

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 00/2

10850 HOUSE JUDICIARY

TABLE I
Additional Highlights from the Charan Investigation

- Based on the incident reports involving Joseph Charan, the San Francisco Police Department did not deem serious the injuries Veena Charan and other family members received at the hands of Joseph Charan. Specifically, the report indicated that "had the investigator looked at the pattern of violence established by Mr. Charan, and presented that information to the District Attorney's Office, stronger measures and responses to the situation may have prevented Joseph Charan from continuing the escalation of violence that led to the murder-suicide."¹⁵
- According to the felony protocol of the District Attorney's Office, prior history was one of the factors to be taken into account regarding re-booking. If the Assistant District Attorney had access to the same information the Commission did, the re-booking charges may have been different.
- Probation officers were not trained adequately in the dynamics of domestic violence.
- The Commission called for greater domestic violence training of the Municipal Court, Criminal Division. In particular, it stated a "need for training judges on the interpretation of restraining orders."¹⁶
- Family Court Services refused to answer questions posed by the Commission, citing their need to maintain confidentiality. The Commission described this failure as "intransigence."¹⁷ The report stated the resistance of Family Court Services "is indicative of the lack of the department's efforts to improve the City's response to battered women and their children."¹⁸ The Commission also criticized the mediation strategies of the Family Court.

understandings of the agreements/court orders and proceedings. Specifically, the investigation called for the development of domestic violence advisory committees in each city department working with domestic violence cases.

Contemporary Domestic Violence Death Reviews: Some Effective Emerging Models

Informal and semi-formal adult domestic violence death reviews have been conducted in a number of states for the past decade. More recently some states, such as California, Nevada, and Delaware, have introduced legislation to regulate the review process and protect review participants from liability. However, adult domestic violence fatality reviews are a relatively recent phenomenon and it is accurate to state that most domestic violence related deaths currently are not subject to systematic and multi-agency review.

The principal purpose of domestic violence fatality review is to reduce domestic violence related deaths and injuries through the identification and subsequent rectification of problems in the civil and criminal justice systems, including the delivery of multiple services to families. One way of doing this is through reviews such as the Charan investigation, which, as the authors have shown, scrutinized

one case very closely yielding various concrete recommendations regarding service delivery.

Other review practices aim to do the same, although they use different approaches. These approaches are influenced by the availability of resources to fund reviews, the commitment of different agencies and jurisdictions, and their experience of domestic violence deaths. Some review teams examine large numbers of deaths with a view to identifying just how many are the result of domestic violence. This type of wide-angle approach tends to reveal the extensive role played by domestic violence in the loss of life in general. An exemplar of this wide-angled approach can be found in Philadelphia.

PHILADELPHIA: A MULTIDISCIPLINARY MODEL

The Philadelphia Women's Death Review Team is a multi-agency, multidisciplinary group convened as a public-private collaboration. It seeks to reduce the number of domestic violence deaths by examining the role of violence in the lives of Philadelphia women killed by an intimate partner, as well as the effects of the killing on their children.

Scope of review. Without substantial funding or any legislation, the Philadelphia Department of Public Health, with support from the District Attorney's Office, is conducting reviews.

This multidisciplinary team goes down to medical examiners' offices to review all deaths of women from 15 to 60 years of age, not just domestic violence cases.¹⁹ These deaths either could be related directly to domestic violence or related indirectly due to women's inability to access health care. Roughly three thousand women die in Philadelphia every year and the team expects to look at 400 to 500 deaths. The team's central objective is to be able to identify any domestic violence directed at decedents in the 12 months prior to the fatality. The meetings are quarterly and each review takes about 30 minutes.

Observations. To date, the Philadelphia Team²⁰ has made the following important observations about the deaths of women:

- It is difficult to locate information on many of the female decedents, especially psychosocial data. Many women led invisible lives and their deaths often went unnoticed. Many women who died prematurely were not known to any community/legal systems.
- Often, perpetrators of domestic homicide are known within their communities, and not only in their role as offenders. Some were known to mental health providers. The team has asked whether it is possible to flag or track offenders who need but refuse psychiatric help.
- Gun merchants do not always refuse to sell firearms

to individuals with Protection from Abuse Orders against them. Additionally, judges do not always order domestic violence perpetrators to relinquish previously acquired weapons. The team has raised a number of questions about the use of the judiciary to remove or manage access to weaponry.

- Women who die from HIV/AIDS are often connected to lifestyles involving drug use and prostitution. It is well documented that prostitutes suffer inordinate amounts of abuse at the hands of men.

**SANTA CLARA COUNTY, CALIFORNIA:
A COUNTY BASED DOMESTIC VIOLENCE
COORDINATING COUNCIL MODEL**

The Santa Clara County Death Review Committee began work in 1994 and appears to have been among the first domestic violence review teams in the country. It defines "domestic violence related death" as one where the perpetrator and victim were "romantically linked," either at the time of death or prior to the death.

The final report²¹ of the committee, published in October 1997, contained information on 51 domestic violence homicides. The report included data on types of deaths (homicide, homicide-suicide, suicide, accidental death, or police shooting); police agencies involved in the case; age, race, sex, and substance abuse history of the parties; presence of children; weaponry used; status of the

TABLE 2
Highlights of the 1997 Santa Clara County Death Review Final Report

- The average adult age of perpetrators and victims was 33 years (females 32; males 35).
- Of the 51 perpetrators, 44 were male, seven female.
- Firearms were used in 29 of the 51 homicides. The report stressed that "as a community we must advocate for handgun control."²²
- In 26 of the 51 cases, the parties were separated or divorced at time of death.
- Police had prior domestic violence contacts with the parties in 11 cases.
- In six cases, restraining orders were either active (four) or in the process of being issued (two).
- Of the 51 victims, 17 were Asian,²³ 14 white, 12 Hispanic, five African American, two mixed-race, and one Indian (not Native American).
- The report noted a need for educating the public through agencies such as schools and the media. For example, the Santa Clara County report recommended all school districts develop a curriculum that addresses domestic violence.²⁴
- The report noted a need for creating a greater awareness of the links between workplace violence and domestic violence. The Santa Clara County team noted that seven of its 51 deaths occurred in the workplace.²⁵

relationship (divorced, cohabiting, separated, etc.); existence of prior restraining orders; prior police involvement; and location of residence.

Asian victims were over-represented among victims, although only one of the Asian cases came to the attention of community agencies prior to the killing. The report noted, "This made members feel that we were not getting the word out about the dangers of domestic violence to the Asian community."²⁶ This led to calls for greater Asian representation on the death review committee. The report noted three Asian members on the team. One committee member helped form the Asian Community Against Domestic Violence Coalition, which organized a domestic violence conference for the Vietnamese community in September 1997.

The suggestion that more Asian women need to be accessed through support services should not be taken to mean that those women who did not utilize services were somehow culpable for their own deaths. Karin Wang (1996) points to the way the cultural background of Asian women makes it difficult for them to utilize the support services offered by a predominantly white-run domestic violence movement.²⁷ In addressing this issue, Wang argues that battered Asian-American women have not been well understood by the domestic violence movement.²⁸

Although California legislation does not address the issue of domestic violence shelters turning over their records for purposes of death review, informally the team seems to have worked around the issue of client confidentiality and it appears a mechanism has emerged so shelter team members do share information.

THE FLORIDA FATALITY REVIEW PROJECT: GOVERNOR'S RESEARCH AND POLICY MODEL

The Florida Department of Law Enforcement reported 230 domestic homicides for 1994. As a result of this disturbing statistic, the Florida Governor's Task Force on Domestic and Sexual Violence funded a study of domestic fatalities in order better to understand, intervene in, and prevent these crimes. Unlike reviews in Philadelphia and Santa Clara County, a team of researchers, hired specifically for that purpose, conducted the Florida reviews. These researchers did identify system failures, although this was not the prime focus of their research. Rather, they gathered evidence on the overall dynamics of cases prior

to death.

Dynamics examined. For each domestic fatality in 1994 researchers examined the following dynamics:

1. The perpetrator-victim dyad.

In particular, the researchers examined the multiple dynamics of these murders, paying particular attention to the sex, race, ethnicity, sexual orientation, geo-cultural background (rural, suburban, urban), socioeconomic status, and marital status/familial relationship between perpetrators and victims.

2. The situational antecedents to the fatality.

Researchers explored the following:

- A prior history of domestic violence in the relationship;
- The presence or absence of injunctions (restraining or protection orders) both prior to the fatality or when the fatality occurred;
- Whether a divorce was pending at the time of death (with married couples);
- Whether there was any sign of relationship breakdown (variously measured);
- Whether there was any sign of acknowledged conflict in the relationship;
- Prior police calls to the residence;
- History of drug/alcohol abuse;
- The residential origins of the perpetrator and victim;
- Whether the victim or perpetrator had any history of emotional problems or mental illness and the specific forms of these problems. (See Table 3)

3. The lethal incident.

Here researchers documented:

- The specific mode of killing;
- The types of weaponry used (handgun, rifle, shotgun, other firearm, knife or cutting instrument, blunt object, motor vehicle, poison, explosives, fire or incendiary device, personal weapons such as fists, feet, teeth, etc.);
- The availability of weapons;
- The involvement of drugs or alcohol during or immediately preceding the fatal episode;
- The presence of other parties at the scene (e.g., children, police, other professionals);
- The non-fatal wounding of others at the scene;

- The involvement of professionals at the scene; and
- The location of the fatal incident

Data sources. Researchers drew information from the following data sources: police records; social service reports; court documents; newspaper accounts; autopsy reports; mental health records; hospital and public health/medical data; and, other information that may have had a bearing on the decedent and her/his family. They also interviewed professionals including, but not limited to, police, court personnel, mental health workers, social service providers, and advocates for battered women.

Disparity in numbers. Although the Florida Department of Law Enforcement (FDLE) documented 230 domestic fatalities in Florida during the year of 1994, the research revealed a total of 328 domestic fatalities in that year.²⁹

The disparity stemmed from four major issues:

1. Police departments often do not include child deaths due to abuse and neglect as part of their official domestic homicide count. The researchers included these deaths.
2. Police departments often do not include the suicide victims in domestic homicide-suicides in their official count. The researchers included these deaths. (However, the researchers did not include deaths from suicide related to domestic violence. This unknown figure represents a huge number of potential deaths stemming from domestic victimization and is an area in urgent need of systematic research and policy initiatives.)
3. Police sometimes did not code domestic deaths as such.
4. Police departments did not include boyfriend/girlfriend deaths as domestic homicides because those deaths did not strictly meet the terms of the statute.

Adopting a broader definition of domestic homicide than law enforcement sources, the researchers showed that in 1994 approximately one-third of all Florida homicides were related to domestic violence.³⁰ This ratio contrasted sharply with official police data, which identified only one-fifth of all homicides in Florida in 1994 as being caused by domestic violence.

Essential findings from the Florida Fatality Review Project.

- The analysis indicated that 294 of the 328 fatalities were consistent with the Florida Domestic Violence Statute.³¹ The 34 remaining domestic fatalities either fell outside the statute criteria (e.g., victim and perpetrator were not married, lived at different addresses, and had no children together) or the researchers simply did not have enough information to determine if they met all the criteria of the statute.
- Men perpetrated nearly all cases with multiple victims. In only six cases did a woman kill more than one victim, or murder her partner and then commit suicide. In no case did a woman murder her husband, her children, and then herself.
- Many of the factors present in the multiple domestic killings also appear in the killing of individual women. Men killed most of the individual women. Nearly all of these cases involved women who had an extensive history of violent victimization prior to being killed. As the statistical analysis reveals, other important factors include prior threats to kill, escalating abuse, and obsessive possessiveness and jealousy on the part of perpetrators. In fewer cases, there was prior documented involvement of police and other criminal justice agencies. Of all adult women victims, only three were killed by other women. Five adult female fatalities resulted from women killing themselves as part of multiple killing scenarios.
- When women are killed in either multiple or single-victim domestic fatalities, it is usually the final event in an abusive relationship of long standing. When men are killed by other men or by women, it is rarely, if ever, the end product of a battering relationship in which the men are the victims of abuse. When other men in domestic situations kill men, it is often because the two men are competing for a woman who has, in many cases, been victimized by one of the men. Men perpetrated three-quarters of all adult male domestic fatalities. Only one-quarter of the men who died were killed by women.
- Women who killed men nearly always did so out of self-defense, or less often, the defense of their children. These women have always, or nearly always, been pushed to the brink of human endurance by the

batterers they eventually kill. While the killing of batterers by the long-standing victims of battering may not qualify as self-defense in a court of law, the act of defensive or preemptive violence by women is qualitatively different from the offensive acts of violence perpetrated by men against women.

The commission of intimate partner homicide by women varied considerably by race and ethnicity. Although African-American women constitute roughly one-eighth of Florida's female population, they comprised 16 of the 24 women who killed their male intimates. Black women who killed, like their Caucasian and Latino counterparts, were essentially backed into a corner with nowhere to go. Like white women, some had children to care for; nearly all, if not all, had been brutalized by their intimate partners; and most had, for whatever reasons, not sought out or received support from criminal justice and other state agencies. Their partners were often obsessively possessive, and a good number of these violent men had threatened to kill them. From initial field interviews in Florida it appears that black women are less likely to use shelter and criminal justice services than white or Latina women and are, therefore, more likely to be entrapped to the point of committing lethal violence.³²

- Missing data hamper the statistical analysis of child fatalities. Nevertheless, there are certain themes that seem to pervade these tragedies. The most common correlate is that the death of children resulting from abuse or neglect occurs in homes where caretakers tend not to be married. About one-third of the perpetrators were mothers' boyfriends, one-third were biological fathers, and approximately a quarter were biological mothers. These men sometimes had criminal records, including a history of violence. It is clear from multiple sources of data that child fatalities normally occur within a context of poverty, often abject poverty.

Research findings also reveal that 50 percent of the children about whom there is reliable data have been physically abused before, often for a long period of time. However, it is not necessarily the case that this prior abuse

has come to the attention of authorities. For example, very few of the families in which child fatalities occurred had prior documented contact with the police.

Children under five years of age are clearly the most vulnerable to violence. Over half of the child victims in the sample were under two years of age. Those who were older were often killed with easily obtained firearms.

