed and presented for confirmation during that session. For example, when governors change this feature allows the new governor to appoint new people or reappoint the interim appointees selected by the previous governor.

9-LS1242\F
Lauterbach
2/22/96

CS FOR HOUSE BILL NO. 359()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE PORTER

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the appointment and confirmation process for members of
2 certain boards, commissions, and similar bodies; relating to terms of certain
3 appointees; and providing for an effective date."

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

5 * Section 1. AS 08.01.035 is amended to read:

6 Sec. 08.01.035. APPOINTMENTS AND TERMS. Members of boards subject
7 to this chapter are appointed for staggered terms of four years. Except as provided in
8 AS 39.05.080(4), a [A] member of a board serves until a successor is appointed. Except
9 as provided in AS 39.05.080(4), an [AN] appointment to fill a vacancy on a board is
10 for the remainder of the unexpired term. A member who has served all or part of two
11 successive terms on a board may not be reappointed to that board unless four years have
12 elapsed since the person has last served on the board.

13 * Sec. 2. AS 08.04.040 is amended to read:

14 Sec. 08.04.040. VACANCY ON BOARD. A vacancy shall be filled by

1 appointment for the unexpired term, except as provided in AS 39.05.080(4), and all
2 vacancies shall be filled within 60 days. Except as provided in AS 39.05.080(4), after
3 [AFTER] the expiration of a member's term of office a member continues to serve until
4 a successor is appointed and qualifies, formally advises the board of acceptance of the
5 appointment, and appears at the next meeting of the board.

6 * Sec. 3. AS 08.65.010(b) is amended to read:

7 (b) The board consists of five members appointed by the governor subject to
8 confirmation by the legislature in joint session. Members serve for staggered terms of
9 four years and, except as provided in AS 39.05.080(4), each member serves until a
10 successor is appointed and qualified. The board consists of two members who are
11 certified in this state as direct-entry midwives, one physician licensed by the State
12 Medical Board in this state who has an obstetrical practice or has specialized training in
13 obstetrics, one certified nurse midwife licensed by the Board of Nursing in this state, and
14 one public member.

15 * Sec. 4. AS 14.07.095 is amended to read:

16 Sec. 14.07.095. TERM OF OFFICE. The members of the board shall be
17 appointed for overlapping five-year terms commencing on the March 1 following the
18 date of the member's [FEBRUARY 1 OF THE YEAR OF] appointment. Except as
19 provided in AS 39.05.080(4), a [A] member appointed to fill a vacancy serves for the
20 unexpired term of the member whose vacancy is filled. A vacancy occurring during a
21 term of office is filled in the same manner as the original appointment.

22 * Sec. 5. AS 14.20.420(a) is amended to read:

23 (a) The term of office for each member of the commission is three years and,
24 except as provided in AS 39.05.080(4), each member serves until a successor is
25 appointed.

26 * Sec. 6. AS 14.20.420(b) is amended to read:

27 (b) Vacancies shall be filled by appointment by the governor and, except as
28 provided in AS 39.05.080(4), an appointment to fill a vacancy is for the unexpired
29 term.

30 * Sec. 7. AS 15.13.020(h) is amended to read:

31 (h) A vacancy on the commission shall be filled through the appropriate
32 appointing method for the position within 30 days after the occurrence of the vacancy.

1 Except as provided in AS 39.05.080(4), the [THE] appointee shall serve for the
2 remaining term of the appointee's predecessor.

3 * Sec. 8. AS 16.05.221(c) is amended to read:

4 (c) Members of the Board of Fisheries or Board of Game serve staggered terms
5 of three years and, except as provided in AS 39.05.080(4), each member serves until
6 a successor is appointed. An appointment to fill a vacancy in the membership of the
7 Board of Fisheries or Board of Game shall be made in the same manner as the original
8 appointment and, except as provided in AS 39.05.080(4), an appointment to fill a
9 vacancy is for the balance of the unexpired term.

10 * Sec. 9. AS 16.43.030(b) is amended to read:

11 (b) A vacancy on the commission shall be filled by appointment by the governor
12 and the appointment shall be confirmed by the legislature in joint session. Except as
13 provided in AS 39.05.080(4), a [A] member selected to fill a vacancy shall hold office
14 for the balance of the full term for which the member's predecessor on the commission
15 was appointed.

16 * Sec. 10. AS 31.05.007(b) is amended to read:

17 (b) A vacancy arising in the office of a commissioner shall be filled by
18 appointment by the governor and confirmed by the legislature in joint session, and,
19 except as provided in AS 39.05.080(4), an appointee selected to fill a vacancy shall
20 hold office for the balance of the full term for which the predecessor on the commission
21 was appointed.

22 * Sec. 11. AS 38.06.025(e) is amended to read:

23 (e) Vacancies in public membership shall be filled in the same manner as
24 original appointment. Except as provided in AS 39.05.080(4), an [AN] appointee to
25 fill a vacancy shall hold office for the balance of the term for which the predecessor on
26 the board was appointed. A vacancy in board membership does not impair the authority
27 of a quorum of the board members to exercise all the powers and duties of the board.

28 * Sec. 12. AS 39.05 is amended by adding a new section to read:

29 Sec. 39.05.053. TERMS OF OFFICE. The term of office of a position or
30 membership ends on March 1 of the year when the position's or membership's term
31 expires except as otherwise provided in a law relating to positions or memberships on
32 a specific board or commission.

1 * Sec. 13. AS 39.05.060(d) is amended to read:

2 (d) A vacancy occurring during a term of office is filled in the same manner as
3 the original appointment is made and, except as provided in AS 39.05.080(4), is filled
4 for the balance of the unexpired term. Except as otherwise provided by law, each
5 [EACH] member holds office at the pleasure of the governor notwithstanding the
6 member's term.

7 * Sec. 14. AS 39.05.080 is amended to read:

8 Sec. 39.05.080. PROCEDURE FOR ALL APPOINTMENTS. Except as
9 otherwise provided in a law relating to the positions or memberships on a specific
10 board or commission, appointment to a position or membership [APPOINTMENTS]
11 shall be made in the following manner:

12 (1) The governor [APPOINTING AUTHORITY] shall, within the first
13 30 days after [OF THE CONVENING OF] the legislature convenes in regular session,
14 present to the legislature for confirmation the names of the following persons: (A)
15 persons appointed to a position or membership who have not previously been confirmed
16 by the legislature, and (B) [OR EITHER HOUSE OF IT; (B) PERSONS APPOINTED
17 SUBJECT TO CONFIRMATION TO FILL AN EXISTING POSITION OR
18 MEMBERSHIP VACANCY; (C)] persons to be appointed [SUBJECT TO
19 CONFIRMATION] to fill a position or membership the term of which will [SHALL]
20 expire March 1 during that [BEFORE JULY 2, FOLLOWING THE] session of the
21 legislature. If an appointment is made after the first 30 days of the convening of the
22 regular session [DEADLINE] but while the legislature is in regular session, the
23 governor [APPOINTING AUTHORITY] shall, within five calendar days after the
24 appointment is made, present to the legislature for confirmation the name of the person
25 appointed. The deadline may be extended by the legislature by the approval of a
26 concurrent resolution.

27 (2) When appointments are presented to the legislature for confirmation,

28 (A) the presiding officer of each house shall assign the name of
29 each appointee to a standing committee of that house for a hearing, report, and
30 recommendation; standing committees of the two houses assigned the same
31 person's name for consideration may meet jointly to consider the qualifications
32 of the person appointed and may issue either a separate or a joint report and

1 recommendation concerning that person; then

2 (B) the legislature shall, before the end of the session in which
3 the appointments are presented, in joint session assembled, act on the
4 appointments by confirming or declining to confirm by a majority vote of all of
5 the members the appointments presented.

6 (3) When the legislature declines to confirm an appointment, the
7 legislature shall notify the governor [APPOINTING AUTHORITY] of its action and a
8 vacancy in the position or membership exists which the governor [APPOINTING
9 AUTHORITY] shall fill by making a new appointment. The new appointment shall be
10 presented for confirmation to the legislature within 20 calendar days following receipt
11 by the governor [APPOINTING AUTHORITY] of the legislature's notification of its
12 refusal to confirm the prior appointment. ~~The governor [IF THE NAME OF A~~
13 ~~PERSON IS SUBMITTED AND IS NOT CONFIRMED, THE APPOINTING~~
14 ~~AUTHORITY] may not appoint [, UPON RESUBMISSION OF APPOINTMENTS,~~
15 ~~SUBMIT] again the same [NAME OF THE] person whose confirmation was refused for~~
16 ~~the same position or membership during the session of the legislature at which~~
17 ~~confirmation was refused. The person whose name is refused for appointment by the~~
18 ~~legislature may not thereafter be appointed to the same position or membership during~~
19 ~~the interim between legislative sessions. Failure of the legislature to act to confirm or~~
20 ~~decline to confirm an appointment during the session in which the appointment was~~
21 ~~presented is tantamount to a declination of confirmation on the day the session adjourns.~~

22 (4) Pending confirmation or rejection of appointment by the legislature,
23 persons appointed shall exercise the functions, [AND] have the powers, and be charged
24 with the duties prescribed by law for the appointive positions or membership. However,
25 the duration of an appointment made during the time period between regular
26 sessions of the legislature ends on the first day of the next regular session. An
27 appointee whose appointment ends on the first day of the next regular session under
28 this paragraph does not serve until a successor is appointed but may be
29 reappointed. The duration of an appointment made during a regular session of the
30 legislature and not presented to the legislature by the governor during that session
31 ends on the last day of that session. The governor may not again appoint the same
32 person to the same position or membership if the person's appointment ends

1 because of the governor's failure to present the person's name for confirmation.

2 * Sec. 15. AS 39.23.200(a) is amended to read:

3 (a) The State Officers' Compensation Commission is established. The
4 commission is composed of seven members appointed by the governor subject to
5 confirmation by a majority of the legislature in joint session. Members serve for
6 staggered terms of four years. Commission membership shall include at least one
7 business executive, one representative of a nonpartisan voters' organization, one person
8 with experience in public administration, and one representative of a labor organization.
9 Except as provided in AS 39.05.080(4), a [A] vacancy shall be filled for the balance
10 of the unexpired term. A commission member may serve no more than two complete
11 consecutive terms.

12 * Sec. 16. AS 41.35.330 is amended to read:

13 Sec. 41.35.330. TERM OF OFFICE. The term of office for a member of the
14 commission is three years, except for those who are members by virtue of their positions
15 with the state, who serve for as long as they remain in the position by virtue of which
16 they are members of the commission. Except as provided in AS 39.05.080(4), a [A]
17 member appointed to fill a vacancy serves for the unexpired term of the member
18 succeeded.

19 * Sec. 17. AS 42.05.030(b) is amended to read:

20 (b) A vacancy arising in the office of commissioner shall be filled by
21 appointment by the governor and confirmed by the legislature in joint session. Except
22 as provided in AS 39.05.080(4), an [AN] appointee selected to fill a vacancy shall hold
23 office for the balance of the full term for which the appointee's predecessor on the
24 commission was appointed.

25 * Sec. 18. AS 42.40.040(a) is amended to read:

26 (a) Except for the commissioner of commerce and economic development and
27 the commissioner of transportation and public facilities, a vacancy on the board is filled
28 by appointment by the governor, and the appointment must be confirmed by the members
29 of the legislature in joint session. Except as provided in AS 39.05.080(4), a [A]
30 member appointed to fill a vacancy holds office for the balance of the term for which
31 the member's predecessor was appointed.

32 * Sec. 19. AS 46.15.200 is amended to read:

1 Sec. 46.15.200. TERM OF OFFICE. The term of office for members of the
2 board is four years. If a vacancy occurs, the governor shall fill it by appointment for the
3 unexpired term, subject to AS 39.05.080(4). The appointment shall be submitted to the
4 legislature for confirmation at the next regular [OR SPECIAL] session.

5 * Sec. 20. AS 08.36.020; AS 08.80.020; and AS 08.88.026 are repealed.

6 * Sec. 21. TRANSITIONAL PROVISIONS. In order to implement the changes made in this
7 Act, and notwithstanding other provisions of law that may limit the years or terms of positions
8 or memberships, the terms of office of positions or memberships, as defined in AS 39.05.200,
9 that exist on the effective date of this Act are extended to the March 1 next following the date
10 that the term would have expired without the changes made in this Act. This section does not
11 apply to terms of office that would have expired on March 1 even if this Act had not taken
12 effect.

13 * Sec. 22. This Act takes effect January 1, 1997.

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

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

MEMORANDUM

February 19, 1996

SUBJECT: Sectional Summary of CSHB 359().
(Confirmation of Board Members)

TO: Representative Brian Porter
Attn: Patrick Lounsbury

FROM: Terri Lauterbach
Legislative Counsel

TLauterbach

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. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Sections 1 - 6 and 10 - 14 make technical changes in existing laws in order to conform to the changes made in AS 39.05 in secs. 7 - 9 of the bill. Under the changes in AS 39.05.080(4), members would not necessarily serve until replaced and vacancies would not be filled for the unexpired term because interim appointees would lose office when a new legislative session begins.

Section 7 adds a new section that specifies that the term of office of each member of a board or commission for which confirmation is required ends on March 1 of the year when the term expires. Allows an exception for when the legislature wants to provide a different termination date for a specific board or commission.

Section 8 modifies the general law on vacancies in AS 39.05.060 so that it conforms to the changes made in sec. 9 of the bill. Also clarifies that, in general, confirmed members of boards and commissions serve at the pleasure of the governor even though terms are set by law, but allows the legislature to provide for a different result, such as removal only for cause, for specific boards and commissions.

Section 9 makes a number of changes to the basic law governing the presentment and confirmation process for members of boards and commissions. These changes do not affect other positions for which confirmation may be required (department heads).

Representative Brian Porter
February 19, 1996
Page 2

Sec. 39.05.080 (lead-in language): Provides that any aspect of the general procedure may be modified by the legislature (by law) for any specific board or commission.