As part of a grant from the Violence Against Women Grants Office, the Florida Governor's Task Force has provided technical assistance to four pilot Florida fatality review teams that are just beginning to review cases at this time of writing. Using the Florida fatality review project and its methodological approach as a touchstone, teams in Metro-Dade (Miami), Volusia-Putnam (Daytona Beach), Palm Beach, and Hillsborough (Tampa) counties have formed, created operational guidelines, and constituted various subcommittees regarding matters such as the ethics of death reviews, data collection, working with family members of the decedents, effecting policy changes, and introducing confidentiality legislation.

The issue of confidentiality and immunity from suits remains the biggest stumbling block in Florida, as teams negotiate their concerns about liability. Some state statutes have already dealt with this matter, providing their teams with immunity from various legal actions stemming from the review process.³³ In Florida, initial reviews have begun with homicide-suicide cases where there is no pending criminal prosecution and cases effectively are closed and the risks of liability limited.

THE USE OF WITNESSES:

AN EMERGING ISSUE FOR FATALITY REVIEW TEAMS

In Florida, as elsewhere, review teams are discussing many important issues. One matter concerns the feasibility of bringing in witnesses to improve understanding of domestic deaths. Other states have empowered teams formally in this area. For example, the Delaware review team has the power and authority to administer oaths and to compel the attendance of witnesses whose testimony is related to the death under review. It also can compel the production of records related to the death by filing a praecipe³⁴ (request) for a subpoena, through the office of the Attorney General, with the Prothonotary³⁵ (clerk) of any county.

TABLE 3
"Red flags" identified with the 1994 fatalities in Florida

The researchers also identified "red flags" or situational antecedents to the fatalities presented in order of their documented frequency in the 106 cases where men killed intimate female partners:

- Prior history of domestic violence (approximately 85 percent of cases). Among these cases battered women often reported an increasing entrapment.
- Obsessively possessive beliefs on the part of the perpetrator (approximately 70 percent of cases). Stalking behavior, close surveillance, inability to sleep on the part of the perpetrator, acute depression, perhaps a history of medication use, history of suicidal ideation, or, less commonly, documented suicide attempts often accompanied this.
- Attempts to break away from the perpetrator, including divorce, separation, and estrangement (approximately 70 percent of cases). In a number of cases of breaking away, researchers identified accompanying relationship difficulties regarding such matters as child custody/visitation.
- Prior police involvement in the case (approximately 50 percent of cases involving lone women killed and 30 percent of cases where women died in the course of homicide-suicides or familicides).
- Prior criminal history on the part of the perpetrator. In 43 percent of those cases where men killed their intimate female partners in non-multiple episodes (67 cases), the men had prior histories of criminal behavior, nearly always involving violence. In about a fifth of the multiple killings, the male perpetrators had prior criminal histories of violence.
- Threats to kill the eventual victim (documented in approximately 30 percent of cases). These often were communicated to family friends, relatives, neighbors, and others prior to the homicide.
- Issuance of restraining orders (approximately 20 percent of cases).
- Alcohol or drug use that often escalated prior to the fatal episode (approximately 20 percent of cases).

This is a thorny issue and some advocates for battered women have argued for retaining certain informal elements to fatality review.³⁶ Some particularly important questions relating to subpoena power are noted below:

- Is the resort to subpoena overly inquisitorial and punitive?
- Do teams themselves want the ability to subpoena witnesses?
- Could family members of victims be subpoenaed? Given the involvement of families of victims in homicide trials and their need for information about the death, closure, and input, how should teams work with grieving families?
- What about the conflicts between confidentiality/immunity of teams from suits, and the need to be open and honest with families about the death?
- How might teams work with domestic violence shelters? For example, ought shelter staff and records also

be available for review, or should they somehow be immune? One can envisage many reasons for not allowing teams to access shelter contacts with women. However, what if shelters actively discriminate against minority women, or fail to provide services for them? Would not this problem, already identified by a small number of African-American women in Florida, be something that an assessment of systems delivery would want to address? Can women entering domestic violence programs be asked to waive access to their records in the event of their subsequent deaths? Is such a waiver not insensitive? realistic? or both? Or, do a victim's rights evaporate upon death?

The authors pose these questions and issues in the spirit of inquiry to encourage discussion and debate. One specific area that needs to be explored further is the role of the judiciary in domestic violence fatality reviews.

The Role of the Judiciary in Domestic Violence

FATALITY REVIEWS

What role should the judiciary and judges play in reviewing cases or situations known to the court where there is fatal domestic violence? Should judges simply defer to others when such tragic circumstances arise or should they participate in some process to determine whether the system could be improved so future fatalities might be prevented?

At a practical level, what should judges do when legislators, the media, and others in their community raise a hue and cry regarding a highly publicized domestic violence fatality? How should judges deal with the professional and ethical constraints, which limit and guide them as part of the third branch of government? These questions inevitably surface when the issue of court involvement in domestic violence fatality reviews arises. Fortunately, other disciplines, such as medicine, have addressed the same issues carefully and it is now part of their ongoing training, protocol, discussion, and literature.³⁷ Perhaps it is time for the justice system to recognize it has a role to respond in a similar fashion.

It is accepted that judges may provide leadership in their courts and in their communities with respect to the fair, prompt, and effective management of domestic violence cases.³⁸ This role is consistent with their judicial duties as laid down in the ABA Code of Judicial Conduct, which specifically acknowledges that judges are in a unique position to improve the administration of justice.³⁹ Under the ABA Code, judges are required to maintain professional competence in judicial administration and cooperate with other judges and court officials in the administration of court business.⁴⁰

As part of their leadership role and administrative responsibilities, some judges and courts have decided to play a key role in domestic violence fatality reviews.⁴¹ While court and judicial participation in such reviews is still evolving, several models have emerged. Some courts conduct internal (or in-house) reviews, while other courts participate in an external and formal team review.⁴² Some courts participate in both kinds of reviews. While some courts and judges have been active in convening such teams, other courts are more passive participants. Each model seems to depend in part on the local judicial and legal culture, as well as the judges' professional views of what role they and their courts can and should play.

One may ask, why include the judge or a member of the court in a domestic violence fatality review, however structured? There are good reasons for doing so. Judges and their staff, as well as the attorneys and others who appear before the court, (including intake officers, social workers, probation officers, and others) usually follow established procedures in processing, presenting, and deciding cases. If the case has the potential for harm to any litigant or family member, court procedures and risk assessments should be reviewed carefully from time to time for fairness and effectiveness. Such review is from a systemic standpoint and should not be focused on blame or finger pointing. Error recognition, accountability, honesty, and systemic improvement should be the focus rather than denial, blame, and personalizing the review.

For example, in a criminal case at arraignment, the court must determine bail or release conditions. If a defendant is ultimately convicted, the court must determine whether a defendant requires prison or a term of probation. If probation is ordered, it comes with a wide array of services and/or sanctions, such as a jail term, a stay away order, domestic violence intervention counseling, substance abuse treatment, mental health counseling, and more. If a judge sentences someone to probation and that person later kills a family member, the system might be reviewed to assure that the court had all the information before it by way of pre-sentence reports, related cases, criminal abstracts, and risk assessments, to fashion a fair and appropriate sentence that is cognizant of community safety, accountability, and treatment issues.

Another good example lies in family court, particularly where the court is a unified family court or a closely coordinated juvenile and family court, as the judges are often well acquainted with the families under the one judge, one family, one service team concept.⁴³ Those calendars require a keen sense of which cases are risk laden. They are often high volume calendars where the judge may make ten, twenty or more custody, visitation, or restraining order decisions daily. The obvious question is whether the judge is privy to all relevant information and is utilizing a valid checklist or risk assessment when rendering these key decisions.

Historically, there has been very limited participation by the judiciary in domestic violence fatality reviews.

Endnotes

- 1 See Leape, L.L., 1994, "Error in Medicine," *JAMA*, 272:1851-1857.
- 2 Such a definition may exclude boyfriend-girlfriend relationships where there has never been cohabitation or a child in common even where the dynamics of the relationship and eventual killing precisely parallel those between couples covered by statute. To qualify as an "intimate partner," states often require the couple to have lived together at some point or to share a child in common. For example, Florida Statute (1994 s. 741.28) defines "domestic violence" as "any assault, battery, sexual assault, sexual battery, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit." A "family or household member" refers to "spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who have a child in common regardless of whether they have been married or have resided together at any time."

According to the Bureau of Justice Statistics (BJS, 1998; Bureau of Justice Statistics, U.S. Department of Justice, 1998. "Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends, and Girlfriends," NCJ-167237 March 1998), in the United States during the 1976-1996 period, intimate partner murder fell by 36 percent from 3,000 (1976) to 1,800 (1996). The number of U.S. women murdered by intimates fell from 1,600 in 1976 to 1,326 in 1996. During the same period the number of men murdered by intimates decreased from 1,357 (1976) to 516 (1996). This overall decline in intimate murder is most marked in the black community. The per capita rate of intimate murders among blacks was 11 times that among whites in 1976, but only four times that among whites in 1996.
- 3 For a discussion of these different categories, see Charles Patrick Ewing, 1997, *Fatal Families: The Dynamics of Intrafamilial Homicide*. Sage, Thousand Oaks, CA; Neil Websdale, 1999, *Understanding Domestic Homicide*, Northeastern University Press, Boston, MA; for a discussion of parricide see Kathleen Heide, 1995, *Why kids kill parents: child abuse and adolescent homicide*. Sage, Thousand Oaks, CA.
- 4 Evan Stark and Anne Flitcraft, 1995, "Killing the Beast Within: Woman Battering and the Female Suicidality." *International Journal of Health Services* 25 (1): 43-64.) addresses the links between suicide, suicidal behavior, and domestic violence. Websdale (1999) explores some of these links.
- 5 Websdale, N & Johnson, B. 1997. "Battered Women's Vulnerability to HIV Infection." *Justice Professional*, vol. 10, no. 4, pp. 183-198.
- 6 Editorial, "Promoting Patient Safety by Preventing Medical Error," *JAMA*, October 28, 1998, vol. 280, no. 16 p.1444-1447. Quoted p. 1444.
- 7 Maria Stone, 1995, "Domestic Violence Fatality Reviews." *Boalt Law School*, p. 13.
- 8 See for example the case of Leonard Morrow who murdered his wife Latonya and two young children before committing suicide. The Hopkins county child death review team defensively concluded that "it does not appear that the system failed Mrs. Morrow," but rather that "Mrs. Morrow failed to allow the system to protect her." (Cited in Websdale, N. 1998, *Rural Woman Battering and the Justice System: An Ethnography*. Sage, Thousand Oaks, CA, p. 149. Full discussion in Websdale, 1998, p. 147-150).
- 9 See Stone, 1995, pp. 15-17 and especially note 59.
- 10 Project Safeguard, 815 E. 22nd Avenue, Denver, Colorado, 80205, 303/863-7606.
- 11 This growing recognition of the links between adult parental domestic violence and child abuse, neglect, and death is reflected in recent legislation in Delaware. Delaware Statute Title 13 s 2105 empowers a domestic violence coordinating council to investigate and review, through a review panel, the facts and circumstances of all deaths occurring in Delaware resulting from domestic violence. Child deaths are to be reviewed jointly by the Child Death Review Commission and the domestic violence fatal incident review panel. The death of a minor will be reviewed by the domestic violence fatal incident review panel only if the child's parents or guardians were involved in an abusive relationship and where the minor's death is directly related to that abuse.
- 12 See Websdale, 1999, chapter 6 Table 6.6. Websdale shows that in just over half the 57 cases of domestic child homicides where two parents/caretakers were involved in the care of the child, the female parent/caretaker was being beaten by the male parent/caretaker prior to the homicide.
- 13 Investigation, p. 5.

Because the judiciary is an integral part of the criminal justice system and the family court system, participation by the judiciary is increasing. As discussed above, in the Charan investigation the final report recommended systemic improvements in a variety of areas that required court involvement, ranging from translators, to training for probation officers and judges, to opening up case records in family court services. The Charan case is not exceptional. Almost every community can recite a widely publicized killing, often accompanied by widespread media and legislative concern about whether the system is responsive to and protective of battered women and children. It is far better to have a constructive review process in place rather than simply to react in *ad hoc* fashion, as has been the case historically. Indeed, with the advent of these review teams across the nation, those jurisdictions without such teams will come under even greater scrutiny and pressure to create a domestic violence fatality review team.

What can judges and the judiciary do to address the concerns raised by those in the community who ask whether the problem of domestic violence is being addressed fairly, promptly, and effectively? Judges and the judiciary can learn from the track record of current review teams and from other disciplines, such as medicine, about how they deal with fatalities. They can participate in forming their own domestic violence fatality review processes and start to discern how and where the various justice systems succeed and where they need improvement in protecting victims of domestic violence. Additionally, they can make a real effort to assure their communities that the justice system fairly and effectively addresses the litigants' legal problems and at the same time adequately protects them. Ultimately, judges must create a legal and judicial culture of safety, which prevents future harm whenever possible.

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Conclusion

When a SwissAir flight went down off the coast of Newfoundland in 1998, claiming the lives of over 200 passengers and crew, a very high profile investigation ensued. Millions of dollars were spent and no stone left unturned in an effort to understand how such a crash could have occurred. These efforts were designed to identify the cause of the crash, with a view to preventing similar tragedies in the future. Given that many people use the airways, such efforts are entirely understandable.

Domestic violence claims the lives of several thousand people per year. Because intimate family relationships are a part of most people's lives, much more time should be devoted to exploring domestic violence

deaths, with a view to preventing them. This article has suggested that reviewing domestic violence fatalities is a laudable development, one that will help prevent future deaths in families, reduce domestic violence in general, improve the delivery of multiple services to families experiencing such violence, and make an unequivocal statement about the undesirability of this illegal and highly injurious behavior. As is happening in the field of medicine, this article recommends creating a culture of safety in order to review domestic violence deaths effectively, honestly, and openly.

We have highlighted several approaches to death reviews. The results of these reviews have been used to implement, or at least suggest, greater system coordination in dealing with people victimized by family violence. We have acknowledged the need for communities to develop their own review processes and the authors hope that some of the highlighted information will contribute to those developments.