Sec. 39.05.080(1): Requires the governor to present to the legislature within 30 days of its convening the names of persons appointed who have not previously been confirmed and the names of persons to be appointed to fill a position that will expire March 1 of that session. An appointment made after 30 days of the session, but while session is still in progress, must be presented within 5 calendar days.

Sec. 39.05.080(2) and (3): No change from current law except to clarify that the governor is the "appointing authority." Use of the term "appointing authority" has been obsolete for some time. This is just a technical change.

Sec. 39.05.080(4). The first new sentence in this paragraph provides that the duration of an appointment made during the legislature's interim ends when a new regular session convenes, but, under the second new sentence, the appointee can be reappointed and presented for confirmation during that session. When governors change, this feature allows the new governor to appoint new people or reappoint the interim appointees selected by the previous governor. When governors don't change, the governor can simply reappoint the interim appointee (or change the appointee, just as if a new governor were taking office).

The third new sentence provides that an unrepresented appointment expires at the end of the legislative session during which it should have been presented. The fourth sentence prohibits the governor from reappointing an unrepresented appointee after session adjourns.

Section 15 repeals laws that conflict with the changes made by this bill.

Section 16 sets up the March 1 cycle of terms of office by extending current terms to March 1 following when they otherwise would have expired.

Section 17 gives the bill a January 1, 1997, effective date.

TML:klb:glc
96-111.klb

HB

364

CS FOR HOUSE BILL NO. 364(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE BUNDE

A BILL

FOR AN ACT ENTITLED

1 "An Act amending, in the Election Code, the definition of the offense of unlawful
 2 interference with voting in the first degree, a class C felony, and adding, for all
 3 'knowing' violations of election offenses set out in the Election Code, a cross-
 4 reference to the definition of the word 'knowing' in the Criminal Code."

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

6 * Section 1. AS 15.56.030(a) is amended to read:

7 (a) A person commits the crime of unlawful interference with voting in the first
8 degree if the person9 (1) uses, threatens to use, or causes to be used force, coercion, violence,
10 or restraint, [;] or [IF THE PERSON] inflicts, threatens to inflict, or causes to be
11 inflicted damage, harm, or loss, upon or against another person to induce or compel that
12 person to vote or refrain from voting [FOR A CANDIDATE] in an election [OR FOR
13 ANY ELECTION PROPOSITION OR QUESTION];14 (2) knowingly pays, offers to pay [GIVES, PROMISES TO GIVE,

1 OFFERS], or causes to be paid [GIVEN OR OFFERED] money or other valuable thing
2 to a person [WITH THE INTENT TO INDUCE THE PERSON] to vote [FOR] or refrain
3 from voting in [FOR A CANDIDATE AT] an election [OR FOR AN ELECTION
4 PROPOSITION OR QUESTION]; or

5 (3) solicits, accepts, or agrees to accept money or other valuable thing
6 with the intent to vote for or refrain from voting for a candidate at an election or for an
7 election proposition or question.

8 * Sec. 2. AS 15.56.030 is amended by adding a new subsection to read:

9 (d) For purposes of (a)(2) and (3) of this section, "other valuable thing"

10 (1) includes, but is not limited to,

11 (A) an entry in a game of chance in which a prize of money or
12 other present or future pecuniary gain or advantage may be awarded to a
13 participant; and

14 (B) government employment or benefits;

15 (2) does not include

16 (A) materials having a nominal value bearing the name, likeness,
17 or other identification of a candidate, political party, committee, or organization,
18 or stating a position on a ballot proposition or question;

19 (B) food and refreshments provided incidental to a gathering in
20 support of or in opposition to a candidate, political committee, or ballot question
21 or proposition;

22 (C) child care services provided in connection with the absence
23 of a voter from home for the purpose of voting; and

24 (D) transportation of a voter to or from the polls without charge.

25 * Sec. 3. AS 15.56 is amended by adding a new section to read:

26 Sec. 15.56.199. DEFINITIONS. In this chapter,

27 (1) "election" includes a local election as defined in AS 15.60.010 in
28 addition to a state election;

29 (2) "knowingly" has the meaning given in AS 11.81.900(a).

30 * Sec. 4. AS 15.56.120 is repealed.

9-LS1305C-
Chenoweth
3/1/96

adopted

CS FOR HOUSE BILL NO. 364()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE BUNDE

A BILL

FOR AN ACT ENTITLED

1 "An Act amending, in the Election Code, the definition of the offense of unlawful
2 interference with voting in the first degree, a class C felony, and adding, for all
3 'knowing' violations of election offenses set out in the Election Code, a cross-
4 reference to the definition of the word 'knowing' in the Criminal Code."

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

6 * Section 1. AS 15.56.030(a) is amended to read:

7 (a) A person commits the crime of unlawful interference with voting in the first
8 degree if the person

9 (1) uses, threatens to use, or causes to be used force, coercion, violence,
10 or restraint, [;] or [IF THE PERSON] inflicts, threatens to inflict, or causes to be
11 inflicted damage, harm, or loss, upon or against another person to induce or compel that
12 person to vote or refrain from voting [FOR A CANDIDATE] in an election [OR FOR
13 ANY ELECTION PROPOSITION OR QUESTION];

14 (2) knowingly pays, offers to pay [GIVES, PROMISES TO GIVE,

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OFFERS], or causes to be paid [GIVEN OR OFFERED] money or other valuable thing to a person [WITH THE INTENT TO INDUCE THE PERSON] to vote [FOR] or refrain from voting [FOR A CANDIDATE] ^{at} an election [OR FOR AN ELECTION PROPOSITION OR QUESTION]; or

(3) solicits, accepts, or agrees to accept money or other valuable thing with the intent to vote for or refrain from voting for a candidate at an election or for an election proposition or question.

* Sec. 2. AS 15.56.030 is amended by adding a new subsection to read:

(d) For purposes of (a)(2) and (3) of this section, "other valuable thing"

(1) includes, but is not limited to,

(A) ^{offer} an entry in a game of chance in which a prize of money or other present or future pecuniary gain or advantage may be awarded to a participant; and

(B) ^{removal of} government employment or benefits;

(2) does not include

(A) materials having a nominal value bearing the name, likeness, or other identification of a candidate, political party, committee, or organization, or stating a position on a ballot proposition or question;

(B) food and refreshments provided incidental to a gathering in support of or in opposition to a candidate, political committee, or ballot question or proposition; ^{#2 Done ver by LWO}

(C) child care services provided in connection with the absence of a voter from home for the purpose of voting; and

(D) transportation of a voter to or from the polls without charge.

* Sec. 3. AS 15.56 is amended by adding a new section to read:

Sec. 15.56.199. DEFINITIONS. In this chapter,

(1) "election" includes a local election as defined in AS 15.60.010 in addition to a state election;

(2) "knowingly" has the meaning given in AS 11.81.900(a).

* Sec. 4. AS 15.56.120 is repealed.

Handwritten notes: 110, 08/10, and a large checkmark.

Date of Committee Action: 3/13/96

Committee considered: JUDICIARY Committee considered:

HB 364

HOUSE BILL NO. 364

UNLAWFUL INTERFERENCE WITH VOTING

An Act amending the definition of the offense of unlawful interference with voting in the first degree, a class C felony, to include conduct related to inducing a person to vote or to refrain from voting at an election and conduct related to acceptance of something offered or given to vote or to refrain from voting in an election."

Committee recommends it be replaced with the following committee substitute CSHB 364 (JUD) 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) _____

fiscal note(s) _____

zero fiscal note(s) Gov

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Brian D. Porter</i>	<input checked="" type="checkbox"/>			
<i>Jim Bunker</i>	<input checked="" type="checkbox"/>			
<i>David DeLoe</i>			<input checked="" type="checkbox"/>	

CHAIR'S SIGNATURE Brian D Porter

LEGAL SERVICES

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

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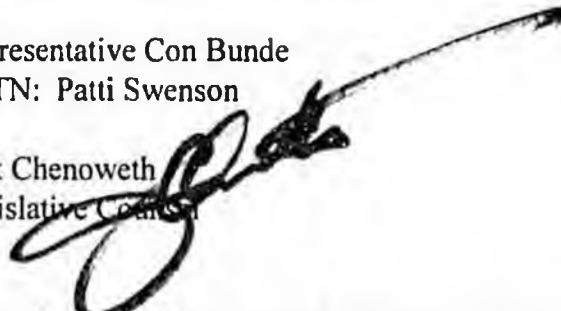
MEMORANDUM

March 13, 1996

SUBJECT: Amendment C.1 to CSHB 364 ()
(Work Order No. 9-LS1305\C.1)

TO: Representative Con Bunde
ATTN: Patti Swenson

FROM: Jack Chenoweth
Legislative Counsel



Read in context, with the addition of "offers of . . ." on lines 11 and 14, the crime of unlawful interference with voting, under 030(a)(2), would have repetitive references to "offers." One appears in the definition of the offense, and one in the definition of "other valuable thing." Read together, the offense would include an "offer to pay . . . money or other valuable thing" in which the definition of "other valuable thing" also mentioned an offer. One could read this as saying that an "offer to pay . . . an offer . . ." would amount to the definition of the offense, and that, I suggest, is one "offer" too many.

To avoid compounded reference to "offer," consider taking "offers of" out of the amendment in the places where it twice appears.

JBC:klb
96-193.klb

Enclosure

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 364()

1 Page 2, line 11, after "(A)":

2 Insert "offers of"

#2 w/ dream

3 Page 2, line 14, after "(B)":

4 Insert "promises or offers of"

5 Page 2, line 18, after "question;":

6 Insert "and"

7 Page 2, line 21, after "proposition":

8 Delete ";

9 Insert "."

10 Page 2, lines 22 - 24:

11 Delete all material.

REPRESENTATIVE CON BUNDE
CO-CHAIR HEALTH, EDUCATION
& SOCIAL SERVICES
VICE-CHAIR RULES

Alaska State Legislature
House of Representatives

DURING SESSION:
STATE CAPITOL, ROOM 108
JUNEAU, ALASKA 99801-1182
1 (907) 465-4843

DURING INTERIM:
716 WEST 4th AVENUE
ANCHORAGE, ALASKA 99501-2133
1 (907) 258-8168

**SPONSOR STATEMENT
HB 364**

“An Act amending the definition of the offense of unlawful interference with voting in the first degree, a class C felony, to include conduct related to inducing a person to vote or to refrain from voting at an election and conduct related to acceptance of something offered or given to vote or to refrain from voting in an election”

As United States citizens we have the right to vote no matter who we are or where we live. In Alaska our election process covers such a vast area that many people must travel great distances to vote. Despite some inconveniences we have a civic duty to vote for or against the candidates, propositions and questions on our state ballot and nobody has the right to interfere with the voting process.

The impetus for HB 364 is *Dansereau v. Ulmer*, which deals in part with unlawful interference with voting in the first degree. This case occurred after the 1994 Gubernatorial election and has yet to be completely resolved. (The complete case is available in the committee packet.)

The purpose of HB 364 is to align our state election law regarding unlawful interference with voting in the first degree with the federal election law. Alaska statute defines the crime of unlawful interference with voting in the first degree by requiring proof that a person was paid to vote for or against a particular candidate, proposition or question. Whereas, federal election law only requires proof that a person first was offered a prohibited incentive and then voted.

HB 364 amends AS 15.56.030 (a) by removing the requirement to prove that an incentive to vote must be for a particular candidate, proposition or question. This proposed legislation only requires proof that a person first was offered a prohibited incentive and then voted. This change strengthens the prohibition against the use of some incentives for voting.

This proposed legislation is an important change to our election statutes. It clarifies that voters in Alaska can not be paid for their vote. I urge the support of all legislators.

REPRESENTATIVE CON BUNDE
CO-CHAIR HEALTH, EDUCATION
& SOCIAL SERVICES
VICE-CHAIR RULES

Alaska State Legislature
House of Representatives

DURING SESSION:
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JUNEAU, ALASKA 99801-1182
1 (907) 465-4843

DURING INTERIM:
716 WEST 4th AVENUE
ANCHORAGE, ALASKA 99501-2133
1 (907) 258-8168

MEMORANDUM

DATE: March 7, 1996

TO: Representative Brian Porter
Chairman House Judiciary Committee

FROM: Representative Con Bunde
Co-Chair House HESS

RE: HB 364

HB 364, "An Act amending the definition of the offense of unlawful interference with voting in the first degree, a class C felony, to include conduct related to inducing a person to vote or to refrain from voting at an election and conduct related to acceptance of something offered or given to vote or to refrain from voting in an election." is currently in the House Judiciary Committee. This memo is a request for a committee hearing at your earliest possible convenience.

The purpose of this legislation is to prevent illegal interference with voting. As you may recall, the last Gubernatorial election resulted in a lawsuit (Dansereau v.State of Alaska). As a result of this lawsuit HB 364 seeks to align our state law regarding unlawful interference with voting, to the federal law.

A copy of the committee packet will be ready for you soon. If you have any questions or concerns please do not hesitate to contact my office.

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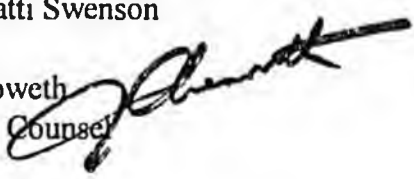
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

December 29, 1995

SUBJECT: House Bill 364, amending the definition of the offense of unlawful interference with voting in the first degree -- sectional analysis (Work Order No. 9-LS1305\A)

TO: Representative Con Bunde
ATTN: Patti Swenson

FROM: Jack Chenoweth
Legislative Counsel 

This measure amends the definition of the offense of unlawful interference with voting in the first degree, an offense set out in the state's Election Code (AS 15). Two kinds of conduct are added to the definition of the offense. The amendment of AS 15.56.030(a)(2) adds the giving or offering of money or another valuable thing to a person with the intent to induce the person to vote or to refrain from voting at an election. The amendment of AS 15.56.030(a)(3) adds the solicitation, acceptance, or agreement to accept money or another valuable thing to vote or to refrain from voting at an election. (The conduct that would be proscribed would in addition to the existing statute that addresses the gift or offer, or the solicitation, acceptance, or agreement to accept, something of value to vote for or to refrain from voting for a candidate or an election proposition or question.)

The offense of unlawful interference with voting in the first degree is punishable as a class C felony. AS 15.56.030(c).

Development of the amendment was influenced by the decision of the Alaska Supreme Court in Dansereau v. Ulmer, 903 P.2d 555 (1995), at 561.

JBC:pl
95-250.plm

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 THIRD JUDICIAL DISTRICT

3 DANA DANSEREAU, GREGORY J.)
4 GURSEY, SAMUEL HAYWOOD,)
5 KATHY HAYWOOD, C.E. JENKINS,)
6 KIM RYAN, JAMES WEYMOUTH,)
7 RITA T. WEYMOUTH, THOMAS J.)
8 NORTHCOTT, DAVID D. KYZER,)
9 M.D., and JANE AND JOHN)
10 DOES 1-10,)

11 Plaintiffs,)

12 v.)

13 FRAN ULMER, LIEUTENANT)
14 GOVERNOR, STATE OF ALASKA,)
15 and DAVID KOIVUNIEMI, ACTING)
16 DIRECTOR OF THE ALASKA)
17 DIVISION OF ELECTIONS,)

18 Defendants,)

Case No. 3AN-94-10948 CI

19 TONY KNOWLES and FRAN ULMER)
20 in their individual)
21 capacities,)

22 Intervenor.)

23 SETTLEMENT AGREEMENT

24 The parties to this agreement are the plaintiffs, ten
25 qualified voters of the state acting by and through their counsel
26 Wevley William Shea; the defendants, the Lieutenant Governor and
the Director of the Division of Elections and the State of Alaska
acting by and through their counsel, the Attorney General of the
State of Alaska; and defendant intervenors, Tony Knowles and Fran
Ulmer, in their individual capacities acting by and through their
counsel, John Rubini.

Dansereau v. State of Alaska
3AN-94-10948 CI
Settlement Agreement

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1081 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 268 5100

1 The parties to Dansereau v. State of Alaska, Case No.
2 3AN-94-10948 CI (hereinafter "the litigation"), plaintiffs,
3 defendants and intervenor-defendants hereby enter into a
4 compromise and settlement of the litigation.

5 Recitals

6 1.1. The parties confirm that this compromise and
7 settlement is in the best interests of the citizens of the State
8 of Alaska and the parties to the litigation. The overriding
9 concern of the parties is that elections continue to be decided by
10 voters who exercise their franchise in accordance with the highest
11 principles of democracy.

12 1.2. The other overriding factor requiring this
13 compromise and settlement of the litigation is that the governing
14 executives of the State of Alaska, the Governor and Lieutenant
15 Governor, should pursue their public service duties on behalf of
16 all Alaskans free from distractions that require the expenditure
17 of money and resources which can best be directed to other more
18 deserving public purposes.

19 1.3. The plaintiffs in bringing and prosecuting the
20 litigation assert that they did so in the public interest.
21 Plaintiffs alleged in this complex litigation that there were
22 corrupt practices and wrong-doing of third parties and election
23 malconduct which occurred prior to the election of Governor
24 Knowles and Lieutenant Governor Ulmer. They did not allege any
25 wrong-doing by Governor Knowles or Lieutenant Governor Ulmer.

26 Dansereau v. State of Alaska
3AN-94-10948 CI
Settlement Agreement

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 263-5109

1 1.4. In its decision No. 4264 dated September 22, 1995
2 remanding a single count of the litigation, the Alaska Supreme
3 Court observed that federal election law prohibits any form of
4 pecuniary inducement of persons to vote in an election in which a
5 candidate for federal office appears on the ballot. The Court
6 found that state law prohibits a pecuniary inducement to vote only
7 if there is intent to induce a vote for a particular candidate.
8 The difference noted by the Alaska Supreme Court between state and
9 federal election law may confuse candidates, campaign
10 organizations, and voters concerning what may or may not
11 constitute lawful conduct. The Lieutenant Governor, after
12 reviewing the Court's decision, has determined that it is in the
13 best interests of the State to have state law conform. The
14 administration intends to make federal and state election law
15 consistent by proposing that the state election code adopt the
16 more stringent federal standard. Plaintiffs intend to endorse and
17 support this legislative initiative.

18 1.5. The parties continue to disagree about the
19 legality and materiality of the election practice that was to be
20 litigated upon remand to the Superior Court.

21 1.6. The parties dispute among themselves the amount of
22 attorney fees and costs that may be awarded to plaintiffs for
23 their part in the litigation. Therefore, the parties desire to
24 establish an efficient and economical procedure to fairly
25 determine the amount of any award.

26 Densmoreau v. State of Alaska
JAN-94-10948 CI
Settlement Agreement

The Agreement

1
2 2.1. In an effort to meet the best interests of the
3 parties, the citizens of Alaska, and address the future of Alaska
4 in a positive manner, the parties hereby agree to a compromise and
5 settlement of the litigation under the following terms:

6 (a) The Lieutenant Governor has reviewed and
7 considered the Alaska Supreme Court's observations concerning the
8 differences between state and federal election laws treatment of
9 pecuniary inducement in exercising the election franchise and is
10 particularly concerned that the difference between the laws may
11 cause confusion for candidates, campaign organizations, and
12 voters. Plaintiffs have been advised that the Knowles
13 administration intends to introduce a bill on the first day of the
14 second session of the Nineteenth Alaska State Legislature to
15 implement the election franchise protections of the Federal Voting
16 Rights Act, 42 U.S.C. 1973i(c). Plaintiffs support the
17 introduction of this legislation and will join the Knowles
18 administration in seeking speedy passage.

19 (b) The parties agree to submit their existing
20 controversy concerning the entitlement of plaintiffs to an award
21 of attorney fees and costs to an arbitrator for the purposes of
22 binding arbitration under the Uniform Arbitration Act (AS 09.43).

23 (1) The fees and costs in dispute are those
24 incurred in preparation for and participation in the litigation
25 before the Superior Court and Alaska Supreme Court.

26 Dansereau v. State of Alaska
JAN-94-10948 CI
Settlement Agreement

1 (2) There shall be a single arbitrator who
2 will be appointed by agreement of the parties.

3 (3) The arbitrator shall determine an
4 appropriate award of attorney fees and costs for plaintiffs based
5 on the following principles applicable to determining an award of
6 attorney fees and costs under Rules 79 and 82 Alaska Rules of
7 Civil Procedure, including the public interest litigant exception
8 to that rule:

- 9 (i) the complexity of the litigation;
10 (ii) the reasonableness of the attorney's
11 hourly rates and the number of hours expended;
12 (iii) the relationship between the amount
13 of work performed and the significance of the matters at stake;
14 and (iv) other equitable factors deemed
15 relevant by the arbitrator.

16 2.2. Plaintiffs, by this settlement, waive and release
17 all claims, demands, causes of action and rights to institute any
18 form of legal action against the State of Alaska, the Lieutenant
19 Governor, the Director of the Division of Elections, arising out
20 of the conduct of the 1994 general election.

21 2.3. Upon execution of this settlement agreement by all
22 parties, plaintiffs shall promptly dismiss the litigation with
23 prejudice.

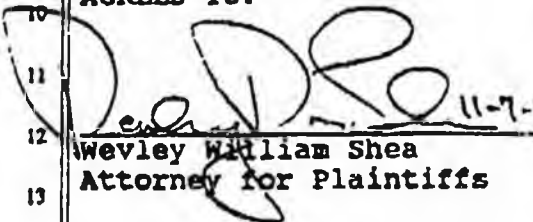
24 2.4. This settlement agreement is entered into in
25 compromise of disputed claims. Neither the execution of this
26

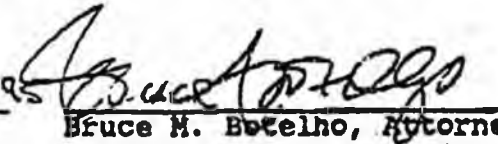
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ANCHORAGE, ALASKA 99501
PHONE: (907) 263-3100

1 agreement and release and dismissal, nor the payment of any
2 consideration as the result of the arbitration of costs and fees,
3 nor any other act or agreement in furtherance of this settlement
4 agreement, may be construed in any way as an admission of
5 wrongdoing or liability on the part of any party to this
6 agreement. The parties each completely deny wrongdoing, and intend
7 by this settlement agreement to avoid further prolonged
8 litigation.

9
10 AGREED TO:

AGREED TO:

11  11-7-95
12 Wevley William Shea
13 Attorney for Plaintiffs

 11/7/95
12 Bruce M. Botelho, Attorney General
13 Attorney for State of Alaska

14
15 AGREED TO:

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17
18 Jonathan B. Rubini
19 Attorney for Intervenor-Defendants

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25
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Dansereau v. State of Alaska
JAN-94-10948 CI
Settlement Agreement

Dana DANSEREAU; Gregory J. Gurse; Samuel Haywood; Kathy Haywood; C.E. Jenkins; Kim Ryan; James Weymouth; Rita T. Weymouth; T.J. Northcott; David D. Kyzer, M.D.; and Jane and John Does 1-10, Appellants.

v.

Fran ULMER, Lieutenant Governor, State of Alaska, and David Koivuniemi, Acting Director of the Alaska Division of Elections, Appellees.

No. S-6894.

Supreme Court of Alaska.

Sept. 22, 1995.

Ten voters (contestants), challenging validity of gubernatorial election, moved for summary judgment and state cross-moved for summary judgment. The Superior Court, Third Judicial District, Anchorage, Karl S. Johnstone, J., granted state's motion for summary judgment. Contestants appealed. The Supreme Court, Eastaugh, J., held that: (1) Borough transportation assistance program was not a corrupt practice constituting crime of unlawful interference with voting in the first degree; (2) genuine issue of material fact precluded summary judgment in favor of state on claim that distribution of postcards to voters offering opportunity to participate in cash drawing was corrupt practice in violation of election laws; (3) state failed to meet its burden that distribution of postcards did not alter outcome of election; and (4) state's operation of absentee voting station did not constitute election misconduct.

Affirmed in part, reversed in part and remanded.

Compton, J., filed opinion dissenting in part.

1. Elections ⇨1

Right to vote encompasses right to express one's opinion and is way to declare one's full membership in political community,

and thus is fundamental to our concept of democratic government.

2. Elections ⇨291

Because public has an important interest in stability and finality of election results, every reasonable presumption is indulged in favor of validity of an election; however, if party challenging an election proves that misconduct occurred and that it could have changed result of election, Supreme Court may vitiate election or determine which candidate was elected. AS 15.20.540.

3. Elections ⇨291

Contestants challenging an election on basis that misconduct occurred have dual burden of showing that there was both significant deviation from statutory direction, and that deviation was of magnitude sufficient to change result of election. AS 15.20.540.

4. Appeal and Error ⇨863

When reviewing grant of summary judgment, Supreme Court must determine whether any genuine issue of material fact exists and whether moving party is entitled to judgment as matter of law.

5. Appeal and Error ⇨934(1)

If superior court's order granting summary judgment does not set out court's reasoning, Supreme Court presumes that superior court ruled in favor of movant on all issues.

6. Elections ⇨285(3), 305(5, 3)

Contestants challenging results of gubernatorial election did not allege facts which would support claim of campaign misconduct in second degree nor did they brief issue either before Superior Court or Supreme Court, and thus claim was waived. AS 15.56.020.

7. Elections ⇨197

In order to show that Borough's transportation assistance program, in which Borough would reimburse each voter for up to ten gallons of gasoline used by voter to reach polls, was an unlawful interference with voting, election contestants had to demonstrate that Borough paid voters and did so with an intent to induce voters to vote for or refrain

from voting for particular candidate. AS 15.56.030, 15.56.030(a)(2).

8. Elections ⇐197

In action challenging results of gubernatorial election on basis that Borough's transportation assistance program, in which Borough would reimburse each voter for up to ten gallons of gasoline used by voter to reach polls, factfinder could have concluded that Borough's program paid voters to vote where, although voters were required to swear or affirm to their need for fuel to cover transportation costs on application for fuel, of 847 vouchers put into evidence, fewer than 10 voters signed for less for ten gallons of gasoline, and evidence suggested that most Borough residents lived in communities no farther than 12 miles from polls, and thus lived too close to polls to require ten gallons of gasoline for transportation on election day. AS 15.56.030.

9. Appeal and Error ⇐934(1)

In reviewing grant of summary judgment, court must draw all reasonable inferences in favor of nonmoving party.

10. Elections ⇐319

When interpreting statute defining unlawful interference with voting in the first degree, Supreme Court gives language its ordinary meaning because language has not acquired peculiar meaning through statutory definition or previous judicial construction. AS 15.56.030.

11. Elections ⇐319

For purposes of statute prohibiting offering thing of value to person with intent to induce person to vote for candidate, term "induce" implies promise of an advantage as a result of performing desire to act, and advantage offered must have an independent value to voter. AS 15.56.030(a)(2).

See publication Words and Phrases for other judicial constructions and definitions.

12. Elections ⇐197

In order for voters to prevail on challenge to gubernatorial election on basis that Borough's transportation assistance program in which Borough reimbursed each voter for up to ten gallons of gasoline used by voter to

reach polls constituted unlawful interference with voting in the first degree, they must show that gasoline was offered to encourage voters to cast their ballots for candidate they would not otherwise have selected; it would be insufficient that something of value was offered in exchange for inducing voting per se since under Alaska law it is legal to compensate person for voting per se. AS 15.56.030(a)(2).

13. Elections ⇐319

Alaska's election practice statute do not proscribe voter incentive programs which involve compensation for voting, even if sponsor of program intends and expects that program will benefit particular candidate; they only prohibit payments intended to induce persons to vote in different manner than they would have otherwise. AS 15.56.030.