Of especial importance, for the purposes of this article, is the recommendation that judges adopt leadership roles in working toward establishing local domestic violence reviews. Such leadership is entirely in keeping with the role of judges in communities and government.

- 14 For a good recent discussion of these issues see Karin Wang, 1996, "Battered Asian American Women: Community Responses from the Battered Women's Movement and the Asian American Community." *Asian Law Journal* 3:151-185.
- 15 Report p. 7.
- 16 Report p. 11.
- 17 Report p. 12.
- 18 Report p. 13.
- 19 This includes deaths classified as homicides, suicides, unintentional injury, undetermined cause, those with inadequate certificates, and peculiar circumstances (asthma, AIDS). This is not to suggest that the deaths of women aged over 60 are not due to domestic violence. For example, "suicide pacts" where elderly men kill their female partners and then themselves cannot be assumed to be free of a history of domestic violence. Indeed, gerontologist Donna Cohen found that homicide-suicides involving elderly women in West Central Florida from 1988-1994 doubled. In all, such homicides accounted for 20 percent of the total homicides of people aged over 55. Cohen also notes that while 50 percent of the women's health had deteriorated, two-thirds had expressed "no desire to die." Evidence that women killed in so-called suicide pacts had expressed "no desire to die" may suggest they were being battered prior to their demise (Cited in Charles Ewing, 1997 p. 143).
- 20 At time of writing the Philadelphia Team is in the process of producing preliminary systematic data on the deaths of women. Contact Dawn Berney for details, 215-985-2500.
- 21 By Rolanda Pierre-Dixon, Chair.
- 22 Santa Clara County Death Review Committee Final Report, October 1993-September 1997, p. 14.
- 23 The term "Asian" is not defined in the report.
- 24 Santa Clara County Death Review Committee Final Report, October 1993-September 1997. p. 15.
- 25 Santa Clara County Death Review Committee Final Report, October 1993-September 1997. p. 5.
- 26 Report. p. 13.
- 27 Wang, 1996. She defines "Asian American" broadly to include "all persons of Asian ancestry living in the United States" (1996:152, n3). This includes peoples from East Asia (including China, Japan, and Korea), Southeast Asia (including Burma, Cambodia, Laos, Thailand, Vietnam), South Asia (India) and the Philippines.
- 28 Asian women differ from white women in at least three ways. First, Wang points to the fact that the majority of Asian women are immigrants and therefore experience numerous language problems. These problems make it difficult for them to obtain help from police, social services, or immigration services. For example, if police officers attending domestic disputes at Asian homes can understand the man and not the woman, it is likely that without special translator services, the Asian woman's story will be marginalized or go unheard. Second, the Asian cultural emphasis on saving face and valuing the family above the individual, makes Asian women more hesitant when it comes to breaking up the family. Such a pronounced belief in the sanctity of the family in the face of violent victimization, combined with a cultural antipathy toward divorce, may make it more difficult for white shelter workers and advocates to offer support and understanding to groups like Korean women. Third, the traditional Asian gender roles of male provider and female homemaker are often disrupted by an American economy that requires both partners to work outside the home. This may be seen as liberating by Asian women, but it may, as Wang points out, be very threatening to the partners of Asian women. See Wang, 1996, p. 171.
- 29 For a very detailed case study analysis of these deaths, see Neil Websdale, *Understanding Domestic Homicide*, Northeastern University Press. Boston, MA. 1999.
- 30 Preliminary findings from 1995 reveal similar discrepancies between FDLE data and that number of domestic violence fatalities identified by the broader definition used by Drs. Websdale and Johnson. Although FDLE identified 195 domestic homicides in 1995, as of October 1, 1998, Drs. Websdale and Johnson had confirmed at least 285 domestic violence related deaths.
- 31 See footnote 1 for Florida Statute (1994) s 741.28
- 32 For further discussion of these and related matters, see Beth Richie, 1996, *Compelled to Crime*, Routledge, New York; Websdale, *supra* note 29, 1999.
- 33 In Nevada, information can be shared among team members regarding the decedent or any person who was in contact with the victim and any other information deemed by the team to be pertinent to the review. This information is to remain confidential (N.R.S. 217.475 ss 4). In addition, each member of the team is immune from civil or criminal liability for an activity related to the review of the death (N.R.S. 217.475 ss 8). Subsection 9 states that the "results of the review...are not admissible in any civil action or proceeding." In Delaware, the review process.

- and any records created by it, shall be exempt from the provisions of the Freedom of Information Act in Chapter 100 of Title 29. All records and documents contributing to the formulation of reviews are deemed confidential. Such records and documents are not subject to subpoena or discovery. Team members will not be required to make any statements regarding review deliberations (Delaware Statute Title 13 s 2105 (h)). Likewise members and their agents will be immune from claims and not be subject to any suits, liability, damages or any other recourse, civil or criminal, arising from any act, proceeding, decision or determination undertaken or performed or recommendation made, provided such persons acted in good faith and without malice in carrying out their responsibilities; good faith and lack of malice are presumed and the burden of proving otherwise falls upon the complainant (Delaware Statute Title 13 s 2105 (i)).
- 34 A praecipe is an original writ drawn up in the alternative.
- 35 A prothonotary is an officer who officiates as principal clerk of courts in states such as Pennsylvania (Delaware Statute Title 13 s 2105 (d)).
- 36 For example, Barbara J. Hart made this point in her recent speech on social justice and fatality reviews in a national summit at Key West, Florida, October 26-28, 1998.
- 37 See for example, Editorial, "Promoting Patient Safety by Preventing Medical Error," *JAMA*, October 28, 1998, vol 280, no. 16 p.1444-1447. The authors suggest that error in medicine is real and common and must be reduced. They argue that if this error is met with blame and distrust, then suppression, stonewalling, and cover-up follow; all of which fail to reduce future harm. Alternatively, they suggest that system changes can prevent harm to patients and led to the transition from a culture of blame to a culture of safety. The editorial is well written and has generated much discussion nationally. See also, Gawande, Atul, "When Doctors Make Mistakes," *The New Yorker*, (Feb. 1, 1999) at p. 40. This excellent and readable article details a difficult medical procedure and sets forth how a hospital morbidity and morality conference addresses physician error and the procedures needed to overcome it. Query if courts and the justice system could adapt such conferences when preventable domestic violence takes place?
- 38 "Judges must provide leadership in their courts and in their communities to ensure that family violence cases are effectively managed and that adequate resources are available." *Family Violence: Improving Court Practice*, p. 15 (National Council of Juvenile and Family Court Judges, 1990).
- 39 Canon 4.B of the revised ABA Model Code of Judicial Conduct states "A judge may speak, write, lecture, teach and participate in other extrajudicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this code." The commentary discusses how the judge is in a unique position to contribute to the improvement of the administration of justice including the criminal justice system.
- 40 See Canon 3. C.1 of the revised ABA Model Code of Judicial Conduct (1990). Most states have adopted some version of the American Bar Association's Model Code of Judicial Conduct, which was revised in 1990. See Shaman, Lubet and Alfani, *Judicial Conduct and Ethics*, pp. 3-6 (Michie, 2nd ed. 1995). The preamble to the 1990 version states that judges "must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system."
- 41 See Websdale, N., Sheeran, M., and Johnson, B. 1998. *Domestic Violence Fatality Reviews: Summarizing National Developments*. National Council of Juvenile and Family Court Judges. Reno, Nevada. This publication was part of the National Summit on Domestic Violence Fatality Reviews held in Key West, Florida in October 1998.
- 42 See for example the Philadelphia Women's Death Review Team: An Interdisciplinary Team to Reduce the Number of Violence-Related Deaths of Philadelphia Women. A paper summarizing the work of the team is available from the Family Violence Department of the National Council of Juvenile and Family Court Judges or from the Philadelphia Health Management Corporation, 260 South Broad St. Philadelphia, PA 19102-5085.
- 43 Typically a unified family court's jurisdiction includes all juvenile cases (delinquency, status, detention, waiver and child abuse), divorce, paternity, adoption, nonsupport, guardianship of adults and children, civil restraining orders, civil commitment in mental health cases, and in some jurisdictions crimes within the family ranging from domestic violence to intra-familial murder. Traditionally, one judge or one judicial team hears all cases affecting one family and the judge has a broad array of services to assist these families. See, e.g., materials on ABA Summit on Unified Family Courts: Exploring Solutions for Families, Women and Children in Crisis (held May 14-16, 1998, Philadelphia, PA).

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: HB398-LAW-CDCO-1-26
 Bill Version: HB 398
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to domestic violence fatality RDU Criminal
review teams." Component CDCO
 Sponsor Representatives Dahlstrom, Stolze, Samuels, McGuire, Wilson
 Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill allows the Commissioner of Public Safety or a municipality to establish domestic violence fatality review teams for the purpose of preventing domestic violence-related fatalities, improving law enforcement response and providing consultation and coordination for agencies involved in the prevention and investigation of domestic violence.

Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhete, Director
 Division Administrative Services
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General
 Agency Department of Law

Phone 465-3673
 Date/Time 1/26/04 9:25 AM
 Date 1/26/2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB398
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to domestic violence BRU Legal and Advocacy Services
fatality review teams Component Public Defender Agency
 Sponsor Representative, Dahlstrom, Stoltze
 Requester (H) Judiciary Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
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 (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill should have minimal fiscal impact on the operations of the Public Defender Agency.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416
 Division: Public Defender Agency Date/Time 1/26/04 11:25 A.M.
 Approved by: Mike Miller, Commissioner Date _____
 Agency: Administration

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 398
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to domestic violence fatality review BRU Legal and Advocacy Services
 Component Office of Public Advccacy
 Sponsor Representatives Dahlstrom, Stoltze, S Samuels & McGuire
 Requester (H) Judiciary Component No. 43

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
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 (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill should have no fiscal impact on the operations of the Office of Public Advocacy.

Prepared by: Josh Fink, Director Phone 907-269-3501
 Division: Office of Public Advocacy Date/Time: _____
 Approved by: Mike Miller, Commissioner Date: _____
 Agency: Administration

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB398CS-DPS-ABI-2-6-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title Domestic Violence Review Teams RDU Alaska State Troopers
 Component Alaska Bureau of Investigations
 Sponsor Ron Dahlstrom
 Requester (H) Judiciary Component No. 2744

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill authorizes that the commissioner of Public Safety or a municipality may establish domestic violence fatality review teams. The purpose of the teams is to review events leading up to a domestic violence incident in order to prevent domestic violence fatalities and to provide consultation and coordination for agencies involved in the prevention and investigation of domestic violence.

This bill would also allow those participating in the teams to receive confidential and other records of a department or an agency of the state or municipality relating to a domestic violence incident. The confidentiality of those records would be maintained.

Prepared by: Lt. Al Storey Phone 269-4532
 Division: Alaska State Troopers Date/Time 2/8/04 8:07 PM
 Approved by: Commissioner William Tandeske Date 2/8/2004
 Agency: Department of Public Safety

FISCAL NOTE

**STATE OF ALASKA
2004 LEGISLATIVE SESSION**

BILL NO. HB398CS-DPS-ABI-2-6-04

ANALYSIS CONTINUATION

Page 2

While the language of this bill empowers the commissioner of Public Safety to establish domestic violence fatality review teams, the teams themselves do not need to be actively oversighted by the Department of Public Safety (DPS).

The direct fiscal impact to DPS, therefore is expected to be very minimal. There would be some expected costs as the processes by which the teams will conduct business are established, as members of DPS attend the meetings, and as final reports from the teams are presented for archiving, but those costs could be absorbed by current resources.

HB

403

FRANK H. MURKOWSKI
GOVERNOR
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January 22, 2004

The Honorable Pete Kott
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Kott:

Under the authority of article III, section 18, of the Alaska Constitution, I am transmitting a bill aimed at a crisis in the Alaska Workers' Compensation insurance industry. Resolving this issue is vitally important to Alaska's employers and employees. Specifically, this bill deals with the after-effects of Fremont Insurance Company's insolvency (Fremont). Fremont was a California based workers compensation insurer. It was writing about 27 percent of the workers' compensation insurance policies in Alaska by the year 2000.

Fremont was heavily involved in California's workers' compensation price wars. These price wars occurred after California deregulated its insurance market in 1995. Insurers like Fremont cut prices and scrambled for market share. The result was that 41 workers' compensation carriers in California went insolvent or quit doing business in the state to avoid insolvency. Fremont joined the group of failed insurers when it was declared insolvent in July, 2003. Fremont left Alaska employers and employees "holding the bag" with liability for claims worth approximately \$60 million.

The Alaska Insurance Guaranty Association Fund (Fund) is set up to pay uncovered claims. The Fund pays claims in situations where insurance is unavailable to pay claims. The goal is to minimize losses to employers and employees. Association members are insurers that are authorized to write property and casualty insurance Alaska. An assessment is made based on the amount of premiums the member writes in this state. Current statutes cap the assessment at two percent of premiums written each year.

The Fremont insolvency and the amount of claims left over is so large, the Fund cannot cover the claims. If the difference is not made up, Alaska employers and employees alike will suffer. Employers will be held liable for claims they paid Fremont to cover. Some businesses will simply not be able to afford to pay the claims and will have to go out of business. Many other claims

The Honorable Pete Kott
January 22, 2004
Page 2

will be delayed or settled for less than their full value as employers and employees litigate or dispute liability and the value of a claim.

Statutory changes are necessary to address the Fund's substantial cash deficits and to provide for greater equity in times of crisis among all persons covering an employer's liability for workers' compensation, whether through insurance, self-insurance, or a pooling arrangement. A brief description of these changes follows.

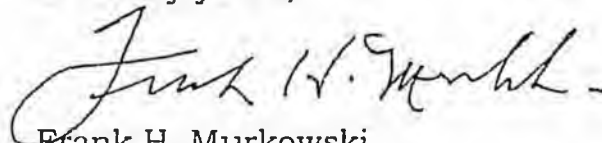
Under the bill, the insurance code (AS 21) would be amended to raise the cap on member assessments by the association from two percent to four percent of written premiums and to provide for excess assessments on member insurers if there is a shortage of money in an association account. The bill would also authorize the association to assess employers that are self-insured for workers' compensation and assess joint insurance arrangements that insure an employer's workers' compensation liability. This assessment applies only when insurer assessments are insufficient in any one year to cover workers' compensation claims payments by the association and is limited to a maximum of two percent of all payments reported to the Alaska Workers' Compensation Board under the Alaska Workers' Compensation Act (AS 23.30).