14. Elections ⇐291

In action challenging Borough's transportation assistance program, in which Borough would reimburse each voter for up to ten gallons of gasoline used by voter to reach polls, on basis that it constituted unlawful interference with voting in the first degree, there was no evidence which would permit reasonable inference that persons responsible for transportation assistance program intended to induce voters to vote in particular manner nor that program as conducted was not candidate-neutral. AS 15.56.030(a)(2).

15. Elections ⇐319

Statute defining unlawful interference with voting in the first degree does not prohibit payment to induce persons to vote who would not otherwise vote, so long as they are not induced to vote in particular manner, and thus evidence that persons responsible for transportation assistance program intended that program would result in net gain of votes for particular candidate would be insufficient to prove violation of statute. AS 15.56.030(a)(2).

16. Elections ⇐291

If transportation assistance program is candidate-neutral in fact, Supreme Court must presume voters, in sanctity of voting booth, will vote as they would have had they

made their ways to polls without assistance or inducement. AS 15.56.030(a)(2).

17. Elections ⇨271

Alleged violation of federal election statute by third party is not an independent ground for an election contest under Alaska law; rather, violation of federal election statute by person other than an election official can be ground for an election contest under Alaska law only if violation is also "corrupt practice" as defined by Alaska election law. Voting Rights Act of 1965, § 2(c), as amended, 42 U.S.C.A. § 1973i(c); AS 15.20.540(3).

18. Elections ⇨271

There was no election "malconduct" by state election officials associated with Borough's transportation assistance program, in which Borough would reimburse each voter for up to ten gallons of gasoline used by voter to reach polls, where no state election official condoned or approved program as it was actually conducted by Borough. AS 15.20.540(1).

19. Elections ⇨271

Requirement of significant deviation from statutory norms applies to all grounds for election contest under Alaska law. AS 15.20.540.

20. Elections ⇨271

Distribution of postcards to voters offering them opportunity to participate in drawing for \$1,000 and stating that source of postcards endorsed particular gubernatorial candidate did not significantly frustrate purposes of statute defining campaign misconduct in the first degree, to promote informed electorate and to allow voters to evaluate solicitations they received, by its failure to indicate on postcard who paid for it, and thus did not constitute a "corrupt practice" sufficient to change results of election for purposes of establishing ground to contest election results where postcard identified its source, and identified source as supporter of particular candidate. AS 15.20.540(3), 15.56.010(a)(2).

See publication Words and Phrases for other judicial constructions and definitions.

21. Elections ⇨227(1)

Even assuming statutory deviation was sufficient to support misdemeanor charge of violating statute defining campaign misconduct in the first degree, technical failure to comply strictly with that statute, which prohibits publishing communication intended to influence election of candidate or outcome of ballot without words "paid for by," is not sufficient to invalidate ballots where purpose of statute has been satisfied. AS 15.56.010.

22. Appeal and Error ⇨761

Supreme Court has discretion to reach an issue which has been inarticulately briefed by one party, especially where Supreme Court, trial court, and opposing party have all been adequately notified that matter is at issue on appeal.

23. Elections ⇨285(3), 305(4)

Voters contesting gubernatorial election results adequately raised question of whether mailing of postcards offering voters opportunity to participate in drawing for \$1,000 violated statute prohibiting giving, or promising to give money to person with intent to induce person to vote for or refrain from voting for candidate where voters' complaint and statement of points on appeal raised question of whether postcard violated statute, voters argued postcard offered something of value, in opposing state's cross-motion for summary judgment, voters argued that postcard demonstrated an intent to encourage people to vote for particular candidate, and state presented its position on issue in its brief and memoranda before Supreme Court and Superior Court. AS 15.56.030(a)(2).

24. Judgment ⇨181(15.1)

Genuine issue of material fact as to whether postcard sent by third parties to voters offering them opportunity to participate in drawing for \$1,000 violated statute prohibiting the offering of something of value to person with intent to induce person to vote for particular candidate precluded summary judgment in favor of state in action contesting gubernatorial election results where drawing offer was accompanied by non-neutral message endorsing particular gubernatorial candidate and state failed to demonstrate that there was no intention to induce voters

to vote for particular candidate. AS 15.56.030(a)(2).

25. Judgment \Rightarrow 185(2)

In action by voters against state challenging gubernatorial election results on basis that postcard sent to voters violated election laws, state, as cross-movant seeking summary judgment, had initial burden of making prima facie showing that postcard mailing did not affect election. AS 15.56.030(a)(2).

26. Elections \Rightarrow 291

State did not make prima facie showing that challenged postcard mailing to voters did not affect election outcome where it simply showed that fewer voters in targeted district participated in prior election than in challenged election without showing that turnouts in two elections could be compared directly or that no other independent circumstances may have depressed turnout in prior election, it offered no evidence about how many targeted voters were registered in district or how many targeted voters voted in either election in that or any other district, and voters who contested election offered evidence that two elections could not be compared. AS 15.56.030(a)(2).

27. Elections \Rightarrow 216.1

State's good-faith operation of absentee voting station did not constitute malconduct for purposes of contesting election results despite fact that state had previously decided to close station, but on day before election changed that decision, and fact that voters had long wait in line prior to voting, where after deciding to close voting station, state trained employers in area to assist voters in registering and distributing absentee ballot applications, there were no allegations that voters were unable to obtain complete, or return absentee ballots prior to election, de-

cision to reverse original course and open voting station was made after receiving numerous phone calls requesting that it be open, and there were no allegations that an earlier decision to open station would have alleviated long lines on election day. AS 15.56.030(a)(2).

Wevley William Shea, Anchorage, for Appellants.

James L. Baldwin and Lauri J. Adams, Assistant Attorneys General, and Bruce M. Botelho, Attorney General, Juneau, for Appellees.

Avrum M. Gross, Gross & Burke, P.C., Juneau, for Amicus Curiae North Slope Borough.

Before MOORE, C.J., and RABINOWITZ, MATTHEWS, COMPTON and EASTAUGH, JJ.

OPINION

EASTAUGH, Justice.

I. INTRODUCTION

Dana Dansereau and nine other voters (Contestants) challenged the validity of the November 8, 1994 gubernatorial election in which Tony Knowles was elected to the office of Governor of Alaska.¹ The superior court granted summary judgment to the State of Alaska, thereby dismissing all of Contestants' claims. We affirm in part and reverse in part.

II. FACTS AND PROCEEDINGS

Contestants challenged the election by filing suit in December 1994, alleging that malconduct by the State and corrupt acts by third parties had occurred and that those acts were sufficient to change the result of

1. The Contestants included as defendants: the State of Alaska; John B. "Jack" Coghill, former Lieutenant Governor; and Joseph L. Swanson, the Director of the Alaska Division of Elections under Governor Walter J. Hickel (collectively "State"). In accordance with Alaska Civil Rule 25(d), the current Lieutenant Governor and the Acting Director of the Division of Elections, Fran Uimer and David Koivuniemi respectively, were substituted as defendants.

A recount requested by gubernatorial Candidate James O. Campbell was completed on December 3, 1994, it determined that Tony Knowles was elected by a margin of 536 votes. Candidate Campbell is not one of the Contestants. Although given an opportunity to do so, Contestants never moved for a preliminary injunction, and conceded that Candidate Knowles was capable of governing the State until there could be a new election.

the gubernatorial election. Contestants requested that the State conduct a new election for governor or declare James O. Campbell Governor of Alaska.

Contestants moved for summary judgment in mid-December 1994. The State cross-moved. The superior court granted the State's motion for summary judgment on February 8 and 9, 1995. This appeal followed. On appeal the North Slope Borough submitted an *amicus curiae* brief.

Contestants advance three main arguments. First, they argue that a North Slope Borough voter assistance program, which offered to reimburse rural voters for the gasoline they used to transport themselves to the polls, violated state and federal election laws. Second, they argue that a postcard sent to Doyon, Limited (Doyon) shareholders violated federal and state election laws, because it offered entry in a \$1,000 cash prize drawing to those who submitted a ballot stub, or similarly sized piece of paper, and stated that the Alaska Federation of Natives (AFN) overwhelmingly endorsed Tony Knowles for governor. Finally, Contestants assert that the State committed election misconduct in its operation of the Prudhoe Bay voting station.²

III. DISCUSSION

[1] The right to vote encompasses the right to express one's opinion and is a way to

2. Contestants also argue that the State committed election misconduct by "disenfranchising" voters through its treatment of absentee ballots and residency disputes in the state Senate race for District J in Anchorage. All but forty of the disputed District J votes were counted in the race for governor. Contestants offer no evidence that substantiates a challenge to the determination regarding the forty ballots, nor do they offer any evidence that the alleged misconduct regarding these forty ballots would have been sufficient to change the outcome of the gubernatorial election.

Because the gubernatorial election is the only race challenged by Contestants, we need not consider any alleged misconduct which did not affect the gubernatorial election.

3. AS 15.20.540 provides:

Grounds for election contest. A defeated candidate or 10 qualified voters may contest the nomination or election of any person or the approval or rejection of any question or propo-

declare one's full membership in the political community. Thus, it is fundamental to our concept of democratic government. Moreover, a true democracy must seek to make each citizen's vote as meaningful as every other vote to ensure the equality of all people under the law.

[2-5] Alaska Statute 15.20.540³ is the statutory mechanism through which voters can challenge, under prescribed conditions, election results which they believe denigrated their right to vote. Because the public has an important interest in the stability and finality of election results, *Dale v. Greater Anchorage Area Borough*, 439 P.2d 790, 792 (Alaska 1968), we have held that "every reasonable presumption will be indulged in favor of the validity of an election." *Turkington v. City of Kachemak*, 380 P.2d 593, 595 (Alaska 1963). However, if the party challenging an election proves that misconduct occurred and that it could have changed the result of the election, we may vitiate the election or determine which candidate was elected. *Boucher v. Bomhoff*, 495 P.2d 77, 80 n. 5, 82 (Alaska 1972). Under AS 15.20.540, Contestants have the "dual burden" of showing that there was both a significant deviation from statutory direction, and that the deviation was of a magnitude sufficient to change the result of the election. *Id.* at 80. We here review the summary judgment dismissing the Contestants' lawsuit.⁴

sition upon one or more of the following grounds: (1) misconduct, fraud, or corruption on the part of an election official sufficient to change the result of the election; (2) when the person certified as elected or nominated is not qualified as required by law; (3) any corrupt practice as defined by law sufficient to change the results of the election.

4. When reviewing a grant of summary judgment, we must determine whether any genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law. *Wright v. State*, 824 P.2d 718, 720 (Alaska 1992). If the superior court's order granting summary judgment does not set out the court's reasoning, we presume that the superior court ruled in favor of the movant on all issues. *Saddler v. Alaska Marine Lines, Inc.*, 856 P.2d 784, 787 (Alaska 1993).

Contestants argue that the three events constitute malconduct or corruption under AS 15.20.540 sufficient to change the results of the gubernatorial election.

A. *North Slope Borough's Gasoline Reimbursement Transportation Assistance Program*

During the 1994 election, the North Slope Borough (Borough) conducted a transportation assistance program allegedly designed to overcome the unique obstacles to voting participation posed by the Borough's vast and largely roadless geography. The Borough informed residents before election day that it would reimburse each voter for up to ten gallons of gasoline used by the voter to reach the polls. After voting, a resident could take his or her ballot stub to tables set up by the Borough near the election booths and fill out a "voter assistance voucher." On the voucher the voter would "swear or affirm" to the amount of gasoline used to transport the voter to the polls. The voter could then redeem the voucher for the specified amount of gasoline at a local fuel station before July 1, 1995. The Borough allowed all voters, regardless of how far they had travelled to the polls, to participate in this program.

Contestants argue that this program violated federal and state criminal election laws. Contestants allege that the Borough impermissibly expanded the transportation assistance program beyond the limited use condoned in advance by the United States Department of Justice Election Crimes Branch and that volunteers witnessing voters' signatures on gasoline vouchers allowed nearly all voters to claim ten gallons, even though most

voters had not used that much gasoline to reach the polls. Contestants further allege that the Borough instituted the transportation assistance program with the intent of helping Candidate Knowles win the election.

1. *The transportation assistance program is not illegal under Alaska law*

[6] Contestants allege that the Borough's transportation assistance program violates AS 15.56.030 and is therefore a "corrupt practice as defined by law sufficient to change the results of the election" under AS 15.20.540(3).⁵ Contestants characterize the Borough's program as a "gas for votes" program and argue that thousands of persons were paid the value of up to ten gallons of gasoline to vote.⁶

Although AS 15.56.030(a)(2) prohibits a person from paying another person to vote for a particular candidate, proposition, or question, no Alaska Statute prohibits a person from compensating another person for voting *per se*. See AS 15.56.030. Thus, assuming the Borough's program paid voters with fuel to vote in the election, regardless of the amount of fuel the voters used to reach the polls, the program would not be a corrupt practice as defined by Alaska law, unless the offers of payment were made with the intent "to induce the person to vote for or refrain from voting for a candidate at an election." AS 15.56.030(a)(2).

In stark contrast to federal election law, Alaska election law does not prohibit paying voters. See discussion *infra*. In this respect Alaska's statutory scheme is similar to the election laws of other states. For example,

Contestants also allege that the program violates AS 15.56.020, which pertains to campaign misconduct in the second degree. However, Contestants have not alleged facts which would support this claim. Nor have they briefed this issue either before the superior court or this court. The argument is thus waived. *Witron & Cash Architects v. Cash*, 837 P.2d 692, 713-14 (Alaska 1992).

6. The record establishes that the market price of ten gallons of gasoline in Barrow was approximately twenty-seven dollars on November 8, 1994.

3. AS 15.56.030 provides in pertinent part:

(a) A person commits the crime of unlawful interference with voting in the first degree if the person

....
(2) gives, promises to give, offers, or causes to be given or offered money or other valuable thing to a person with the intent to induce the person to vote for or refrain from voting for a candidate at an election or for an election proposition or question ...

....
(b) Violation of this section is a corrupt practice.