The bill also includes a provision to authorize the Alaska Industrial Development and Export Authority (AIDEA) to guarantee loans to the association that are needed to make the association financially able to meet cash flow needs. While current law allows the association to borrow money, the association is not a viable prospect for traditional commercial loans. Loan guarantees from AIDEA would permit the association to obtain loans on favorable terms. The bill, however, would limit AIDEA guarantees for association loans to a maximum outstanding principal balance at any time on all loans of \$30,000,000.

The bill provides for an immediate effective date.

I urge your prompt and favorable action on this measure.

Sincerely yours,



Frank H. Murkowski
Governor

Enclosure

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 403
(H) Publish Date: 1/28/04

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
Title: "An Act relating to the RDU: Workers' Compensation
Alaska Insurance Guaranty Association..." Component: Workers' Compensation
Sponsor: Rules Committee
Requester: Governor Component Number: 344

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: None
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There is no anticipated fiscal impact to the department as a result of this legislation.

Prepared by: Paul Grossi, Director Phone 465-2790
Division: Workers' Compensation Division Date/Time 12/31/03 9:17 AM
Approved by: Greg O'Claray, Commissioner Date 12/31/2003
Agency: Department of Labor and Workforce Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 403
(H) Publish Date: 1/28/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title AIGA Assessment RDU _____
Sponsor Rules Component Alaska Railroad Corporation
Requester By Request of the Governor Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Alaska Railroad Corp Revenues						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: _____
Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Alaska Railroad Corporation (ARRC) is a public corporation wholly supported by revenues generated through freight, passenger and real estate services. ARRC does not receive state subsidies for operations or capital improvements from the State.

It is estimated that \$1,560,000 of the railroad's operating expenses will be expensed to workers compensation in 2003. The fiscal impact on ARRC related to the assessment fees (an incremental 2% of all payments reported to the Workers Compensation Board) associated with the proposed bill are as follows:

Prepared by: Wendy Lindskoog, Director of External Affairs Phone (907) 265-2498
Division Alaska Railroad Corporation Date/Time 12/24/03 10:54 AM
Approved by: Edgar Blatchford, Commissioner Date 12/24/2003
Agency Department of Community & Economic Development

FISCAL NOTE #2

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. HB 403

ANALYSIS CONTINUATION

FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
\$31.2	\$31.2	\$31.2	\$31.2	\$31.2	\$32.2	\$31.2

This assumes that ARRC's workers compensation expenses, which increased significantly from 2000 to 2002, will return to the fairly stable level experienced between 1987 and 1999. Future workers compensation expenses will fluctuate from year to year based on the performance of ARRC's safety and injury record, which is estimated to stabilize in future years.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: HB 403
(H) Publish Date: 1/28/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title AIGA Assessment RDU Insurance (116)
Component Insurance
Sponsor Rules
Requester By Request of the Governor Component No. 354

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation increases the Alaska Insurance Guaranty Association's (AIGA) ability to pay Alaska claims of insurers who become insolvent. It raises the current assessment limit for insurance companies from two percent to four percent of the member insurers net direct written premiums for a calendar year (AS 21.80). Based on 2001 premium activity for workers compensation insurance, an increase to four percent could generate a maximum assessment of approximately \$6 million annually. In addition to the assessment on insurance company premiums, the legislation also expands the assessment pool to include joint insurance arrangements (Alaska Municipal League Joint Insurance Association, Inc. and the Alaska Public Entity Insurance) as well as self-insurers (some large Alaska employers including the State of Alaska). They are to be assessed an amount not to exceed two percent of the payments reported to the Alaska Workers Compensation Board for a calendar year. This bill has no fiscal impact on the operations of the division.

Prepared by: Linda S. Hall, Director Phone (907) 269-7900
Division Insurance Date/Time 12/24/03 9:54 AM
Approved by: Edgar Blatchford, Commissioner Date 12/24/2003
Agency Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: HB 403
(H) Publish Date: 1/28/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title AIGA Assessment RDU AIDEA (125)
Component AIDEA
Sponsor Rules
Requester By Request of the Governor Component No. 1234

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation authorizes Alaska Industrial Development and Export Authority (AIDEA) to guarantee loans to the Alaska Insurance Guaranty Association (AIGA) needed to make the association financially able to meet cash flow needs. AIDEA guarantees for association loans are limited to a maximum outstanding principal balance at any time of \$30 million on all loans. There is no financial impact on the operations of AIDEA.

Prepared by: Ron Miller, Executive Director Phone (907) 269-3000
Division AIDEA/AEA Date/Time 12/24/03 9:00 AM
Approved by: Edgar Blatchford, Commissioner Date 12/24/2003
Agency Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 5
Bill Version: HB 403
(H) Publish Date: 1/28/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title: An Act relating to AK Guaranty Assoc. and new fee assessments BRU: Risk Management
Component: Risk Management
Sponsor: _____ Component No.: 71
Requester: _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	372.9	439.9	519.0	612.4	722.5	852.4
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	372.9	439.9	519.0	612.4	722.5	852.4

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1007 I/A Receipts	372.9	439.9	519.0	612.4	722.5	852.4
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	372.9	439.9	519.0	612.4	722.5	852.4

Estimate of any current year (FY2004) cost: 316.1

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation creates an increased cost to Risk Management operating expenses as it requires an assessment fee for all self insured employers. The bill includes an immediate effective date, therefore it is assumed that an assessment will be applied in FY2004 for calendar 2003 payments reported 3/1/2004.

Applying the 2% rate to the projected workers' compensation claims experience is projected, although future loss experience will determine actual costs incurred.

As Risk Management is funded solely through inter-agency receipts, this additional expense will require increased cost of risk allocations (premium assessments) to all state agency operating budgets.

Prepared by: J. Brad Thompson, Director Phone: _____
Division: Risk Management Date/Time: 1/23/04 7:17 AM
Approved by: Mike Miller, Commissioner Date: 1/23/2004
Agency: Administration

HB 403 - Fiscal Note #5

Calendar Year annual report	Total W/C benefits paid (excluding	Second Injury Fund - SIF)	% Increase	Estimated Assessment Owed
CY2000	\$9,625,032			
CY2001	\$11,165,023		16.00%	
CY2002	\$13,166,038		17.92%	
CY2003 (11 mo. Exp. Proj. 12 mo)	\$15,802,514		20.02%	\$316,050

3 year average increase 17.98%

	Estimated Future W/C Benefits to be Paid w/avg. % increase	
CY2004	\$18,644,167	\$372,883
CY2005	\$21,996,814	\$439,936
CY2006	\$25,952,343	\$519,047
CY2007	\$30,619,167	\$612,383
CY2008	\$36,125,193	\$722,504
CY2009	\$42,621,328	\$852,427

FISCAL NOTE

STATE OF ALASKA
2004 Legislative Session

Fiscal Note Number: 6
 Bill Version: CSSB 276(L&C)
 (S) Publish Date: 2/18/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title AK Insurance Guaranty Assn. BRU AK Permanent Fund Corporation
 Component Earnings Reserve
 Sponsor Governor
 Requester Senate Labor and Commerce Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	2005	2006	2007	2008	2009	2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1041 PF Earnings	8,890.7					
TOTAL	8,890.7	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 5,828.5

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Jane Alberts Phone 465-3844
 Division Labor & Commerce Committee Staff Date/Time 2/18/04 11:23 AM
 Approved by: Senator Con Bunde, L&C Chair Date 2/18/2004
 Agency Legislature



Alaska Municipal League Joint Insurance Association, Inc.

217 Second Street, Suite 200 • Juneau, Alaska 99801 • Phone (907) 586-3222 • Fax (907)

February 3, 2004

The Honorable Tom Anderson
Chairman, House Labor & Commerce Committee
State Capitol, Room 432
Juneau, AK 99801-1182

RE: HB403

Dear Representative Anderson:

The Alaska Municipal League Joint Insurance Association (AML/JIA) opposes HB403 as currently drafted. The bill imposes a "non-user fee" on local governments, school districts, and self-insureds, including the State of Alaska.

In addition to other, more lucrative provisions, the bill proposes a two percent assessment on all workers' comp. expenses paid out annually by a joint insurance arrangement or self-insured employer. Neither joint insurance arrangements like the AML/JIA nor self-insured employers like the State of Alaska are eligible to receive any benefit from the fund.

AS21.76 permits public entities to form joint insurance arrangements. One reason local government entities are permitted to pool is because they have taxing authority. If additional monies are needed to protect injured workers in the pool, school and municipal members of the joint insurance association would be tapped to replenish the pool's reserves much as the private sector members of the Alaska Guaranty Fund are assessed to replenish their fund.

Ultimately, workers' compensation is an obligation of the employer. This is an obligation the 140 municipal and school district members of the AML/JIA take very seriously. We have been working diligently to adequately fund our program. In the unlikely event of financial problems, the AML/JIA does not expect, nor are we entitled to, a bail-out from the Guaranty Fund.

There is no question that the Alaska Guaranty Fund is in desperate straits. If joint insurance arrangements and self-insureds must be called upon to pay into a fund which we have no access to, please consider a sunset provision in four years.

Thank you for your consideration.

Sincerely,

Kevin Smith
Executive Director

23-GS2105H
Bullock
2/15/04

CS FOR SENATE BILL NO. 276(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Alaska Insurance Guaranty Association; relating to the powers
2 of the Alaska Industrial Development and Export Authority concerning the association;
3 and providing for an effective date."

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

5 * Section 1. AS 21.80.060(a) is amended to read:

6 (a) The association

7 (1) is obligated to pay covered claims existing before the order of
8 liquidation and arising within 30 days after the order of liquidation, or before the
9 policy expiration date if less than 30 days after the order of liquidation, or before the
10 insured replaces the policy or causes its cancellation if the insured does so within 30
11 days after the order of liquidation, but this obligation includes only that amount of
12 each covered claim that is less than \$500,000, except that a covered claim for return of
13 unearned premium may not exceed \$10,000 for each policy, and except that the
14 association shall pay the full amount of any covered claim arising out of a workers'

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compensation policy; the association is not obligated

(A) to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises; or

(B) to pay a claim filed with the association after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer;

(2) is considered the insurer to the extent of its obligation on the covered claims and to that extent has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(3) shall allocate claims paid and expenses incurred among the three accounts separately, and assess member insurers separately for each account amounts necessary to pay the obligation of the association under (1) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, and other expenses authorized by this chapter; under this paragraph,

(A) the assessments of each member insurer must initially be based on a uniform percentage, as determined by the association, of the net direct written premiums of each member insurer for the last year for which annual statements have been filed on the kinds of insurance in the account; this initial assessment shall be adjusted by applying the same uniform percentage as initially used to each member insurer's net direct written premiums for the calendar year following the year in which the initial assessment was issued; any difference between the initial assessment amount and the adjusted assessment amount allocated to a member insurer shall be levied against or credited back to the member insurer, as appropriate, by the association; the association shall calculate and issue all appropriate levies and credits as soon as practical after all member insurers have filed their annual statements for the calendar year following the year in which the initial assessment was issued;

(B) on an annual basis, the association shall determine if funding is required for any of the three accounts; based on this determination, the association shall, during November of each year, issue initial assessments

1 as may be necessary to cover the projected reasonable costs of claims and
2 expenses to administer the association for the following year; under this
3 subparagraph,

4 (i) the association shall use the services of an
5 independent actuary to assist the association to evaluate and make the
6 projection;

7 (ii) an initial assessment may be made at any other time
8 if the association determines funding is necessary, except that a
9 member insurer may not be assessed initial assessments on any account
10 in an amount greater than two percent of the member insurer's net
11 direct written premiums for the applicable calendar year;

12 (C) the association may pay claims in any order that it
13 determines reasonable, including the payment of claims as they are received
14 from claimants or in groups or categories of claims; however, if the maximum
15 of all assessments made under this section [ASSESSMENT], together with
16 the other assets of the association in any account, does not provide, in any one
17 year, in any account, an amount sufficient to make all necessary payments
18 from that account, the funds available shall be prorated, and the unpaid portion
19 shall be paid as soon thereafter as funds become available;

20 (D) the association may defer, in whole or in part, an
21 assessment of any member insurer if the assessment would endanger the ability
22 of the member insurer to fulfill the insurer's contractual obligations or cause
23 the member insurer's financial statement to reflect amounts of capital or
24 surplus less than the minimum amounts required for a certificate of authority
25 by any jurisdiction in which the member insurer is authorized to transact
26 insurance; however, during the period of deferment, the member insurer may
27 not pay dividends to shareholders or policyholders; a deferred assessment may
28 only be paid when the payment does not reduce capital or surplus below
29 minimums required by law; a member insurer who pays a larger assessment as
30 a result of a deferment given to another member insurer shall receive a refund
31 when the deferment ends or, at the election of the member insurer, receive a

1 credit against future assessments;

2 (E) each member insurer may set off against an assessment
3 authorized payments made on covered claims and expenses incurred in the
4 payment of these claims by the member insurer if they are chargeable to the
5 account for which the assessment is made;

6 (4) shall investigate claims brought against the association, adjust,
7 compromise, settle, and pay covered claims to the extent of the association's
8 obligation, and deny all other claims, and may review settlements, releases, and
9 judgments to which the insolvent insurer or its insureds were parties to determine the
10 extent to which settlements, releases, and judgments may be properly contested;

11 (5) may, subject to AS 21.89.100, appoint, substitute, or direct legal
12 counsel retained under an insurance policy for the defense of a covered claim;

13 (6) shall handle claims through its employees or through one or more
14 insurers or other persons designated as servicing facilities; a servicing facility shall
15 operate and maintain its principal office in this state unless the use of a servicing
16 facility located outside of the state would result in operating cost savings of at least 10
17 percent and would not result in material delay in claim payments; designation of a
18 servicing facility is subject to the approval of the director, but designation may be
19 declined by a member insurer;

20 (7) shall reimburse each servicing facility for obligations of the
21 association paid by the facility and for expenses incurred by the facility while handling
22 claims on behalf of the association and shall pay the other expenses of the association
23 authorized by this chapter.