(c) Unlawful interference in the first degree is a class C felony.

under California law it is not unlawful to offer any form of consideration, including cash payment, to a person to vote, provided that the payment is not an inducement to or reward for voting for, or refraining from voting, for a particular person or measure.⁷ California deleted language in the previous version of the statute

dealing with voting, agreeing to vote, coming to the polls, or agreeing to come to the polls . . . since [this language] could, conceivably, be used to punish someone for having rewarded a voter for doing what is his [or her] civic duty—namely coming to the polls and voting. Various bicentennial attempts to produce large turnouts this year may well be in violation of these subsections. What needs to be prohibited is rewarding a person for voting in a particular manner, something [the statute] continues to do.

Legislative Committee Comment 1976 Addition, former Cal.Elec.Code § 29621 (now § 18521).

Similarly, Washington State election law prohibits any person from “directly or indirectly offer[ing] a bribe, reward, or any thing of value to a voter in exchange for the voter’s vote for or against any person or ballot measure, or authoriz[ing] any person to do so . . .” Wash.Rev.Code Ann. § 29.85.060 (West 1993). In contrast, Oregon election law prohibits a person from directly or indirectly “giving or promising to give money, employment or other thing of value” to a

person with the intent to induce an individual to register or vote. Or.Rev.Stat. § 260.665(1) & (2)(a) (1993). However, Oregon specifically excludes “[f]ree transportation to and from the polls for persons voting” from this prohibition. Or.Rev.Stat. § 260.665(4)(f) (1993).

[7] Although the language of AS 15.56.030(a)(2) is not as unequivocal as the language of California’s law, which states that one may not offer compensation in exchange for “voting for any particular person,” Cal.Elec.Code § 18521 (West 1995), it appears clear from a plain reading of AS 15.56.030(a)(2) that the prohibition against inducing a person to “vote for or refrain from voting for a candidate” under AS 15.56.030(a)(2) has an identical meaning. Thus, to show that the Borough’s transportation assistance program violated AS 15.56.030(a)(2), Contestants must demonstrate that the Borough paid voters and did so with an intent to induce voters to vote for or refrain from voting for a particular candidate.

2. Payment for voting

Contestants argue that this case is analogous to *United States v. Garcia*, 719 F.2d 99 (5th Cir.1983), where the court held that 42 U.S.C. § 1973i(c) prohibits not only paying a voter in cash, but also offering any item of value, such as a welfare food voucher, in

7. Cal.Elec.Code § 18521 (West 1995) provides in relevant part:

A person shall not directly or through any other person receive, agree, or contract for, before, during or after an election, any money, gift, loan, or other valuable consideration, office, place or employment for himself or any other person because he or any other person:

- (a) Voted, agreed to vote, refrained from voting, or agreed to refrain from voting for any particular person or measure.
- (b) Remained away from the polls.
- (c) Refrained or agreed to refrain from voting.
- (d) Induced any other person to:
 - (1) Remain away from the polls.
 - (2) Refrain from voting.
 - (3) Vote or refrain from voting for any particular person or measure.

Section 18522 provides in relevant part:

Neither a person nor a controlled committee shall directly or through any other person or

controlled committee pay, lend, or contribute, or offer or promise to pay, lend, or contribute, any money or other valuable consideration to or for any voter or to or for any other person to:

(a) Induce any voter to:

- (1) Refrain from voting at any election.
- (2) Vote or refrain from voting at an election for any particular person or measure.
- (3) Remain away from the polls at an election.

(b) Reward any voter for having:

- (1) Refrained from voting.
- (2) Voted for any particular person or measure.
- (3) Refrained from voting for any particular person or measure.
- (4) Remained away from the polls at an election.

exchange for a vote.⁸ *Id.* at 101-02. The State and Borough argue that *Garcia* and similar cases⁹ are inapposite. They argue that programs with the primary goal of assisting voters in reaching the polls have long been upheld against challenges that such assistance constitutes a payment to vote.

In *United States v. Lowin*, 467 F.2d 1132, 1136 (7th Cir.1972), the court classified providing transportation to the polls as "assistance rendered by civic groups to prospective voters," rather than payment, and held that § 1973i(c) does not proscribe "efforts by civic groups or employers to encourage people to register." The United States Department of Justice appears to agree with this analysis.

[T]he concept of "payment" does not reach things such as rides to the polls or time off from work which are given to make it easier for those who have decided to vote to cast their ballots. Such "facilitation payments" are to be distinguished from gifts made personally to prospective voters for the specific purpose of stimulating or influencing the more fundamental decision to participate in an election.

Craig C. Donsanto, *Federal Prosecution of Election Offenses* 18 (5th ed. 1988).

The distinction between "facilitative" programs and "gift" programs seems based in part on historical factors which preceded the passage of most voting rights legislation. See *Day-Brite Lighting v. State of Missouri*, 342 U.S. 421, 424-25, 72 S.Ct. 405, 407-08, 96 L.Ed. 469 (1952) (upholding state law requiring employer to allow employees four hours of paid leave on election day in order to vote); 111 Cong.Rec.S. 8986 (daily ed. April 29, 1965) (Section 1973i(c) does not prohibit the "practice that has been recognized and has been accepted by both political parties and all organizations with respect to helping to transport people who do not have means of transportation to the polls in order to cast

their ballots"). See also *Parsley v. Cassidy*, 300 Ky. 603, 189 S.W.2d 947, 948 (1945) (upholding candidates' contribution of cars and trucks to assist in voter transportation as reasonable due to bad roads and wartime exigencies); *Watkins v. Holbrook*, 311 Ky. 236, 223 S.W.2d 903, 903-04 (1949) (upholding disbursement of money to provide for transport to polls to "get out the vote").

Perhaps more importantly, this distinction reflects the difficulty in balancing the need to minimize undue pecuniary influence in elections with the desire to encourage and facilitate maximum political participation. The State and Borough argue that the transportation program is a valid balancing of these two factors, while Contestants argue that the program is an invalid form of vote solicitation.

The North Slope Borough comprises 89,000 square miles and is inhabited by 5,760 people. The majority of these people are regularly involved in subsistence activities. The Borough's limited road system makes it difficult for residents in remote areas to reach voting facilities. In some cases, snowmobile or all-terrain vehicles are the only available modes of transportation. Fuel is especially expensive in the Borough, and because many residents do not participate fully in the cash economy, a fuel expenditure may be still more costly.

The Borough argues that many individuals who would like to vote will be deterred by the limited access to roads and the cost of transportation in the Borough. Thus, a transportation assistance program would clearly facilitate voting in the Borough. However, the Borough argues, the sorts of transportation programs already permitted in many other states, in which volunteers car-pool or bus voters to voting stations, would not be feasible in the Borough because

8. 42 U.S.C. § 1973i(c) provides in pertinent part: Whoever knowingly or willfully ... pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than \$10,000 or imprisoned not more than five years or both....

9. See *United States v. Saenz*, 747 F.2d 930, 934 (5th Cir.1984) (prospective voters offered welfare

vouchers in exchange for voting for defendant); *United States v. Thompson*, 615 F.2d 329, 330-31 (5th Cir.1980), cert. denied, *Solis v. United States*, 473 U.S. 906, 105 S.Ct. 3531, 87 L.Ed.2d 655 (1985) (defendant candidate for sheriff bought votes with liquor and cash and accompanied voters into booth to insure compliance).

of the limited road access and the distances involved.

The Borough claims its program is "more feasible and much cheaper" because it allows individual voters to provide their own transportation to the polls and then be reimbursed for the cost of fuel used by the voter to reach the polls. When the Borough began developing this program, Special Counsel to the Mayor contacted the Election Crimes Branch of the United States Department of Justice to ascertain whether the program might violate 42 U.S.C. § 1973i(c). The Borough described its proposed program as follows: "[t]he plan is to offer up to 10 gallons of gasoline to each voter who requests it. The gasoline will help cover these individuals' travel costs between town and their hunting, fishing, whaling or other sites. Each voter will *swear or affirm* to their need for the fuel to cover transportation costs on the application for fuel." The Borough explained that the assistance would not be payment because (1) the Borough's sole purpose was to facilitate voters reaching the polls or the registrar's office; (2) the transportation norms in the contiguous United States do not apply because of the lack of roads; (3) the large amount of off-road travel in the region removes many citizens from access to registrars and voting polls; and (4) the lack of telephones or other methods of communication with subsistence or other sites located outside of Borough communities makes offering a "ride to the polls" impractical.

The Election Crimes Branch responded with an informal opinion stating that "the outreach program as described in your letter in our opinion is clearly lawful under 42 U.S.C. § 1973i(c)." The Election Crimes Branch stated that its understanding was that the offer "would be made only to individual Native Americans¹⁰ who are on active hunting status—or who are otherwise located in extremely remote areas of the North Slope Borough." Its response further stated that

[w]e assume for the purposes of this letter that these offers of gasoline will be made

in a completely politically neutral manner; that they will not be connected in any way with specific candidates or political organizations; that they will be available to all individual Native Americans whose physical location satisfies the eligibility criteria describe[d] in your letter; . . . and that the gas provided will not exceed that needed to transport the individual in question from his or her hunting camp to the nearest registration or polling site.

Its response concluded, "[i]n sum, the gasoline offer describe[d] in your letter, and as amplified by the assumptions summarized above, is functionally similar to an offer of [a] ride to the polls in jurisdictions that have roads and geographically concise populations."

[8] Contestants argue that the Borough conducted the program "directly contrary to the advice and warnings" of the Election Crimes Branch by allowing participation by voters who did not meet the criteria set forth in the response, and by allowing many people to claim more gas than they actually used, resulting in a net pecuniary gain. Although Contestants presented no evidence that any particular voter actually received more fuel than necessary to reach the polls, they presented evidence that this was the likely result of the Borough's program. The 847 vouchers put into evidence by Contestants reveal that fewer than ten voters signed for less than ten gallons of gasoline. Contestants provided evidence suggesting that most Borough residents lived in communities no farther than twelve miles from the polls and thus lived too close to the polls to require ten gallons of gasoline for transportation on election day. Contestants also provided evidence that there may have been little significant subsistence activity on November 8 and further, that the Borough might not have taken adequate steps to ensure that voters did not receive more fuel than was necessary for transportation to the polls. Thus, construing the facts in the light most favorable to the nonmoving party, we hold that a factfinder could conclude that the Borough's program

10. The Borough's program as implemented was not limited to Native Americans, nor could it have been so limited consistent with the requirements of the Fourteenth Amendment to the United

States Constitution or the Equal Rights Clause of article I, section 1 of the Constitution of Alaska.

paid voters to vote. See *Clabaugh v. Bottcher*, 545 P.2d 172, 175 n. 5 (Alaska 1976) (in ruling on a motion for summary judgment the court must draw all reasonable inferences in favor of the nonmoving party).

b. *Intent to induce a person to vote for a candidate*

As noted above, the Borough's program did not violate Alaska's election laws unless the payment to vote was made with the intent to induce a person to vote for or refrain from voting for a candidate. AS 15.56.030(a)(2). Contestants argue that the program is illegal because the Borough offered something of value in exchange for getting out the vote with the expectation that an increase in voter turnout meant an increase in votes for the Democratic candidate for governor, Tony Knowles. Contestants offered an affidavit in which Thomas Northcott affirmed that several months after the election, a Borough executive boasted about the high voter turnout in the area, and stated that the incentive behind the gas for votes program was to get Tony Knowles elected.

[9] In reviewing the summary judgments entered against the Contestants, the court must draw all reasonable inferences in favor of the Contestants. The parties do not dispute that AS 15.56.030(a)(2) prohibits giving money or other valuable thing with an intention to persuade a person to vote for a candidate. (Because offering to give money or an other valuable thing can also violate AS 15.56.030(a)(2), we need not distinguish between the Borough's offer and its delivery of valuable vouchers to voters.) The averments in Northcott's affidavit would support a finding that the Borough, acting through its officials, intended the program to increase the number of votes cast for Candidate Knowles. Consequently, the question we must answer is whether AS 15.56.030(a)(2) prohibits a candidate-neutral program which gives or offers to give a thing of value in a manner that encourages persons who might otherwise not have voted to go to the polls and cast their votes for candidates for whom they were already inclined to vote.

[10,11] We give the language of AS 15.56.030 its ordinary meaning when inter-

preting the statute because the language has not acquired a peculiar meaning through statutory definition or previous judicial construction. *Foreman v. Anchorage Equal Rights Comm'n*, 779 P.2d 1199, 1201 (Alaska 1989); *Wilson v. Municipality of Anchorage*, 669 P.2d 569, 572 (Alaska 1983). Alaska Statute 15.56.030(a)(2) prohibits offering a thing of value to a person "with the intent to induce the person to vote for" a candidate. The most common legal definition of "induce" is "to lead on, to influence, to prevail on, to move by persuasion or influence, to bring on or about, to effect, to cause." See *Commonwealth v. Mason*, 381 Pa. 309, 112 A.2d 174, 176 (1955) (defining "induce" as "to lead on; to influence; to prevail on; to move on by persuasion or influence . . . ; to bring on or about; to effect; to cause."); *People v. Drake*, 151 Cal.App.2d 28, 310 P.2d 997, 1003 (1957) (using same definition); *La Page v. United States*, 146 F.2d 536, 538 n. 2 (8th Cir.1945) (using same definition as *Drake*); *State v. Cook*, 139 Ariz. 406, 678 P.2d 987, 989 (1984) (the generally accepted meaning of "induce" is, "to lead on; to move by persuasion or influence"); *Black's Law Dictionary* 775 (6th ed. 1990) ("To bring on or about, to affect, cause, to influence to an act or course of conduct, lead by persuasion or reasoning, incite by motives, prevail on"); *Webster's New Collegiate Dictionary* 587 (1974) ("to lead on: move by persuasion or influence;" "to call forth or bring about by influence or stimulation"). These definitions connote an alteration of a person's previous inclination.

The terms "induce" and "inducement" appear to have been used most frequently in criminal law, especially in entrapment cases. This usage clearly indicates that inducement requires altering a person's disposition to act in a certain way. See, e.g., *State v. Hansen*, 69 Wash.App. 750, 850 P.2d 571, 579 n. 9 (1993), reversed on other grounds, *State v. Stegall*, 124 Wash.2d 719, 881 P.2d 979 (1994) ("inducement" such as might support entrapment defense, "is government conduct which creates a substantial risk that an undisposed person or otherwise law-abiding citizen will commit offense"); *United States v. Salmon*, 948 F.2d 776, 779 (D.C.Cir.1991) ("Inducement is government behavior that would

'cause[] an unpredisposed person to commit a crime.'") (citation omitted).

[12] In *Oregon Republican Party v. State of Oregon*, 78 Or.App. 601, 717 P.2d 1206, 1208, remanded for dismissal as moot, 301 Or. 437, 722 P.2d 1237 (1986), the court held that providing postage-paid envelopes which recipients could use to return requests for absentee ballots to the Republican Party's headquarters, did not constitute an inducement to vote under O.R.S. 260.665(2)(a). That statute prohibits inducing a person to register to vote. The court reasoned that because "[i]nducement implies the promise of an advantage as a result of performing the desired act," the advantage offered must have an independent value to the voter. *Id.* Without an independent value in exchange for the performance of the act, the thing offered did not induce the act of registering, but rather facilitated registration. *Id.* Applying the Oregon court's definition of inducement to this case, to prevail here Contestants must show that something of independent value—gasoline—was offered to encourage voters to cast their ballots for a candidate they would not otherwise have selected. It is insufficient that something of value was offered in exchange for inducing voting per se, because under Alaska law it is legal to compensate a person for voting per se.

Unless improperly influenced, voters will cast their ballots in accordance with their own criteria. No doubt voters are influenced by such legitimate criteria as their own socio-economic status and community values. Thus, residents of any given community may naturally tend to favor a particular candidate. Persons whose votes are facilitated by candidate-neutral transportation assistance programs will likely vote for the same candidates they would have favored if they had reached the polls without assistance. Potential voters who could benefit from transportation assistance may share beliefs or values which tend to favor a particular candidate. It is not surprising that some candidates or organizations employ transportation assistance programs to target persons of a particular socio-economic status or party registration, just as other candidates or organizations

may employ other programs, such as absentee ballot assistance, hoping to maximize participation of voters thought more likely to favor those candidates. See *Oregon Republican Party*, 717 P.2d at 1208 (discussing Republican Party mailing of absentee ballots with postage pre-paid envelope).

When voting, a person must choose one candidate over others. Thus, if the phrase "intent to induce to vote for or refrain from voting for a candidate" in AS 15.56.030 is not read to require an intent to persuade voters to choose candidates for whom they would not otherwise have voted, that statute would have to be construed as prohibiting payments for voting per se. As discussed previously, such a reading of the statute would conflict with its plain language.

[13] There are many policy arguments for and against the "commercialization" of votes. See, e.g., *Day-Brite Lighting*, 342 U.S. at 428, 72 S.Ct. at 409 (Jackson, J., dissenting) (disagreeing with upholding state statutes which require employers to give employees two hours paid leave in order to vote and disapproving of "state-imposed pay-for-voting system[s]"); Pamela S. Karlan, *Not by Money but by Virtue Won? Vote Trafficking and the Voting Rights System*, 80 Va. L.Rev. 1455 (1994) (discussing dangers to the polity, especially to economically disadvantaged subsets, of vote-buying schemes and contrasting these schemes with voting incentive programs). These policy arguments have already been resolved in Alaska. The election practice statutes enacted by the Alaska Legislature do not proscribe voter incentive programs which involve compensation for voting, even if the sponsor of a program intends and expects that the program will benefit a particular candidate; they only prohibit payments intended to induce, i.e., influence or persuade, persons to vote in a different manner than they would have otherwise. It is not for the courts to second-guess this permissible legislative choice.

[14-16] Applying that choice to the record before us, we find no evidence which would permit a reasonable inference that the persons responsible for the Borough's trans-

portation assistance program intended to induce voters to vote in a particular manner. Most significantly, there was no evidence the program as conducted was not candidate-neutral. Evidence that persons responsible for the program, by encouraging eligible citizens to vote, intended that the program would result in a net gain of votes for Candidate Knowles would be insufficient to prove a violation of AS 15.56.030(a)(2). As written, the statute does not prohibit payment to induce persons to vote who would not otherwise vote, so long as they are not induced to vote in a particular manner. If a program is candidate-neutral in fact, we must presume voters, in the sanctity of the voting booth, will vote as they would have had they made their ways to the polls without assistance or inducement.¹¹

2. *The alleged violation of federal election law is not grounds for contest under AS 15.20.540*

Contestants assert that they can challenge the election under AS 15.20.540 because the Borough's program violated federal law.

Although a candidate-neutral program which offers compensation to encourage voting per se does not violate Alaska law, it appears to violate federal election law. See 42 U.S.C. § 1973i(c), *supra* note 8. That does not necessarily mean, however, that a given federal violation is ground for an Alaskan election contest.

The State and the Borough argue that the Alaska and federal election statutes do not make the violation of a federal criminal election statute a basis for invalidating an election. The State notes that election contests based on the acts of third parties must show that the third party committed a "corrupt

11. The record reflects three other programs that offered potentially valuable consideration to persons who voted in the 1994 election. A private travel agent in Fairbanks gave \$40 air fare discounts to 120-25 customers presenting a 1994 ballot stub on November 8 or 9, 1994. The Anchorage Chamber of Commerce offered a drawing for various prizes, including two round trip tickets, to persons submitting their ballot stubs; approximately 4,415 people entered that drawing. The Municipality of Anchorage People Mover bus system accepted an unknown number of riders' ballot stubs the day after the election in exchange for trips of any length, all day. There

practice" as "defined by law." AS 15.20.540(3). The State argues that the Alaska Legislature has expressly defined specific acts as "corrupt practices," because it included the phrase "violation of this section is a corrupt practice" in particular election statutes. See, e.g., AS 15.56.010(b); AS 15.56.030(b); AS 15.56.035(b). The State reasons that given the legislature's careful attention to this classification, it clearly did not designate the violation of federal criminal election law as a corrupt practice.

Contestants do not respond to these assertions. It would be inconsistent for the legislature not to prohibit candidate-neutral payments made to encourage voting, *see supra*, discussion of AS 15.56.030(a)(2), yet to regard such payments as a "corrupt practice" sufficient to set aside an election, whether or not they violated federal law. It is also unlikely the legislature would have considered acts violating federal election law, but not Alaska's election statutes, to be "corrupt practices as defined by law," given that the federal election statutes do not use that phrase. The absence of that phrase or some close equivalent in the federal election statutes tends to confirm that the Alaska Legislature did not intend that AS 15.20.540(3) election contests could be based on acts that violated federal, but not Alaska, election statutes.

[17, 18] We hold that an alleged violation of a federal election statute by a third party is not an independent ground for an election contest under AS 15.20.540(3). A violation of 42 U.S.C. § 1973i(c) by a person other than an election official can be ground for an election contest under AS 15.20.540(3) only if the violation is also a "corrupt practice" as defined by Alaska election law.¹²

is no indication in the record that any of those programs was not candidate-neutral.

12. Contestants also argue that there was election "malconduct" by State election officials under AS 15.20.540(1) because the Borough's program violated federal law and State officials approved that program. Having reviewed the record, we are persuaded that there is no genuine fact dispute, and that no State election official condoned or approved the program as it was actually conducted by the Borough. The trial court did not err in entering summary judgment against Contestants on this claim.

B. *Postcard Mailed to Doyon Shareholders*

The Tanana Chiefs Conference, Doyon, Limited and the Fairbanks Native Association (TCC/Doyon/FNA) mailed a postcard to Doyon shareholders before the election. One side of the postcard offered to persons who submitted an entry on the 1994 ballot stub, or similarly-sized piece of paper, an opportunity to participate in a drawing for one thousand dollars in cash. Participants had to submit entries to their tribal counsel office by noon the day after the election. Neither TCC, Doyon, nor FNA endorsed any candidate for governor in the November 8 general election. However, the other side of the postcard encouraged Native Alaskans to vote. This side stated that "it is *very important*" to vote and that "one vote does make a difference." It asked people to encourage their friends and relatives to vote in the general election. The following statement was centered on this side of the postcard: "At this year's Alaska Federation of Natives convention, Native delegates from across Alaska overwhelmingly endorsed *Tim Knowles* for governor." Contestants argue that the postcard and the drawing it advertised violated Alaska election law.

1. *Absence of language required by statute*

Contestants argue that the postcard violates Alaska election law because it did not bear the words "paid for by," as required by AS 15.56.010.¹³ The State argues that the postcard satisfies the purpose of AS 15.56.010 and that its distribution should thus

13. AS 15.56.010(a)(2) provides that "[a] person commits the crime of campaign misconduct in the first degree if the person":

knowingly prints or publishes an advertisement, billboard, placard, poster, handbill, paid-for television or radio announcement or other communication intended to influence the election of a candidate or outcome of a ballot proposition or question without the words "paid for by" followed by the name and address of the candidate, group or individual paying for the advertising or communication....

14. The State argues that AS 15.56.010 does not apply to the postcard because the postcard does

not be considered a "corrupt practice" under AS 15.20.540.

Because the postcard was distributed by persons other than election officials, Contestants must demonstrate that its distribution was a "corrupt practice," not simply "malconduct." AS 15.20.540(1) & (3).

[19] We first consider the significance of the omission of the information required by AS 15.56.010. This court has held that the term "malconduct" as used in AS 15.20.540 means a "significant deviation from statutorily or constitutionally prescribed norms." *Hammond v. Hickel*, 588 P.2d 256, 258 (Alaska 1978) (citing *Boucher v. Bomhoff*, 495 P.2d 77 (Alaska 1972)). Although *Hammond v. Hickel* involved claims of official malconduct rather than third-party corruption, given our prior holding that election statutes will be liberally construed to uphold the will of the electorate, *Carr v. Thomas*, 586 P.2d 622, 626 n. 11 (Alaska 1978), we choose to apply *Hammond's* requirement of a significant deviation from statutory norms to all grounds for an election contest under AS 15.20.540.

[20] In this case, assuming the language of the postcard was "intended to influence the election of a candidate," no significant statutory deviation occurred. AS 15.56.010(a)(2). The statute presumably requires that the postcard bear the words "paid for by" and the sponsor's name and return address.¹⁴ However, the postcard identified its source, and also identified the Alaska Federation of Natives (AFN) as a supporter of Candidate Knowles. Thus, the apparent purpose of AS 15.56.010—to promote an informed electorate and to allow

not encourage voting for any particular candidate and because AS 15.56.010 does not apply to mailings from corporations to their investors. It is unnecessary for us to address those two arguments because we hold that distributing the postcard in violation of AS 15.56.010 was not a "corrupt practice" under AS 15.20.540.

Given our resolution of this issue, we do not find it necessary to consider whether, in light of *McIntyre v. Ohio Elections Commission*, — U.S. —, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995) (holding that an Ohio statute prohibiting distribution of anonymous campaign literature violated the First Amendment), AS 15.56.010 is valid. No party argues that it is not.

voters to evaluate the solicitations they receive—was substantially met. *Cf. Messerli v. State*, 626 P.2d 81, 87 (Alaska 1980) ("Identification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected.") (quoting *First National Bank v. Bellotti*, 435 U.S. 765, 792 n. 32, 98 S.Ct. 1407, 1424 n. 32, 55 L.Ed.2d 707 (1978)).

[21] Since distribution of the postcard did not significantly frustrate the purposes of AS 15.56.010, it cannot be said that the deviation from that statute was a "corrupt practice . . . sufficient to change the results of the election" for the purposes of AS 15.20.540. Even assuming the deviation was sufficient to support a misdemeanor charge of violating AS 15.56.010, we hold that a technical failure to comply strictly with that statute is not sufficient to invalidate ballots where the purpose of the statute has been satisfied. *See Carr*, 586 P.2d at 625-26 (citing the "well-established policy which favors upholding of elections when technical errors . . . do not affect the result of an election," and recognizing that courts are reluctant to permit a wholesale disfranchisement of qualified voters where a reasonable construction of the statute can avoid such a result). Consequently the failure to indicate on the postcard who paid for it is not ground for an election contest under AS 15.20.540(3) in this case.

2. Legality of postcard mailing

[22, 23] We must next consider whether mailing the postcards was a corrupt practice

15. The dissenting opinion suggests that we should refuse to reach this issue, on the theory Contestants have not squarely argued in their brief that the mailing of the postcard was a corrupt practice under AS 15.56.030(a)(2).

This court has discretion to reach an issue which has been inarticulately briefed by one party, especially where we, the trial court, and the opposing party have all been adequately notified that the matter is at issue on appeal. *Rarcliff v. Secretary Nat'l Bank*, 670 P.2d 1139, 1141 n. 4 (Alaska 1983).

Contestants' complaint and statement of points on appeal raise the question of whether the Doyon postcard violated AS 15.56.030. Contestants repeatedly invoke § .030; they twice quote § .030(a)(2) in their opening appellate brief. Contestants squarely argued that in the context of 42 U.S.C. § 1973(c) the postcard offered something of value. In their memorandum op-

on the theory that the postcards offered something of value and were distributed with an intent to influence the way voters cast their ballots, in violation of AS 15.56.030.¹⁵ In response the State asserts that the drawing cannot have violated AS 15.56.030 because not only was participation in the drawing not contingent on a vote for Candidate Knowles, but drawing participants were not required to vote at all. The State reasons that because it was not necessary to vote to enter the drawing, entry in the drawing cannot be construed as a payment in exchange for the participant's vote. The trial court held that distributing the postcard "did not constitute a corrupt practice," and granted partial summary judgment to the State on that issue.

Insofar as is pertinent here, AS 15.56.030(a)(2) is violated when a person "[1] offers . . . [2] money or other valuable thing [3] to a person [4] with the intent to induce the person to vote for or refrain from voting for a candidate...."