24 * Sec. 2. AS 21.80.060(b) is amended to read:

25 (b) The association may

26 (1) employ or retain those persons necessary to handle claims and
27 perform other duties of the association;

28 (2) borrow funds necessary to effect the purposes of this chapter in
29 accord with the plan of operation and secure guarantees from the Alaska Industrial
30 Development and Export Authority for association loans that are necessary to
31 make the association financially able to meet cash flow needs;

- 1 (3) sue or be sued;
- 2 (4) negotiate and become a party to those contracts that are necessary
- 3 to carry out the purposes of this chapter;
- 4 (5) perform all other acts necessary or proper to carry out the purposes
- 5 of this chapter;
- 6 (6) retain amounts excess of claims, expenses, credits, and other
- 7 liabilities in any account to be applied to reduce future assessments in that account,
- 8 except that, if, in any year, the association determines that significant funds in excess
- 9 of projected claims, expenses, credits, and other liabilities exist in an account, the
- 10 association shall return amounts to policyholders, through procedures established by
- 11 the association, whereby the association reimburses member insurers for providing
- 12 uniform credits against rates and premiums charged for all policies applicable to the
- 13 account issued during the next calendar year.

14 * Sec. 3. AS 21.80.080(b) is amended to read:

15 (b) The director may

16 (1) suspend or revoke, after notice and hearing, the certificate of

17 authority to transact insurance in this state of any member insurer that fails to pay an

18 assessment when due or fails to comply with the plan of operation; as an alternative,

19 the director may levy a fine on any member insurer that fails to pay an assessment

20 when due; this fine may not exceed five percent of the unpaid assessment per month or

21 portion of a month, except that a fine may not be less than \$250 a month;

22 (2) revoke the designation of any servicing facility upon a finding that

23 claims are being handled unsatisfactorily;

24 (3) upon a finding by the superior court that the board of governors has

25 failed to comply with a requirement of this chapter or the plan of operation, assume

26 the powers of the board of governors under AS 21.80.060;

27 (4) subject to an appropriation by the legislature from the

28 earnings reserve account established under AS 37.13.145, make a grant or grants

29 to the association as may be required to ensure the long-term solvency of the

30 association.

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

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR BUNDE

TO: CSSB 276(L&C), Draft Version "H"

1 Page 5, following line 30:

2 Insert a new bill section to read:

3 "** Sec. 4. AS 44.88.080 is amended by adding a new paragraph to read:

4 (27) to guarantee loans made to the Alaska Insurance Guaranty
5 Association (AS 21.80.040), with these guarantees limited to loans necessary to make
6 the association financially able to meet cash flow needs up to a maximum outstanding
7 principal balance at any time of \$30,000,000."

8

9 Renumber the following bill section accordingly.

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

MEMORANDUM

To: House Judiciary Committee
From: Rep. Lesil McGuire, Chair, Judiciary Committee
Date: February 17, 2004
Re: Waiver Request for House Judiciary Committee Referral for
HB 403: Alaska Insurance Guaranty Association

I respectfully request your consideration to waive HB 403: Alaska Insurance Guaranty Association, sponsored by the House Rules Committee by Request of the Governor, from the House Judiciary Committee. The bill was given several full public hearings in the House Labor and Commerce Committee and has a further referral to the House Finance Committee.

Thank you.

AGREEMENT TO WAIVE HB 403 FROM THE HOUSE JUDICIARY COMMITTEE

Rep. Lesil McGuire (Chair) _____

Rep. Tom Anderson (Vice-Chair) _____

Rep. James Holm _____

Rep. Dan Ogg _____

Rep. Ralph Samuels _____

Rep. Les Gara _____

Rep. Max Gruenberg _____

HB

414

AMENDMENT # 1 - PASSED

OFFERED IN THE HOUSE
TO: CSHB 414(STA)

BY REPRESENTATIVE GRUENBERG

- 1 Page 1, line 1, following "**filling**":
- 2 Delete "**the**"
- 3 Insert "**a**"

AMENDMENT # 2 PASSED

OFFERED IN THE HOUSE
TO: CSHB 414(STA)

BY REPRESENTATIVE GRUENBERG

1 Page 1, lines 6 - 7:

2 Delete "secs. 2 - 7 and 9"

3 Insert "secs. 2 - 8 and 10"

4

5 Page 2, following line 2:

6 Insert a new bill section to read:

7 **"* Sec. 3.** AS 15.40 is amended by adding a new section to read:

8 **Sec. 15.40.145. Temporary appointment of United States senator.** When a
9 vacancy occurs in the office of United States senator, the governor may appoint a
10 qualified individual to fill the vacancy temporarily until the results of the special
11 election called to fill the vacancy are certified. If a special election is not called for
12 the reasons set out in AS 15.40.140, the individual shall fill the vacancy temporarily
13 until the results of the next general election are certified."
14

15 Renumber the following bill sections accordingly.

AMENDMENT #3 - FAILED

OFFERED IN THE HOUSE
TO: HB 414

BY REPRESENTATIVE GRUENBERG

1 Page 3, following line 14:

2 Insert a new bill section to read:

3 "* Sec. 7. AS 15.45.010 is amended to read:

4 **Sec. 15.45.010. Provision and scope for use of the initiative.** The law-
5 making powers assigned to the legislature, including the power assigned to the
6 legislature by the Seventeenth Amendment to the Constitution of the United
7 States to direct how vacancies in the United States Senate shall be filled, may be
8 exercised by the people through the initiative. However, an initiative may not be
9 proposed to dedicate revenue, to make or repeal appropriations, to create courts, to
10 define the jurisdiction of courts or prescribe their rules, or to enact local or special
11 legislation."
12

13 Renumber the following bill sections accordingly.

23-LS1514\S.1
Kurtz
2/13/04

AMENDMENT #4

By Rep Gruenberg

FAILED

OFFERED IN THE HOUSE

TO: CSHB 414(STA)

1 Page 4, following line 7:

2 Insert new bill sections to read:

3 ** Sec. 10. The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 CONTINGENT EFFECT. Sections 1 - 7 and 9 of this Act take effect only if

6 (1) a substantially similar initiative is adopted by the voters;

7 (2) that initiative is subsequently invalidated by a court in a final judgment
8 that the federal constitution limits the electorate's ability to enact an initiative on this subject;
9 and

10 (3) the time for an appeal of the judgment has expired or, if an appeal was
11 taken, a final order on the appeal has been entered invalidating the initiative.

12 * Sec. 11. If secs. 1 - 7 and 9 of this Act take effect, they take effect on the date that the
13 time for an appeal of a judgment under sec. 10(2) of this Act has expired or the court order
14 specified in sec. 10(3) of this Act becomes final."

Note: Section numbers in lines 5 and 12 of this amendment refer to the State Affairs CS unamended. If amendments are added, those references may have to be changed to reflect the new section numbers.

a referendum election, it shall have full force and effect until the next election returns (now lieutenant governor). 63 (Alaska 1964).

d by an application. The application shall be signed by the applicant and shall be filed with the clerk of the court upon denial of certification.

No. 35. The lieutenant governor certification under this section does not apply to the general provisions of the article on initiative. There would be no application for an initiative. 1959 Op.

is in a ministerial capacity. 195.

to make such inquiry and determine the qualifications of individual applicants as appears on the application as appears on the application at the discretion of the clerk, but he may not determine the substance of an application. No. 35. But see *Boucher v. State*, 543 P.2d 731 (Alaska 1974), cited below. A referendum petition submitted to the clerk was necessary for the clerk to prepare an application. *LA 1963*, and secure the clerk's signature on this application. There are a petition for circulation. Art. XI, § 3. 1963 Op.

contained seven sections of the Alaska Statutes described by the words "the first legislative assembly of the mandatory boroughs in Alaska." Att'y Gen. No. 17.

Alaska 1991); *Shettlers v. State*, 832 P.2d 181 (Alaska App. 1992); *Alaskans v. Kritz*, 3 P.3d 906 (Alaska App. 1992).

tion containing a referendum for lieutenant governor for a period of ten per cent of the total number of electors, at least two-thirds of the electors of the state.

districts" for "election districts."

eral. — An initiative which is seen to contain an unconstitutional provision may not be filed and certified. February 1, 1984 Op. Att'y Gen.

is sufficient on its face

before it may be accepted for filing, i.e., it must have the requisite number of purportedly valid signatures before it may be filed in the office of the attorney general; a petition deficient in this respect should be returned to the sponsors. February 1, 1984 Op. Att'y Gen.

AS 15.45.170 authorizes a supplementary petition,

but that privilege is afforded only when a petition, believed to contain a sufficient number of signatures of qualified voters, is later found to contain signatures of persons who are not qualified voters; in such a case, the latent defect of numbers may be cured, but where the defect is patent, the petition may not be accepted for filing. February 1, 1984 Op. Att'y Gen.

NOTES TO DECISIONS

Sufficiency of summary. — In preparing summary of subject matter of proposed bill, the lieutenant governor is entitled to rely on the premise that readers of the summary understand that in the absence of explicit language to the contrary, state initiatives are intended to change state law and bind the state government, not federal law and the federal government, thus he need not give "special" reminders to the voters regarding the scope of a state initiative. *Burgess v. Miller*, 654 P.2d 273 (Alaska 1982).

Summary's prediction as to proposed bill's effect was amply supported by text of bill, consequently the summary's use of the language "would prevent" was neither misleading nor inaccurate. *Burgess v. Miller*, 654 P.2d 273 (Alaska 1982).

Quoted in *Walters v. Cease*, 388 P.2d 263 (Alaska 1964).

Cited in *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173 (Alaska 1985); *Shettlers v. State*, 832 P.2d 181 (Alaska Ct. App. 1992).

Section 4. Initiative Election. An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.

Effect of amendments. — The amendment, effective October 10, 1970 (6th Legislature's SJR 2(1970)), substituted "lieutenant governor" for "secretary of state" in the second sentence.

Opinions of attorney general. — An initiative

petition must be filed before the start of the legislative session in order to be presented to the electorate at the first state-wide election held 120 or more days after the conclusion of that session. February 1, 1984 Op. Att'y Gen.

NOTES TO DECISIONS

This section must be interpreted broadly and not narrowly as to the scope of legislative power. *Warren v. Boucher*, 543 P.2d 731 (Alaska 1975).

Purpose of amending section prior to its adoption. — As originally introduced, this section provided that laws proposed by the initiative shall be submitted to the voters "at an election not later than 180 days after the adjournment of the legislative session following the filing of the petition." This proposal was amended before adoption to read as it does now. The purpose of the amendment, as explained by one of its sponsors, was to do away with the high costs of special elections for such matters (estimated at \$40,000), by requiring that the initiative proposition go on the ballot at a statewide election, whether it be primary or a general election or a special election called for some other purpose. *Starr v. Hagglund*, 374 P.2d 316 (Alaska 1962).

Placement on statewide election ballot. — An initiative proposition may be placed on the ballot for the first available statewide election held more than 120 days after adjournment of the legislative session following its filing because of special circumstances. *Starr v. Hagglund*, 374 P.2d 316 (Alaska 1962).

This section was not designed with the objective of depriving the people of the right to vote if by reason of circumstances, such as an injunction preventing the secretary of state (now lieutenant governor) from placing an initiative proposition on the ballot, it became impossible to submit the proposition at the "first" statewide election held within the prescribed

time. *Starr v. Hagglund*, 374 P.2d 316 (Alaska 1962).

The words "substantial" or "substantially" are relative, inexact terms. Their meaning is quite elusive. The meaning of such terms can be derived only by reference to all the circumstances surrounding the context in which they are used. *Warren v. Boucher*, 543 P.2d 731 (Alaska 1975).

The term "substantially the same measure" must be viewed against the total structure contemplated in this article in the matter of direct legislation. *Warren v. Boucher*, 543 P.2d 731 (Alaska 1975).

When substantial similarity exists. — If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists. *Warren v. Boucher*, 543 P.2d 731 (Alaska 1975).

It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or if it requires comprehensive treatment. *Warren v. Boucher*, 543 P.2d 731 (Alaska 1975).

Legislative discretion. — It is clear that the legislative act need not conform to the initiative in all respects, and that the framers intended that the legislature should have some discretion in deciding how far the legislative act should differ from the provisions of the initiative. *Warren v. Boucher*, 543 P.2d 731 (Alaska 1975).

The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary

LEGAL SERVICES

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

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

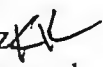
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 6, 2004

SUBJECT: HB 414 and Initiative Relating to Filling Vacancies in the U.S. Senate (Work Order No. 23-LS1514)

TO: Representative Lesil McGuire
Attn: Vanessa Tondini

FROM: Kathryn Kurtz 
Legislative Counsel

You have asked whether HB 414 would be considered "substantially the same" as the proposed initiative to fill U.S. Senate vacancies exclusively by election for purposes of art. XI, sec. 4 of the Constitution of the State of Alaska. The two are substantially the same.

Constitutional and statutory provisions

The state constitution and statutes address what happens if legislation is enacted that addresses the subject matter of a proposed initiative. Under art. XI, sec. 4, of the Constitution of the State of Alaska, a proposed initiative is void if the legislature passes a law that is "substantially the same measure" as the proposed initiative.¹ Under AS 15.45.210, the lieutenant governor, with the concurrence of the attorney general, is responsible for determining whether an Act of the legislature is substantially the same as a proposed initiative.²

¹ Article XI, sec. 4, Constitution of the State of Alaska states:

INITIATIVE ELECTION. An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.

² AS 15.45.210 states:

Determination of void petition. If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of

The test of how similar a measure enacted by the legislature and an initiative must be for the legislative measure to operate to invalidate the initiative was set out in Warren v. Boucher, 543 P.2d 731 (Alaska 1975). The Warren court noted:

... [T]he legislative act need not conform to the initiative in all respects, and ... the [constitution's] framers intended that the legislature should have some discretion in deciding how far the legislative act should differ from the provisions of the initiative. The question, of course, is how great is the permitted variance before the legislative act becomes no longer substantially the same.

Upon reflection we have concluded that the legislature's discretion in this matter is reasonably broad. ...

The court fashioned the following as a general test:

... [i]f in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists. It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or requires comprehensive treatment. The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative.

543 P.2d at 736.

Analysis

The text of HB 414 mirrors that of the initiative except in two respects. The initiative has an effective date of January 1, 2005; HB 414 does not have an effective date. HB 414 has a section that amends the definition of political party; the initiative does not. These differences do not detract from the substantial similarity of the measures. HB 414, if enacted as introduced, would presumably take effect before January 1, 2005. But the changes proposed in the manner of filling vacancies would be exactly the same as if the initiative had been passed by the voters. That the bill contains additional material does not change this fact. If HB 414 is enacted as introduced, then the initiative would be void.

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the legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall so notify the committee.

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MEMORANDUM

February 15, 2004

SUBJECT: Qualifications for Office of U.S. Senator (CSHB 414 (STA))

TO: Representative Max Gruenberg

FROM: Kathryn Kurtz *KK*
Legislative Counsel

You have asked about the constitutionality of imposing additional requirements, beyond those listed in the qualifications clauses of Art. I, secs. 2 and 3, Constitution of the United States, for candidates for Congress. Specifically, you asked whether the provision of AS 15.40.010 requiring appointees to fill vacancies in the U.S. Senate to be a member of the same political party as the previous holder of the office was constitutional, and whether it would be constitutional to specify that individuals appointed to fill vacancies are ineligible for election to fill the vacancy.

Vacancies in the United States Senate

Under the Seventeenth Amendment to the Constitution of the United States, "[w]hen vacancies happen in the representation of any state in the senate, the executive authority of such state shall issue writs of election to fill such vacancies; provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct."

This amendment clearly permits the legislature to authorize the governor to fill vacancies temporarily by appointment, as the Alaska legislature has in AS 15.40.010. Filling vacancies only by election, as anticipated in CSHB 414 (STA), is also clearly permitted under the 17th Amendment.

Qualifications

Although the legislature has the power to direct elections to fill vacancies in the U.S. Senate, and to authorize the governor to make temporary appointments to fill such vacancies, the legislature probably does not have the authority to impose qualifications for candidates or appointees to fill vacancies beyond those specified in the federal constitution.

The qualifications clause of Art. I, sec. 2 provides: "No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen." The qualifications clause of Art. I, sec. 3 provides: "No

person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen."

In U.S. Term Limits v. Thornton, 514 U.S. 779, 800-801 (1995), the Supreme Court found that "the Framers intended the Constitution to be the exclusive source of qualifications for Members of Congress, and that the Framers thereby "divested" States of any power to add qualifications."

Following the decision in U.S. Term Limits v. Thornton, the Ninth Circuit developed the following test for determining whether state requirements constitute unconstitutional additional qualifications: first, does the statute "create an absolute bar to candidates who would otherwise qualify under the Qualifications Clause"? If not, does the statute "have the likely effect of handicapping an otherwise qualified class of candidates"? Schaefer v. Townsend, 215 F.3d 1031, 1034 (9th Cir. 2000). At issue in that case was the ability of a Nevada resident to file as a candidate for the special election held to fill the vacant seat of Congressman Sonny Bono. A state statute required that candidates reside in the state at the time the nomination papers were filed. The court held that "California's requirement that candidates to the House of Representatives reside within the state *before* election, violates the Constitution by handicapping the class of nonresident candidates who otherwise satisfy the Qualifications Clause." *Id.* at 1037.

Although states may not impose additional qualifications for congressional office, states may regulate the time, place, and manner of holding elections under Art. I, sec. 4, Constitution of the United States. "The Elections Clause gives States authority to enact the numerous requirements as to procedures and safeguards which experience shows are necessary in order to enforce the fundamental right involved. . . ." U.S. Term Limits v. Thornton, 514 U.S. at 834. Recent cases exploring the distinction between qualifications and "procedures and safeguards" include:

- Campbell v. Davidson, 233 F.3d 1229 (10th Cir. 2000) (holding that requirement that candidates be registered voters is a substantive requirement that impermissibly imposes qualifications upon would-be candidates for Congress, and not merely a procedural regulation);
- Cartwright v. Barnes, 304 F.3d 1138 (11th Cir. 2002) (law that candidates of political groups other than political parties must obtain signatures of 5% of the total registered voters in order to appear on the ballot as a candidate for federal office was an election procedure and not a substantive qualification);
- Merle v. United States, 217 F.Supp. 2d 560 (D. N.J. 2002) (the federal Hatch Act, prohibiting federal employees from seeking office in a partisan election, is a permissible regulation, not a qualification); and
- Biener v. Calio, 2003 U.S. Dist. LEXIS 752 (D. Del. 2003) (a \$3,000 filing fee for candidates for U.S. representative was not an impermissible wealth qualification), *see also* Biener v. Calio, 209 F. Supp. 2d 405 (D. Del. 2002).

Constitutionality of AS 15.40.010
AS 15.40.010 provides:

Sec. 15.40.010. Conditions and time of filling vacancy by appointment and special election. When a vacancy occurs in the office of United States senator, the governor, at least five days after the date of the vacancy but within 30 days after the date of the vacancy, shall

(1) appoint a qualified person who, if the predecessor in office was nominated by a political party, has been, for the six months before the date of the vacancy, and is, on the date of appointment, a member of the same political party as that which nominated the predecessor in office to fill the vacancy temporarily until the vacancy is filled permanently by election; and

(2) by proclamation and subject to this chapter, call a special primary election and a special election to fill the vacancy for the remainder of the term of the predecessor in office if the predecessor's term would expire more than 30 calendar months after the date of the vacancy.

The requirement that appointees be of the same political party as the predecessor in office appears to be more like the registration and residency requirements that were held to be unconstitutional qualifications in the cases outlined above than a permissible time, place and manner regulation. AS 15.40.010 might be vulnerable to a constitutional challenge on this basis.

Still, at least three other states require that temporary appointees be members of the same political party as the predecessor: Arizona, A.R.S. 16-222; Hawaii, H.R.S. 17-1; and Utah, Utah Code Ann. 20A-1-502. There are no reported decisions challenging the constitutionality of those statutes.

Making appointees ineligible to seek election

Adding a statutory provision making temporary appointees ineligible for election to fill vacancies in the U.S. Senate might be held to be an unconstitutional qualification, but the case is less clear. On the one hand, it creates a situation like that in the Hatch Act case, where the individual would have to choose between appointment and election. In that case, the court did not find an unconstitutional qualification. However, the proposed requirement has a temporal element as well, like the residency requirement in the 9th Circuit case, or the registration requirement in the 10th Circuit case--both of which were held to be unconstitutional qualifications. There is certainly a significant risk that such a statutory provision would be found to constitute an unconstitutional qualification.

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MEMORANDUM

February 19, 2004

SUBJECT: The 17th Amendment - CSHB 414(JUD),
(Work Order No. 23-LS1514U))

TO: Representative Lesil McGuire
Attn: Vanessa Tondini

FROM: Kathryn Kurtz *KK*
Legislative Counsel

You requested an opinion on the constitutionality of amendment 23-LS1514\H.2. That amendment would amend AS 15.45.010 to provide in part "[t]he law making powers assigned to the legislature, including the power assigned to the legislature by the Seventeenth Amendment to the Constitution of the United States to direct how vacancies in the United States Senate shall be filled, may be exercised by the people through the initiative."

You asked whether the people currently have the power to direct by initiative how vacancies in the office of U.S. senator are filled, or whether the legislature would need to delegate this power by statute? You also asked whether the proposed amendment would constitute an indirect constitutional amendment.

The 17th Amendment provides, in part:

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

Whether the people currently have the power to direct by initiative how vacancies in the office of U.S. Senator should be filled is not clear. The current initiative scheduled to appear on the ballot in November 2004 assumes that they do. The attorney general has opined that they do not, and recommended that the initiative not be certified for that reason.¹ The Superior Court ordered that the initiative application be certified,² citing in

¹ Op. Atty. Gen. 663-04-0024, October 20, 2003.

² Final Judgment, 3AN-03-12217 CI (November 3, 2003).

Representative Lesil McGuire
February 19, 2004
Page 2

its oral decision³ recent precedent from the Alaska Supreme Court holding that unless an initiative is clearly unconstitutional, the court should wait until the initiative is passed by the voters to determine its constitutionality. *See Kodiak Island Borough v. Mahoney*, 71 P.3d 896 (Alaska 2003).

It is a question of federal constitutional law, and the proposed amendment H.2 should not make a difference in how that question is answered. It would merely be an assertion on the part of the legislature of the view that the people do have the power to direct by initiative how United States Senate vacancies are filled.

If HB 414 was enacted with this amendment, it would not constitute an indirect amendment to the Alaska constitution. The state constitution is clear that the law-making power of the people is coextensive with that of the legislature, with a few limited exceptions. Article XI, secs. 1 and 7, Constitution of the State of Alaska. The issue is whether the wording of the 17th Amendment to the federal constitution poses an additional limitation, beyond those expressly spelled out in the state constitution, on the power of the people to legislate by initiative.

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³ Transcript of oral decision rendered October 30, 2003 by Judge Rindner in 3AN-03-12217 CI.

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MEMORANDUM

March 3, 2004

SUBJECT: Is CSHB 414(JUD) substantially similar to the initiative on filling senate vacancies? (Work Order No. 23-LS1514\U)

TO: Representative Lesil McGuire
Attn: Heath Hilyard

FROM: Kathryn Kurtz *KK*
Legislative Counsel

You have asked whether CSHB 414(JUD) is considered "substantially the same" for purposes of art. XI, sec. 4 of the Constitution of the State of Alaska as the proposed initiative to fill U.S. Senate vacancies exclusively by election.

My memo to you of February 6 concluded that the original version of this bill—HB 414—and the initiative were substantially the same. The text of the original HB 414 mirrored that of the initiative except in two respects. The initiative has an effective date of January 1, 2005; the original HB 414 did not have an effective date. Also, the original HB 414 had a section that amends the definition of political party; the initiative does not. These differences exist in the present version, CSHB 414(JUD) as well, although the changes to the definition of political party made in CSHB 414(JUD) are different than those in HB 414.

In addition, the present version of the bill includes the following new sections.

- Section 1 provides a statement of legislative intent that the provisions of the Act relating to filling Senate vacancies not be repealed for two years after the effective date of the Act.
- Section 3 authorizes temporary appointments by the governor to fill vacancies in the U.S. Senate pending certification of election results.

The new section 1 does not change the analysis. An initiated law may not be repealed within two years of its effective date under art XI, sec. 6, Constitution of the State of Alaska.

However, the new section 3 might lead the lieutenant governor to conclude that the bill is no longer substantially similar to the initiative, as it does significantly change the method for filling vacancies from the method proposed in the initiative, which makes no provision for appointments by the governor.

Under art. XI, sec. 4, of the Constitution of the State of Alaska, a proposed initiative is void if the legislature passes a law that is "substantially the same measure" as the proposed initiative.¹ Under AS 15.45.210, the lieutenant governor, with the concurrence of the attorney general, is responsible for determining whether an Act of the legislature is substantially the same as a proposed initiative.²

The test of how similar a measure enacted by the legislature and an initiative must be for the legislative measure to operate to invalidate the initiative was set out in Warren v. Boucher, 543 P.2d 731 (Alaska 1975). The Warren court noted:

... [T]he legislative act need not conform to the initiative in all respects, and ... the [constitution's] framers intended that the legislature should have some discretion in deciding how far the legislative act should differ from the provisions of the initiative. The question, of course, is how great is the permitted variance before the legislative act becomes no longer substantially the same.

Upon reflection we have concluded that the legislature's discretion in this matter is reasonably broad. ...

The court fashioned the following as a general test:

... [i]f in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists. It

¹ Article XI, sec. 4, Constitution of the State of Alaska states:

INITIATIVE ELECTION. An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.

² AS 15.45.210 states:

Determination of void petition. If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of the legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall so notify the committee.

is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or requires comprehensive treatment. The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative.

543 P.2d at 736.

In other words, the determination as to whether a legislative act is substantially similar to an initiative involves making a judgment, so any prediction of the outcome of the lieutenant governor's analysis may prove inaccurate. Whether or not the governor will be allowed to make appointments to fill vacancies would certainly be a major feature of any change to the method of filling Senate vacancies. The subject matter of the bill is not particularly complex, and its reach is relatively narrow. Correspondingly, the legislature's discretion to vary from particular features of the initiative is perhaps not as broad here as it might be in the context of a different initiative.

The standard established in Warren v. Boucher is whether "the legislative act achieves the same general purpose as the initiative." *Id.* If the purpose of the initiative is to preclude the governor from making appointments to fill Senate vacancies, section 3 of CSHB 414(JUD) would obviously be inconsistent with that purpose. However, if the purpose of the initiative is to provide for special elections to fill vacancies in the Senate when there are less than 30 calendar months remaining in the predecessor's term (vacancies that are now filled by appointment until the next general election), then section 3 may not be inconsistent with that purpose.

The determination of whether CSHB 414(JUD) is substantially similar to the initiative depends on how the lieutenant governor perceives the purpose of the initiative. Depending on how the lieutenant governor perceives the purpose of the initiative, the change in CSHB 414(JUD) permitting the governor to make temporary appointments to fill vacancies could lead the lieutenant governor to conclude that the two measures are not substantially similar.

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STATE OF ALASKA
Division of Elections
Office of the Lieutenant Governor

TO: The House State Affairs Committee

THRU: Representative Bruce Weyhrauch, Chairman

DATE: February 4, 2004

FROM: Laura A. Glaiser, Director
Division of Elections

SUBJECT: Questions posed during House State Affairs hearing on HB 414 (February 3, 2004).

- 1) **Representative Seaton** asked for clarification about the proposed text in HB 414, Sec 7. AS 15.60.010 (21) regarding the definition of " political party". Due to the complexity of the answer, I would be pleased to discuss this with the Committee.
- 2) **Representative Berkowitz** asked two (2) questions:
 - *What is the cost to the State to conduct primary elections?*
 - The cost to conduct the 2002 primary elections was \$1,263.5.
 - *What is the cost to the State related to collecting and maintaining party affiliation data?*
 - It is difficult to isolate direct costs related with the collection of party affiliation data, as it is a component engrained in the voter registration system as a whole.