[24] By prominently mentioning the AFN's endorsement of Candidate Knowles, the postcard potentially encouraged recipients to vote for a particular candidate. This facially non-neutral message is evidence of an intent to induce persons to vote for a person they might not otherwise have favored. This non-neutral message distinguishes it from the North Slope Borough's transportation assistance program. The drawing offer conse-

quently, in posing the State's cross-motion for summary judgment. Contestants argued that the postcard demonstrated an intent to encourage people to vote for a particular candidate. These are the two issues critical to determining whether distributing the postcard was a corrupt practice in violation of AS 15.56.030(a)(2). The State presented its position on § .030(a)(2) in its brief and memoranda before this court and the superior court.

While such a relatively oblique discussion of an issue might not always be sufficient under the facts of this case we find that Contestants adequately raised the question of whether mailing the postcards violated AS 15.56.030(a)(2). We would be remiss in failing to reach this issue, especially considering that if we do not, persons may needlessly violate the statute and jeopardize future elections.

quently comes closer to offering a thing of value, a chance to win one thousand dollars, to encourage a vote for a particular candidate.¹⁶

We hold that the drawing offer potentially violated AS 15.56.030(a)(2), because it was accompanied by a non-neutral message. Given that message and the State's failure to demonstrate that there was no intention to induce voters to vote for a particular candidate, the trial court could not say as a matter of law that the mailing did not violate AS 15.56.030(a)(2).¹⁷ The issue consequently could not be resolved on summary judgment.

3. Effect of postcard on election

We next consider whether the State was entitled to summary judgment on the alternative theory that the postcard did not affect the outcome of the election. See *Wright v. State*, 824 P.2d 718, 720 (Alaska 1992) (holding that "this court is not bound by the reasoning articulated by the trial court and can affirm a grant of summary judgment on alternative grounds"). The trial court did not reach this issue, having held as a matter of law that the postcard did not constitute a corrupt practice. We conclude that the record does not permit us to uphold the summary judgment on this alternative ground.

Assuming the TCC/Doyon/FNA drawing solicitation violated AS 15.56.030, to prevail at trial Contestants would have to show that the violation was of a magnitude "sufficient

16. Although the actual value of a chance to win one thousand dollars is potentially small, depending upon the number of drawing entrants, the perceived value of the chance to win a one thousand dollar drawing may be considerably higher in the eyes of potential participants. No party has argued that a chance to win one thousand dollars does not constitute an "other valuable thing" under AS 15.56.030(a)(2). Cf. *Naron v. Prestage*, 469 So.2d 83 (Miss.1985) (approving a candidate's cash drawing offer sent to registered voters). Given the State's failure to assert the existence of a genuine issue of material fact in response to Contestants' assertion (in the context of 42 U.S.C. § 1973i(c)) that the postcard offered something of value, we find the dissenting words of Chief Justice Patterson in *Naron* persuasive:

In my opinion, the offer of a chance to win cash by pursuing the citizen's duty to vote is

to change the results of the election." See AS 15.20.540(3); *Boucher*, 495 P.2d at 80.

Contestants moved for summary judgment, and argued in support that mailing the postcards to "thousands of individuals is sufficient to permeate the entire election with misconduct..." Contestants did not then or later offer any evidence that the mailing affected the outcome of the election.

In opposing Contestants' motion for summary judgment and cross-moving for summary judgment, the State offered evidence that fewer voters, and a lower percentage of the registered voters, cast ballots in House District 36, the Rural Interior District, in the 1994 general election than in the 1992 general election. The State offered the affidavit of a State labor economist who affied that "[t]he Alaska Native population of House District 36 includes American Indians in the Doyon Alaska Native Regional Corporation (ANRC) region of the interior, as well as Eskimos of the Calista ANRC Region." The economist identified other House Districts with other regional corporations. The State also offered the affidavit of TCC's general counsel. He affied that TCC is a "consortium of Interior Native villages and associations, and [is] the sponsoring regional organization under the Alaska Native Claims Settlement Act" for Doyon, whose shareholders and their descendants are Native members of the TCC member villages and association. From this evidence, the State argued in support of its cross-motion that "District 36 includes the Doyon region of the Interior" and that many

little different from an offer to pay cash in whatever amount for a citizen to vote. The hope of winning something for little, if any, cash outlay has great popular appeal as is established by the growing popularity of state lotteries for greater tax revenues.

469 So.2d at 88. There is no genuine dispute regarding the value of the offer the postcards transmitted in this case. We do not find it necessary to decide here whether an offer of participation in a cash-prize drawing is always an offer of an "other valuable thing" under AS 15.56.030(a)(2).

17. Contestants also allege that the postcard violated 42 U.S.C. § 1973i(c). As discussed in part A2, *supra*, violation of a federal election statute is not an independent ground for an election contest under AS 15.20.540(3).

of the voters participating in the drawing voted in District 36. It argued that this information established that the drawing did not affect the election outcome.

Contestants have produced no evidence that the drawing solicitation influenced enough votes to change the outcome of the election. They simply assert that if the votes of all postcard recipients were awarded to Candidate Campbell, the result of the election would be changed. Although Contestants asserted in their opening appellate brief that the number of voters who received postcards can be determined exactly, so far as the record reveals, Contestants never conducted the discovery or analysis necessary to count the postcard recipients who voted and the record permits no inference about how many postcard recipients or drawing participants voted. Contestants candidly stated during oral argument before us that the record contains no evidence about how many people participated in the drawing. No evidence in the record permits an inference that the drawing actually affected the ballot cast by even one person who received a postcard. Likewise, no evidence in the record permits an inference about how many, if any, ballots were cast for Candidate Knowles or any other candidate as a result of the postcard mailing.

The Contestants' failure to produce any such evidence, however, is not necessarily determinative of this issue, because we must here decide whether summary judgment should have been granted to the State over the Contestants' arguments that there were genuine fact disputes about the effect of the postcard on the election.

[25] In accordance with the principles now governing summary judgment in Alaska, the State, as the cross-movant seeking summary judgment, had the initial burden of making a prima facie showing that the postcard mailing did not affect the election. See *Yurioff v. American Honda Motor Co.*, 803 P.2d 386, 389 (Alaska 1990); *Bauman v. State, Div. of Family and Youth Svcs.*, 768 P.2d 1097, 1099 (Alaska 1989) ("[T]he proponent of a summary judgment motion has the initial burden of establishing the absence of genuine issues of material fact and his or her

right to judgment as a matter of law."). See also Alaska R.Civ.P. 56.

[26] The facts submitted by the State in support of its cross-motion were relevant, and would, if unexplained and un rebutted, tend to support an inference the mailing did not increase the voter turnout, and therefore did not affect the election results. Nonetheless, the facts produced by the State did not amount to a prima facie showing that the alleged violation did not affect the election outcome. Simply showing that fewer District 36 voters participated in the general election in 1994 than in 1992 was insufficient because the State offered no evidence that turnouts in the two elections could be compared directly or that no other, independent circumstances may have depressed the District 36 turnout in 1994 or increased it in 1992. It offered no evidence about how many Doyon shareholders were registered voters in District 36, or how many Doyon shareholders voted in either election in that or any other district. Furthermore, the figures offered by the State indicated that the percentage of District 36 registered voters who voted in 1992 was lower than the statewide average that year, but that the percentage turnout there in 1994 was higher than the 1994 statewide average, a phenomenon that may undercut the State's assertion that the postcard did not influence the turnout in that district. The State's own evidence did not require a conclusion that the postcard did not influence the election outcome.

Moreover, the State's showing was not un rebutted. Contestants offered an affidavit executed by a person identified on Contestants' witness list as an expert in Alaska elections. He affied that the 1994 voter turnout should be compared to the turnout in 1990, since both were non-presidential election years. That opinion was sufficient to cast into doubt any direct comparison of voter participation in 1992 and 1994.

In a statement of genuine issues, Contestants asserted that mailing the postcards was a "corrupt practice" and that "corrupt practices" of TCC, FNA, and Doyon "injected extensive bias into the results of the 1994 governors [sic] election." They asserted the

cash drawing introduced sufficient corrupt practices into the election through extensive bias that "it could and probably would change the result of the election if eliminated." They also asserted that the corrupt practices "have introduced extensive bias into the 1994 governors [sic] election that requires a new election for the governor of Alaska."

We have stated that "every reasonable presumption will be indulged in favor of the validity of an election." *Turkington v. City of Kachemak*, 380 P.2d 593, 595 (Alaska 1963). See also *Hammond*, 588 P.2d at 260 (although malconduct may have impeached integrity of election process and placed true outcome "in doubt," malconduct not sufficient grounds for new election where more concrete standards do not indicate that the votes affected are sufficient to change the result of the election); *Boucher*, 495 P.2d at 86 n. 20 ("The presumption of validity given to elections and the diffidence with which the court attacks the results thereof places a heavy burden on the trial judge."); *Dale v. Greater Anchorage Area Borough*, 439 P.2d 790, 792 (Alaska 1968) (election contestant must strictly observe contest procedures because public policy demands that election results have stability and finality).

Given our conclusion that it was error to grant summary judgment to the State on the issue of whether the postcard violated AS 15.56.030, we could affirm this portion of the summary judgment only if we could conclude that the State made out a prima facie showing that any violation was not of sufficient magnitude to affect the election result. Because the State, as the movant, did not make that showing, it did not establish that it was entitled to judgment as a matter of law and did not establish the absence of any genuine issue of material fact. It was not entitled to summary judgment on this issue, and we cannot affirm the judgment on this alternative ground on the basis of the record before us.

C. Prudhoe Bay Absentee Voting Station

The State decided in August 1994 to close the Prudhoe Bay absentee voting station, citing a decrease in transient population

which no longer justified the cost of sending election workers to Prudhoe Bay and renting space to operate the absentee voting station. The State requested preclearance from the United States Department of Justice Civil Rights Division before it closed the absentee voting station. The Department of Justice replied that it had no objections to the closure. The State notified the oil extraction employers in the area that the station would be closed and trained these employers to assist voters in registering and distributing absentee ballot applications.

The day before the November 8 election, the Director of Elections decided to open the Prudhoe Bay absentee voting station after receiving several phone calls requesting that it be opened. The Director of Elections sent two election workers to the voting station on election day. The Division originally intended that the voting station would operate on November 8 until 5:00 p.m., but at 4:30 p.m., after consulting with the Division of Elections, the on-site election workers decided to extend the voting station's hours until 8:00 p.m. to accommodate voters who had been waiting in a two to three hour waiting line. Approximately seventy-five people voted at the voting station between 5:00 p.m. and 8:00 p.m., and the wait was reduced significantly by 7:30 p.m. A total of 308 people voted at the station.

Contestants argue that the Division of Elections' last minute decision to open the station "created a two to three hour waiting period," raising a question of "how many Prudhoe Bay workers wanted to vote but did not vote or could not vote due to the unreasonable wait imposed by the State." Contestants offer no evidence that voters *could not* vote because of the long wait, but do provide affidavits of two Prudhoe Bay workers who affied that they *did not* vote because they were unwilling to endure the hours-long waiting period. The State argues that the Director of Elections is given the authority to designate and supervise voting stations and that the Director properly exercised this discretion both in deciding to close the Prudhoe Bay station and in directing the station's operation on election day.

[27] We have never held that an "unreasonable" wait at an absentee voting station, in itself, can be considered election misconduct. Nor do Contestants cite any cases to support this proposition. Moreover, it does not appear that the wait at the absentee voting station resulted from a lack of training or from the fact that the Director of Elections' decision to reopen the absentee voting station was made at the "last minute," or that it was otherwise "unreasonable."

The Director of Elections was not required to reopen the absentee voting station at Prudhoe Bay. AS 15.20.045(b).¹⁸ As noted above, the State had decided to close the Prudhoe Bay voting station before the August primary and had trained Prudhoe Bay employers to assist voters in registering and distributing absentee ballot applications. The affidavit of Mark Humphrey, submitted by Contestants, provides evidence that voters at Prudhoe Bay were aware that the Director of Elections had previously decided not to operate the Prudhoe Bay absentee voting station. Contestants do not allege that any voter was unable to obtain, complete, or return absentee ballots by mail before the election. The State made considerable efforts to insure that Prudhoe Bay voters were aware well before election day that they would need to vote by mail.

The State offered evidence that decisions of the Division of Elections to reverse its original course and open the absentee voting station, and then to extend the station's hours, were made in good faith and were intended to accommodate, and in fact did accommodate, voters who would not have been able to vote because they had failed to return absentee ballots by mail. AS 15.20.081. Contestants have offered no facts creating a genuine fact dispute about those matters.

Furthermore, although the decision to open the station was made only the day before the election, Contestants do not allege that an earlier decision would have alleviated

the wait on election day. Nor is there any evidence that the election workers were inadequately trained or unable to perform their duties. To the contrary, one of the employers which had requested that the absentee voting station be opened wrote to the Division of Elections commending the election workers. The letter noted the hard work of the Division staff, and thanked the Division for setting up the voting station on such short notice. The employer stated that "everyone I spoke with was happy they were able to vote."

In the context of an absentee voting station and under the facts presented by both parties, the good-faith operation of the Prudhoe Bay station is not misconduct even though voters had a long wait. See *Hammund v. A. Ckel*, 588 P.2d at 259 ("evidence of an election official's good faith may preclude a finding of misconduct under certain circumstances") (citing *Turkington*, 380 P.2d at 595).

IV. CONCLUSION

We hold that the Borough's transportation assistance program did not violate AS 15.56.030(a)(2). We further hold that it was error to grant summary judgment to the State on Contestants' claim that the distribution of the postcard to Doyon shareholders was a corrupt practice under Alaska's election laws. We decline to affirm the summary judgment on that claim on an alternative theory that the postcard did not alter the outcome of the election since the State failed to meet its burden of proof on this issue. Finally, we hold that the State's operation of the Prudhoe Bay voting station did not constitute election misconduct.