LEGISLATIVE RESEARCH REPORT

FEBRUARY 20, 2002



REPORT NUMBER 02.133

POLITICAL PARTY AFFILIATION OF APPOINTEES TO THE U.S. SENATE—LEGISLATIVE HISTORY

BY PATRICIA YOUNG, MANAGER

You wished to know the legislative history behind the requirement that, when filling a vacancy in the office of U.S. Senator, the governor must appoint an individual from the political party of the person who vacated the office.

As originally passed in 1960, the law in Alaska specified as follows in regard to the qualifications of appointees to the office of U.S. Senator:

The appointee shall be a member of the same political party as that which nominated the predecessor in office. If the predecessor in office was not nominated by a political party, the governor may appoint any qualified person.¹

The provision remained unchanged until 1967 when lawmakers repealed the section. The act became law without Governor Hickel's signature and went into effect in April of 1967.²

In December of 1968, Senator E.L. (Bob) Bartlett, a Democrat, died in office. Because at that time the law was silent on the matter of political party affiliation of appointees, Republican Governor Hickel was able to appoint Ted Stevens, also a Republican, to fill the vacancy left by the death of Senator Bartlett. As you know, Senator Stevens still holds that seat.

In 1998, Alaska lawmakers amended AS 15.40.010, to require that the governor, within 30 days of the date of the vacancy, fill such vacancy by appointing an individual who, if the predecessor

¹ Codified at AS 15.40.020, the provision on qualification of appointee passed as Sec. 8.02, ch 83 SLA 1960.

² Ch 139 SLA 1967.

was nominated by a political party, has been for at least the previous six months a member of the same political party as the predecessor in office.³

As you may know, governors typically make temporary appointments to fill U.S. Senate vacancies. Alaska is one of a small minority of states, however, in which the governor is required to appoint an individual of the same political party as the predecessor in office.⁴

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

³ Chapter 30 SLA 1998 also specified that the governor's appointment is temporary until the vacancy is filled permanently by election, and that the vacancy must be permanently filled by special election if the predecessor's term would expire more than 30 months after the date of the vacancy. The date of the special primary election would be the date of the first primary election held more than 30 days after the vacancy; the date of the special general election would be the date of the first general election held after such primary election.

⁴ The National Conference of State Legislatures (NCSL) compiled information on filling vacancies in the U.S. Senate from the *Senate Election Law Guidebook 2000: A Compilation of Senate Campaign Information Including Federal and State Laws Governing Election to the United States Senate*, a publication of the Committee on Rules and Administration, U.S. Senate (106th Congress, Revised to January 1, 2000; November 19, 1999). According to the NCSL compilation, at that time only Oregon and Wisconsin did not permit a governor to make an appointment filling such a vacancy. Also at that time, Arizona, Hawaii, Utah, and Wyoming were the only states in which the governor was required to appoint an individual from the same political party as the predecessor. The *Guidebook* is available in its entirety on-line at http://nwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_documents&docid=f:sd014.106. We include as Attachment A the NCSL compilation of the laws regarding vacancies.

Attachment A

National Conference of State Legislatures, Compilation of Information on Laws
Governing Vacancies in the U.S. Senate, from
*Senate Election Law Guidebook 2000: A Compilation of Senate Campaign
Information Including Federal and State Laws Governing Election to the United
States Senate*, a publication of the Committee on Rules and Administration, U.S.
Senate (106th Congress, Revised to January 1, 2000; November 19, 1999)



NATIONAL CONFERENCE *of* STATE LEGISLATURES

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State Laws Governing Vacancies in the U.S. Senate

The process of filling vacancies in the U.S. Senate is governed by both state and federal law. The U.S. Constitution stipulates that states must hold a special election to fill a senate vacancy, and permits state legislatures to determine the timing of such special elections. It also permits a state legislature to empower the governor to make a temporary appointment to fill the vacancy until a special election is held. (See Appendix A)

Most state legislatures have granted governors the power to make such interim appointments. Oregon and Wisconsin are the only two states that do not permit the governor to make an appointment, and require that the senate seat remain vacant until filled at a special election.

In most states, the governor's temporary appointee remains in office until the next regularly-scheduled general election, when a new senator is elected. Even though this election coincides with a regularly-scheduled general election, it is deemed a special election because the person elected will not serve a full term as U.S. Senator. Rather, that person serves out the unexpired term of the vacated office.

In very few states, the governor's appointee fills the unexpired term of the office vacated.

(See Appendices B and C for details of state laws)

Text of Federal Laws Governing U.S. Senate Vacancies

U.S. Constitution, Article I, Section 3

...if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

U.S. Constitution, 17th Amendment

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

2 U.S.C. Sec. 8. Vacancies

The time for holding elections in any State, district, or territory for a Representative or Delegate to fill a vacancy, whether such vacancy is caused by a failure to elect at the time prescribed by law, or by the death, resignation, or incapacity of a person elected, may be prescribed by the laws of the several States and territories respectively.

Text of State Laws Governing U.S. Senate Vacancies

<p>ALABAMA</p> <p>The Governor may make temporary appointment of a Senator in the Senate of the Congress of the United States from Alabama, whenever a vacancy exists in that office, the appointee to hold office until his successor is elected and qualified (Sec. 36-9-7).</p> <p>Whenever a vacancy occurs in the office of Senator of and from the State of Alabama in the Senate of the United States more than 4 months before a general election, the Governor of Alabama shall forthwith order an election to be held by the qualified electors of the State to elect a Senator of and from the State of Alabama to the United States Senate for the unexpired term. If the vacancy occurs within 4 months of but more than 60 days before a general election, the vacancy shall be filled at that election. If the vacancy occurs within 60 days before a general election, the Governor shall order a special election to be held on the first Tuesday after the lapse of 60 days from and after the day on which the vacancy is known to the Governor, and the Senator elected at such special election shall hold office for the unexpired term (Sec. 36-9-8).</p> <p>The Governor must give notice of a special election to elect a Senator for an unexpired term in the same manner and for the same time as is prescribed for special elections to fill a vacancy in the office of Members of the House of Representatives (Sec. 36-9-9), i.e., by proclamation (Sec. 17-18-4). For special election procedures, see Sec. Sec. 17-18-1--17-18-7.</p>
<p>ALASKA</p> <p>When a vacancy occurs in the office of a United States Senator, the Governor, within 30 days, shall appoint a qualified person of the same political party of the predecessor to fill the vacancy. However, if the remainder of the term of the predecessor in the office will expire more than 30 calendar months after the vacancy, the vacancy will be filled by a special primary and special general election. (Sec. 15.40.010).</p> <p>The special primary election shall be held on the date of the first primary election that is held more than 30 days after the vacancy. The special election to fill the vacancy shall be held on the date of the first general election after the first primary election which is held more than 30 days after the vacancy occurs (Sec. 15.40.050).</p> <p>The Governor shall issue the proclamation calling the special election at least 80 days before the election (Sec. 15.40.060).</p> <p>At the special election a United States Senator shall be elected to fill the remainder of the unexpired term (Sec. 15.40.070).</p>
<p>ARIZONA</p> <p>When a vacancy occurs in the office of United States Senator by reason of death or resignation, or from any other cause, the vacancy shall be filled at the next general election. At such election the person elected shall fill the unexpired term of the vacated office. In the interim, the governor shall appoint a person to fill the vacancy. That appointee shall be of the same political party as the person vacating the office and shall serve until the person elected at the next general election is qualified and assumes office (Sec. 16-222).</p>
<p>ARKANSAS</p> <p>A vacancy in the United States Senate from Arkansas shall be filled by the governor by temporary appointment until the people fill the vacancy at the next ensuing general election for state and county officers to be held more than 60 days and less than 12 months after such vacancy shall occur; provided that if no general election for state and county officers shall occur within 12 months after such vacancy, the governor shall call a special election to be held not less than 60 days and not more than 120 days after the vacancy shall occur (Sec. 7-8-102).</p>
<p>CALIFORNIA</p> <p>If a vacancy occurs in the representation of this State in the Senate of the United States, the Governor may appoint and commission an elector of this State, who possesses the qualifications for the office, to fill the vacancy until his successor is elected and qualifies and is admitted to his seat by the United States Senate. However, whenever a vacancy occurs within term fixed by law to expire on the third day of January following the next general election, the person so appointed shall hold office for the remainder of the unexpired term unless such vacancy is filled at a special election held prior to such general election, in which case the person elected at such special election shall hold office for the remainder of the unexpired term. An election to fill a vacancy in the term of a United States Senator shall be held at the general election next succeeding the occurrence of the vacancy or at any special election</p>

(Sec. 10720).

The special election shall be proclaimed within 14 calendar days after the occurrence of the vacancy (Sec. 10700). When the vacancy occurs in a congressional office after the close of the nomination period in the final year of the term of office, the Governor may decline to issue an election proclamation at his discretion (Sec. 10701).

COLORADO

(1) Whenever a vacancy happens in the office of United States Senator from this State, the Governor shall make a temporary appointment to fill such vacancy until the same is filled by election.

(2) When a vacancy happens, the Governor shall direct the Secretary of State to include in the general election notice for the next general election a notice of the filling of such vacancy. The Secretary of State shall give notice accordingly. At such election the vacancy shall be filled for the unexpired term. If for any reason, no United States Senator is elected at the next general election, the person temporarily appointed by the Governor shall hold the office until a United States Senator is elected at a succeeding general election (Sec. 1-12-20.).

CONNECTICUT

In case of a vacancy in the office of Senator in Congress, the Governor is empowered to fill such vacancy by appointment. If such vacancy occurs 60 or more days prior to a state election, the appointee shall serve until the third day of January following such election, and at such election there shall be elected a Senator in Congress to serve for the remaining portion, if any, of the term vacated. If such vacancy occurs within less than 60 days of a state election and the term vacated does not expire on the third day of January following such election, the appointee shall serve until the third day of January following the next such election but one, and at such next election but one there shall be elected a Senator in Congress to serve for the remaining portion, if any, of the term vacated. If such vacancy occurs within less than 60 days of a state election and the term vacated expires on the third day of January following, the appointee shall serve until such third day of January (Sec. 9-211).

DELAWARE

When a vacancy occurs in the office of the United States Senate, it shall be filled for the unexpired term at the next general election. The Governor may make a temporary appointment from among the qualified electors of the State until the vacancy is filled by the next general election (Sec. 7321).

FLORIDA

If a vacancy happens in the representation of the State in the United States Senate, the Governor shall issue a writ of election to fill such vacancy at the next general election; and the Governor may make a temporary appointment until the vacancy is filled by election (Sec. 100.161).

GEORGIA

In the event of a vacancy, it shall be filled by special election at the next November election, occurring at least 40 days after the occurrence of such vacancy, and until such election, the Governor may make a temporary appointment to fill such vacancy (Sec. 21-2-542).

HAWAII

When a vacancy occurs in the office of a United States Senator, the vacancy shall be filled for the unexpired term at the following state general election, provided that the vacancy occurs not later than 4:30 p.m. on the 60th day prior to the date of the primary for nominating candidates to be voted for at the election; otherwise at the state general election next following. The chief election officer shall issue a proclamation designating the election for filling the vacancy. Pending the election, the governor shall make a temporary appointment to fill the vacancy and the person so appointed shall serve until the election and qualification of the person duly elected to fill the vacancy and shall be a registered member of the same political party as the Senator causing the vacancy. All candidates for the unexpired term shall be nominated and elected in accordance with this title (Sec. 17-1).

IDAHO

Whenever any vacancy shall occur in the office of United States Senator from the State of Idaho by death, resignation or otherwise, the governor shall have the power and is hereby authorized and empowered to fill such vacancy by appointment, and the person so appointed shall hold office until such time as a United States Senator is regularly elected to fill such vacancy at the next succeeding general election, and qualifies by virtue of such election; provided, however, that in case a vacancy occurs in the position of United States Senator from the state of Idaho within 30 days of any general election, no election for United States Senator to fill said vacancy shall be held at such general election (Sec. 59-910).

ILLINOIS

When a vacancy shall occur in the office of United States Senator from Illinois, the Governor shall make temporary appointment to fill such vacancy until the next election of representatives in Congress, at which time such vacancy shall be filled by election, and the senator so elected shall take office as soon thereafter as he shall receive his certificate of election (Sec. 5/25-8).

INDIANA

- (a) A vacancy that occurs, other than by resignation, in the United States Senate shall be certified to the governor by the secretary of state.
- (b) The governor shall immediately fill a vacancy in the United States Senate by appointing a person possessing the qualifications required under Article 1, Section 3, Clause 3 of the Constitution of the United States. The person appointed holds office until the next general election, when the vacancy shall be filled by the election of a Senator in a special election to hold office for the unexpired term.
- (c) If a vacancy in the United States Senate occurs after the last day on which notice of the special election can be published under IC 3-10-8-4, the person appointed under subsection (b) holds office until the vacancy is filled in a special election held at the time of the next general election for which notice can be published under IC 3-10-8-4 (Sec. 3-13-3-1).

IOWA

In the office of United States Senator, when the vacancy occurs when the Senate of the United States is in session or when such Senate will convene prior to the next general election, it shall be filled by the Governor. Such appointment shall be for the period until the vacancy is filled by election pursuant to law (Sec. 69.13).

If a vacancy occurs in the office of Senator in the Congress of the United States 89 or more days prior to a general election, and the unexpired term in which the vacancy exists has more than 70 days to run after the date of that general election, the vacancy shall be filled for the balance of the unexpired term at that general election and the person elected to fill the vacancy shall assume office as soon as a certificate of election has been issued and the person qualified (Sec. 69.13).

KANSAS

When a vacancy shall occur in the office of United States Senator from this state, the governor shall make a temporary appointment to fill such vacancy until the next election of representatives in Congress, at which time such vacancy shall be filled by election, and the senator so elected shall take office as soon thereafter as he shall receive his certificate of election (Sec. 25-318).

KENTUCKY

The Governor shall fill vacancies in the office of United States Senator by appointment until the next regular election at which members of the lower branch of Congress are elected, and shall, under the Seal of the Commonwealth, certify the appointment to the President of the Senate of the United States. The certificate of appointment shall be countersigned by the Secretary of State (Sec. 63.200).