We consequently REVERSE that portion of the summary judgment dismissing Contestants' claim regarding the postcard sent to Doyon shareholders. This issue is remanded for further proceedings not inconsistent with this opinion. We AFFIRM that portion of

18. AS 15.20.045(b) provides:

The director may designate by regulation adopted under the Administrative Procedure Act (AS 44.62) locations at which absentee voting stations will be operated on election day and on other dates and at times to be designat-

ed by the director. The director shall supply absentee voting stations with ballots for all election districts in the state and shall designate absentee voting officials to serve at absentee voting stations.

the summary judgment dismissing all other claims asserted by Contestants.

COMPTON, Justice, dissenting in part.

I dissent from section III.B.2 of the court's opinion. In that section the court reverses the trial court's grant of summary judgment in the State's favor on the issue of whether the TCC/Doyon/AFN postcard mailing violated AS 15.56.030(a)(2), even though Contestants never argued this issue on appeal. I would hold that the issue of whether the postcard mailing violated AS 15.56.030(a)(2) should not be considered, because Contestants failed to raise it.

In their brief, Contestants assert generally that "[t]he mailing [of the postcard] itself constitutes federal criminal violations under 18 U.S.C. section 597, [and] 42 U.S.C. section 1973i(c). Additionally, it is a corrupt practice as defined in A.S. 15.20.540, A.S. 15.56.010, and A.S. 15.56.030." Contestants then assert specifically a violation of AS 15.56.010, which requires the words "paid for by" on any communication intended to influence an election. Following this, Contestants focus entirely on 42 U.S.C. § 1973i(c), the so-called federal "cash for vote" prohibition. They cite federal cases and *Federal Prosecution of Election Offenses* (5th ed. 1988), which analyzes section 1973i(c).

Contestants never assert that the cash drawing announced in the postcard violates AS 15.56.030(a)(2), nor do they assert that the alleged federal law violation is a violation of AS 15.56.030(a)(2). Their general assertion, offered without elaboration, that "[t]he mailing . . . is a corrupt practice as defined in . . . A.S. 15.56.030" is the sum total of their argument on this issue. We require more than this under the waiver rule. See, e.g., *Wirum & Cash Architects v. Cash*, 837 P.2d 692, 713-14 (Alaska 1992) ("Where a point is not given more than a cursory statement in the argument portion of a brief, the point will not be considered on appeal.").

The court notes, as one justification for addressing the purported violation of AS 15.56.030(a)(2), that the State "presented its position" on the issue. Op. at n. 15. While it is true that in its argument the State cites to AS 15.56.030(a)(2)—something Contestants

never do—it only does so as part of its larger argument that the postcard mailing did not violate the "corrupt practice" provision of AS 15.20.540(3). Furthermore, the focus of the waiver rule is on whether the *proponent* of a point has raised and adequately briefed it. The State's reference to AS 15.56.030(a)(2) did not relieve Contestants of their responsibility under the waiver rule to raise and brief the purported violation of that provision if they wished the court to consider it.

The other justification the court offers for addressing the AS 15.56.030(a)(2) issue is that, by doing so, it may prevent persons from "needlessly violat[ing] the statute and jeopardiz[ing] future elections." Op. at n. 15. Yet, on the "two issues critical to determining whether distributing the postcard was a corrupt practice," *id.*, the court (1) declines to decide whether a cash-prize drawing is always an offer of a "valuable thing;" and (2) remands the case for a determination of whether AFN intended to influence voters to vote for a particular candidate. Op. at 569-70 and n. 16. The court announces no new principle of law, nor does it resolve any of the key legal issues arising under AS 15.56.030(a)(2); it simply holds that the trial court erred in granting summary judgment in the State's favor on the AS 15.56.030(a)(2) issue. The court therefore does not accomplish what it sets out to do: In the future, a party contemplating a cash-prize drawing scheme will still not know whether such a scheme is permitted under AS 15.56.030(a)(2), and may therefore "needlessly violate the statute."

I might be persuaded that a "public interest" exception to the waiver rule should be adopted, were the court to propose one. It may well be that litigants should not be deprived of review of issues relating to strong public policy, affecting the citizens of the state as a whole, simply because the issues have not been adequately raised by counsel. On the other hand, in this case the court has embraced once again the rule that "every reasonable presumption will be indulged in favor of the validity of an election," citing *Turkington v. City of Kachemak*, 380 P.2d 593, 595 (Alaska 1963). If we are to indulge every reasonable presumption in fa-

vor of the validity of the election, the failure of the Contestants to raise the AS 15.56.030(a)(2) issue must constitute a waiver of that issue.

The court's resolution of the AS 15.56.030(a)(2) issue is troublesome for reasons other than that it cannot be said fairly that the issue was raised by Contestants. First, the court provides virtually no guidance to the superior court on how to address the issue on remand. For example, the court does not declare whether the intent to induce is to be determined by applying an objective or a subjective standard.

Second, the court holds that "there is no genuine dispute regarding the value of the offer the postcards transmitted in this case." *Op.* at n. 16, without any evidence in the record that the cash drawing at issue is a valuable thing to the target voting group. The court rests its holding on the assumption that "[a]lthough the actual value of a chance to win one thousand dollars is potentially small, depending upon the number of drawing entrants, the perceived value of the chance to win a one thousand dollar drawing may be considerably higher in the eyes of potential participants." *Id.* In deciding previous election contests, we have relied on expert testimony or other evidence, rather than mere conjecture, to determine whether election laws were violated. *See, e.g., Boucher v. Bomhoff*, 495 P.2d 77, 81 (Alaska 1972) (voiding vote on constitutional-convention referendum; decision based in part on expert testimony that the misleading ballot language biased voters). Today the court strays from this practice, and bases its holding that the drawing offered a valuable thing on nothing more than its own sense of what the drawing participants may have perceived.

After holding that there can be no genuine dispute that the cash drawing in the present case was an offer of a valuable thing, the court states, as previously noted, that it need not decide whether a cash drawing is *always* an offer of a valuable thing. *Op.* at n. 16. If the court is not prepared to say that a cash drawing is always an offer of a valuable thing, how can it say, without supporting evidence, that the cash drawing in this case is an offer of a valuable thing? If a cash

drawing is not *always* an offer of a valuable thing, then the question must be factual. If so, its resolution should be left to the trial court.

This is the mischief played when courts take it upon themselves to address issues to which the litigants have paid scant, if any, attention. When there are no criteria to guide a court in addressing an issue not raised by the litigants, "the decision whether a litigant gets a new trial becomes wholly arbitrary." *Clark v. Greater Anchorage, Inc.*, 780 P.2d 1031, 1039 (Alaska 1989) (Compton, J., dissenting in part).

Contestants have not raised a claim that the postcard mailing violated AS 15.56.030(a)(2). Their sweeping assertion that the mailing constituted a corrupt practice under AS 15.56.030 does not ever address subsection (a)(2). They have failed utterly to argue that the cash drawing was "money or [an]other valuable thing" offered "with the intent to induce the [voter] to vote for or refrain from voting for a candidate." Because they have failed to argue this point, the court should not consider it. I would affirm the judgment of the superior court.

02/04/95

EFFECT GAS-FOR-VOTE INCENTIVE HAD ON NORTH SLOPE BOROUGH

	US-PRES 1988	1990	US-PRES 1992	1994	1994 minus 1990
statewide turnout %	69.5	65.7	82.9	64.4	
Anaktuk Pass	22-010	22-010	37-010	37-010	
registered voters	313	242	224	243	
ballots counted	75	84	81	105	21
Barrow	22-020	22-020	37-020	37-020	
registered voters	1524	1545	1554	1684	
ballots counted	738	694	878	999	305
Browerville	22-025	22-025	37-025	37-025	
registered voters	284	226	212	308	
ballots counted	161	132	151	190	58
Muiqsut	22-075	22-075	37-075	37-075	
registered voters	190	198	175	186	
ballots counted	99	105	121	115	10
Point Hope	22-080	22-080	37-080	37-080	
registered voters	257	276	282	316	
ballots counted	119	146	171	235	89
Point Lay	22-085	22-085	37-085	37-085	
registered voters	85	86	77	168	
ballots counted	58	50	48	100	50
Wainwright	22-100	22-100	37-100	37-100	
registered voters	207	209	224	241	
ballots counted	126	133	145	206	73
					total 606

METRO

ANCHORAGE DAILY NEWS

SATURDAY, September 23, 1995

High court revives election challenge

By PETER S. GOODMAN
Daily News reporter

An Alaska Supreme Court ruling handed down Friday revived a legal challenge to the election of Gov. Tony Knowles, who claimed office last year by a margin of just 536 votes.

The ruling came in a lawsuit filed by former U.S. Attorney Wev Shea against the state on behalf of 10 voters. It alleged the election was rife with cor-

ruption and it asked the state to either invalidate the results and hold a new election or declare Knowles' Republican opponent, Jim Campbell, the winner.

Specifically, Shea charged that Doyon Ltd., the Interior Native regional corporation, effectively bought votes when it sent postcards to its sharehold-

Please see Page B-2, SUIT

SUIT: Supreme Court ruling gives new life

Continued from Page B-1

ers, announcing a \$1,000 raffle that voters could enter by sending in their ballot stubs. The postcards noted prominently that Knowles had the backing of the Alaska Federation of Natives.

Shea claimed the North Slope Borough also bought votes when it offered to give up to 10 gallons of gasoline to anyone who

made the trip to the polls. Shea asserted that the two promotions stole victory from Campbell, noting that Knowles' election was due in part to overwhelming support from Natives in rural Alaska.

Judge Karl Johnstone threw the suit out of Anchorage Superior Court in February, concluding that neither the postcards nor the free gas amounted to corruption. That prompted

Shea to appeal.

In the ruling released Friday, the Supreme Court backed Johnstone on his finding that the gas offer didn't constitute vote-buying since voters could get in on it regardless of how they cast their ballots. While paying someone to vote a certain way is illegal under state law, simply paying someone to cast a ballot is not, the Supreme Court said.

to lawsuit against election of Knowles

But the court overturned Johnstone on the issue of the postcards. The cards were clearly intended to produce votes for Knowles, the court found. Furthermore, they may have affected the election outcome.

Though Shea didn't prove this in Superior Court, neither did the state disprove it, the court wrote. The high court could only guess what effect the

raffle had on the election. So the Supreme Court sent the suit back to the lower court for further proceedings, reopening the possibility the election could be invalidated.

Shea sounded confident after reading the opinion Friday afternoon.

"There's going to be a new election," he said.

"I think his optimism is misplaced," countered assistant attorney general

Jim Baldwin, who defended the case for the state.

"It's pretty good for us," he said. For Shea to win, he must prove that the postcards actually decided the election, Baldwin said. "That's a tremendous burden."

The opinion was written by Justice Robert Eastaugh. Justice Allen Compton penned the lone dissent.

registration by State or local officials or listing by an examiner, shall be denied the right to vote for failure to pay a poll tax if he tenders payment of such tax for the current year to an examiner or to the appropriate State or local official at least forty-five days prior to election, whether or not such tender would be timely or adequate under State law. An examiner shall have authority to accept such payment from any person authorized by this Act to make an application for listing, and shall issue a receipt for such payment. The examiner shall transmit promptly any such poll tax payment to the office of the State or local official authorized to receive such payment under State law, together with the name and address of the applicant."

Redesignation:

This section, formerly part of Act Aug. 6, 1965, P. L. 89-110 was redesignated as part of Title I of such Act by Act June 22, 1970, P. L. 91-285, § 2, 84 Stat. 314.

CROSS REFERENCES

This section is referred to in 42 USCS § 1973j.

RESEARCH GUIDE**Federal Procedure I Ed:**

Elections and Elective Franchise, Fed Proc, L Ed §§ 28:70, 71, 75, 77.

Am Jur:

16A Am Jur 2d, Constitutional Law § 655.

25 Am Jur 2d, Elections § 82.

Forms:

8 Federal Procedural Forms L Ed, Declaratory Judgments § 21:2.

8 Federal Procedural Forms L Ed, Elections and Elective Franchises § 25:32.

Law Review Articles:

Poll Tax: Its Impact on Racial Suffrage. 54 Ky L J 423.

INTERPRETIVE NOTES AND DECISIONS

In action instituted under 42 USCS § 1973b(b), state poll tax upheld over equal protection and Fifteenth Amendment claims, but overturned on due process grounds, notwith-

standing revenue and other assorted arguments. *United States v Texas* (1966, WD Tex) 252 F Supp 234, aff'd 384 US 153, 16 L Ed 2d 434, 86 S Ct 1333.

§ 1973i. Prohibited acts

(a) Failure or refusal to permit casting or tabulation of vote. No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of this Act or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.

(b) Intimidation, threats, or coercion. No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any persons to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 3(a), 6, 8, 9, 10, or 12(e) [42 USCS §§ 1973a(a), 1973d, 1973f, 1973g, 1973h, or 1973j(e)].

(c) False information in registering or voting; penalties. Whoever knowingly or willfully gives false information as to his name, address, or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than \$10,000 or imprisoned not more than five years, or both: Provided, however, That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

(d) Falsification or concealment of material facts or giving of false statements in matters within jurisdiction of examiners or hearing officers; penalties. Whoever, in any matter within the jurisdiction of an examiner or hearing officer knowingly and willfully falsifies or conceals a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(e) Voting more than once. (1) Whoever votes more than once in an election referred to in paragraph (2) shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(2) The prohibition of this subsection applies with respect to any general, special, or primary election held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

(3) As used in this subsection, the term "votes more than once" does not include the casting of an additional ballot if all prior ballots of that voter were invalidated, nor does it include the voting in two jurisdictions under section 202 of this Act [42 USCS § 1973aa-1], to the extent two ballots are not cast for an election to the same candidacy or office.

(Aug. 6, 1965, P. L. 89-110, Title I, § 11, 79 Stat. 443; June 22, 1970, P. L. 91-285, § 2, 84 Stat. 314; Sept. 22, 1970, P. L. 91-405, Title II, § 204(e), 84