LOUISIANA

The Governor may fill any vacancy in the office of United States Senator by appointment; however, if the United States Senate is in session when the vacancy occurs, the Governor, within ten days after receiving official notice of the vacancy, shall appoint a Senator to fill the vacancy. If a vacancy occurs in the office of United States Senator and the unexpired term is more than one year, any appointment to fill the vacancy shall be temporary, and any Senator so appointed shall serve until his successor is elected at a special election and takes office, and the Governor, within ten days after receiving official notice of the vacancy, shall issue his proclamation for a special election to fill the vacancy for the unexpired term. The date of the special election shall be established by the

Governor in accordance with the provisions of R.S. 18:402(E). The election shall be conducted and the returns shall be certified as in regular elections for United States Senator. (Sec. 1278(A), (B)).

MAINE

Within a reasonable time after a vacancy occurs, the Governor shall appoint a qualified person to fill the vacancy until his successor is elected and qualified. If the vacancy occurs 60 days or more before a regular primary election, nominees must be chosen at the primary and a successor elected for the remainder of the term at the general election. If the vacancy occurs less than 60 days before a regular primary election, nominees must be chosen at the next regular primary following the one in question, and a successor elected for the remainder of the term at the general election (Sec. 391).

MARYLAND

In the event of a vacancy in said office of Senator, however said vacancy may arise, the Governor of the State shall make a temporary appointment of a Senator who shall serve until the people shall fill such vacancy by nomination and election (Sec. 21-1(c)).

Special election.--It shall be the duty of the Governor of the State, within 10 days after such vacancy shall have been made or becomes known to him, to issue a proclamation accompanied by a writ of election declaring and providing that at the next ensuing primary election held for the nomination of candidates for the House of Representatives, candidates for said unexpired portion of the term of said office of Senator in which such vacancy has occurred shall be nominated in the manner aforesaid. The election of a Senator to fill such unexpired portion of said term shall take place at the next ensuing general congressional election (Sec. 21-1(d)).

MASSACHUSETTS

The vacancy shall be filled for the unexpired term at the following biennial state election provided said vacancy occurs not less than seventy days prior to the date of the primaries for nominating candidates to be voted for at such election, otherwise at the biennial state election next following. Pending such election the governor shall make a temporary appointment to fill the vacancy, and the person so appointed shall serve until the election and qualification of the person duly elected to fill such vacancy (ch. 54, Sec. 139).

MICHIGAN

Whenever a vacancy shall occur in the office of United States Senator, the Governor shall appoint, to fill the vacancy, some suitable person having the necessary qualifications for Senator. The person so appointed shall hold office from the time of his appointment and qualification until the first day of December following the next general November election which occurs more than one hundred twenty days after such vacancy happens. At such general November election, a United States Senator to fill such vacancy shall be elected and the person so elected shall hold office from the first day of December following such election for the balance of the unexpired term of the Senator whose vacancy is filled (Sec. 168.105).

MINNESOTA

Every vacancy shall be filled for the remainder of the term by a special election, except that no special election shall be held in the year before the term expires. The special election shall be held at the next November election if the vacancy occurs at least 6 weeks before the regular primary preceding that election. If the vacancy occurs less than 6 weeks before the regular primary preceding the next November election, the special election shall be held at the second November election after the vacancy occurs. The Governor may make a temporary appointment to fill any vacancy until the next special or regular election (Sec. 204D.28).

MISSISSIPPI

If a vacancy shall occur in the office of United States Senator from Mississippi by death, resignation, or otherwise, the Governor shall, within ten days receiving official notice of such vacancy, issue his proclamation for an election to be held in the State to elect a Senator to fill such unexpired term as may remain, provided the unexpired term is more than 12 months, and election shall be held within 90 days from the time the proclamation is issued and the returns of such election shall be certified to the Governor in the manner set out for regular elections unless the vacancy occurs in a year in which there shall be held a general state or congressional election, in which event the Governor's proclamation shall designate the general election day as the time for electing a Senator, and the vacancy shall be filled by appointment as hereinafter provided (Sec. 23-15-855).

In case of a vacancy, the Governor may appoint a Senator to fill such vacancy temporarily, and if the United States Senate is in session at the time the vacancy occurs, the Governor shall appoint a Senator within 10 days after receiving official notice thereof, and the Senator so appointed shall serve until his successor is elected and

commissioned; provided, that such unexpired term as he may be appointed to fill shall be for a longer time than 1 year, but if for a shorter time than one year, he shall serve for the full time of the unexpired term and no special election shall be called by the Governor, but his successor shall be elected at the regular election (Sec. 23-15- 855).

MISSOURI

Whenever a vacancy in the office of Senator of the United States occurs, the Governor shall appoint a person to fill such vacancy who shall continue in office until a successor shall have been duly elected and qualified according to law (Sec. 105.040).

MONTANA

If a vacancy occurs, an election to fill the vacancy shall be held at the next general election. If the election is invalid or not held at that time, the election to fill the vacancy shall be held at the next succeeding general election. The Governor may make a temporary appointment to fill the vacancy until an election is held (Sec. 13-25-202).

NEBRASKA

When a vacancy occurs in the representation of the State of Nebraska in the Senate of the United States, the office shall be filled by the Governor. The Governor shall appoint a suitable person possessing the qualifications necessary for senator to fill such vacancy. If the vacancy occurs within 60 days of a statewide general election and if the term vacated expires on the following January 3, the appointee shall serve until the following January 3, and if the term extends beyond the following January 3, the appointee shall serve until January 3 following the second statewide general election next succeeding his or her appointment. If the vacancy occurs more than 60 days before a statewide general election, the appointee shall serve until January 3 following the statewide general election and at the statewide general election a senator shall be elected to serve the unexpired term if any (Sec. 32-565).

NEVADA

If a vacancy occurs due to death, resignation or otherwise, the Governor may appoint some qualified person to fill the vacancy, who shall hold office until the next general election and until his successor shall be elected and seated (Sec. 304.030).

NEW HAMPSHIRE

If a vacancy occurs, the Governor shall fill the vacancy by temporary appointment until it is filled at the next general election (Sec. 661:5).

NEW JERSEY

If a vacancy occurs, the Governor shall issue a writ of election to fill the same unless the term of service of the person whose office shall become vacant will expire within 6 months next after the happening of the vacancy (Sec. 19:27-4). If the vacancy shall happen within 64 days next preceding the primary prior to the general election, it shall be filled by election at the second succeeding election unless the Governor shall deem it advisable to call a special election therefor (Sec. 19:27-6).

The Governor may make a temporary appointment of a Senator whenever a vacancy shall occur by reason of any cause other than the expiration of the term; and such appointee shall serve as such Senator until a special election or general election shall have been held pursuant to law and the board of state canvassers can deliver to his successor a certificate of election (Sec. 19:3-26).

NEW MEXICO

If a vacancy occurs, the Governor shall make a temporary appointment to fill the vacancy until such time as an election is held to fill the vacancy for the unexpired term. The election to fill the vacancy for the unexpired term shall be held at the next general election occurring not less than thirty (30) days subsequent to the happening of such vacancy. If the vacancy occurs within thirty (30) days next preceding a general election, the person appointed by the Governor to fill the vacancy shall hold office until the next general election occurring more than thirty (30) days subsequent to the happening of the vacancy unless the term of office for such Senator shall sooner expire. Candidates to fill a vacancy in the office of United States Senator for an unexpired term shall be nominated and elected in the same manner as candidates are nominated and elected for the full term (Sec. 1-15-14).

NEW YORK

At the general election next preceding the expiration of the term of office of a United States Senator from this state, a United States Senator shall be elected by the people for a full term of 6 years. Elections to fill a vacancy for an unexpired term shall be held as provided in the public officers law (Sec. 12-200).

If a vacancy occurs in any even-numbered calendar year on or after the 59th day prior to an annual primary election, the Governor shall make a temporary appointment to fill such vacancy until the third day of January in the year following the next even-numbered calendar year. If such vacancy occurs in any even-numbered calendar year on or before the 60th day prior to an annual primary election, the Governor shall make a temporary appointment to fill such vacancy until the third day of January in the next calendar year. If a vacancy occurs in any odd-numbered year, the Governor shall make a temporary appointment to fill such vacancy until the third day of January in the next odd-numbered calendar year. Such an appointment shall be evidenced by a certificate of the Governor which shall be filed in the Office of the State Board of Elections along with a writ of election (McKinney's Public Officers Law, Sec. 42(4-a)).

NORTH CAROLINA

Whenever there shall be a vacancy in the office of United States Senator from this State, whether caused by death, resignation, or otherwise than by expiration of term, the Governor shall appoint to fill the vacancy until an election shall be held to fill the office. The Governor shall issue his writ for the election of a Senator to be held at the time of the first election for members of the General Assembly that is held more than 60 days after the vacancy occurs. The person elected shall hold office for the remainder of the unexpired term. The election shall take effect from the date of the canvassing of the returns (Sec. 163-12).

NORTH DAKOTA

When a vacancy occurs in the office of United States senator from this state, the governor shall issue a writ of election to fill the vacancy at the next statewide primary or general election, whichever occurs first, and that occurs at least ninety days after the vacancy. However, if the next primary or general election at which the vacancy could be filled, occurs in the year immediately preceding the expiration of the term, then no election may be held. The governor, by appointment, may fill the vacancy temporarily, but any person so appointed shall serve only until the vacancy is filled by election or until the term expires if no election can be held (Sec. 16.1-13-08).

OHIO

If a vacancy occurs, the Governor shall make a temporary appointment of some suitable person having the necessary qualifications for Senator. The appointee shall hold office until the 15th of December succeeding the next regular state election which occurs more than 180 days after such vacancy happens. At that next regular state election, a special election to fill the vacancy shall be held, provided, that when the unexpired term ends within 1 year immediately following the date of such regular state election the appointment shall be for the unexpired term (Sec. 3521.02).

OKLAHOMA

Whenever a vacancy shall occur in the office of a member of the United States Senate from Oklahoma, such vacancy shall be filled at a special election to be called by the Governor within 30 days after occurrence of the vacancy. No special election shall be called if the vacancy occurs after March 1 of any even-numbered year if the term of the office expires the following year. In this case the candidate elected to the office at the regular General Election shall be appointed by the Governor to fill the unexpired term (Sec. 12-101).

OREGON

Under Article V, Section 16 of the Constitution of Oregon, if a vacancy occurs in the office of United States Senator, the vacancy shall be filled at the next general election provided such vacancy occur more than 20 days prior to such general election.

(1) If a vacancy in election or office of Representative in Congress or United States Senator occurs before the 61st day before the general election, the Governor shall call a special election to fill that vacancy. If a vacancy in election or office of United States Senator occurs after the 62nd day before the general election but on or before the general election, and if the term of that office is not regularly filled at that election, the Governor shall call a special election to fill the vacancy as soon as practicable after the general election.

(2) If a special election to fill the vacancy in election or office of Representative in Congress or United States Senator is called before the 80th day after the vacancy occurs, each major political party shall select its nominee for the office and certify the name of the nominee to the Secretary of State. The Secretary of State shall place the name of the nominee on the ballot.

(3) If a special election to fill the vacancy in election or office of Representative in Congress or United States Senator is called after the 79th day after the vacancy occurs, a special primary election shall be conducted by the Secretary of State for the purpose of nominating a candidate of each major political party. A declaration of candidacy or nominating petition may be filed not later than the 10th day following the issuance of the writ of

election (Sec. 188.120).

PENNSYLVANIA

If a vacancy occurs, it shall be filled for the unexpired term by the vote of the electors of the State at a special election held at the next general or municipal election, occurring at least 90 days after the happening of such vacancy. Candidates shall be nominated by political parties in accordance with party rules and by means of nomination certificates. Until such time as the vacancy shall be filled by an election, the Governor may make a temporary appointment to fill the vacancy (Sec. 2776).

RHODE ISLAND

If a vacancy occurs, it shall be filled at the next general election after the expiration of 70 days from the date of such vacancy. In case of such vacancy, the Governor shall make a temporary appointment of a person, pending the results of such an election (Sec. 17-4-9).

SOUTH CAROLINA

If a vacancy occurs, the Governor may fill such vacancy by appointment for the period of time intervening between the date of such appointment and January 3 following the next succeeding general election. But, if such vacancy occurs less than 100 days prior to any general election, the appointment shall be for the period of time intervening between the date of such appointment and January 3 following the second general election next succeeding. The Governor shall within 5 days after any such appointment order an election to occur at the time of the general election immediately preceding the expiration date of the appointment if at the expiration of such appointment an unexpired term shall remain. (Sec. 7-19-20).

SOUTH DAKOTA

If a vacancy occurs, it is the duty of the Governor within 10 days of the occurrence to issue a proclamation setting the date of and calling for a special election to fill the vacancy. If either a primary or general election is to be held within 6 months, an election to fill a vacancy in the office of representative in the United States Congress shall be held in conjunction with that election; otherwise, the election shall be held not less than 80 nor more than 90 days after the vacancy occurs (Sec. 12-11-1). The Governor may fill by temporary appointment, until a special election is held, vacancies in the office of U.S. Senator (Sec. 12-11-4).

TENNESSEE

If a vacancy occurs in the office of United States Senator, a successor shall be elected at the next regular November election and shall hold office until the term for which his predecessor was elected expires. If the vacancy will deprive the State of its full representation at any time Congress may be in session, the governor shall fill the vacancy by appointment until a successor is elected at the next regular November election and is qualified (Sec. 2-16-101).

TEXAS

The governor shall appoint a person to fill a vacancy in office if the vacancy exists or will exist when congress is in session. The appointee serves until a successor has been elected and has qualified (Sec. 204.002). If a vacancy occurs during an odd-numbered year or after the 62nd day before general primary election day in an even-numbered year, the remainder of the unexpired term shall be filled by a special election except that the minimum number of signatures that must appear on a petition accompanying a candidate's application for a place on the ballot is 5,000 (Sec. 204.005, Supp.).

UTAH

When a vacancy occurs in the office of U.S. senator, it shall be filled for the unexpired term at the next regular general election. The governor shall appoint a person to serve as U.S. senator until the vacancy is filled by election from one of three persons nominated by the state central committee of the same political party as the prior officeholder (Sec. 20A-1-502(2)).

VERMONT

If a vacancy occurs in the office of United States Senator, the governor shall call a special election to fill the vacancy. His proclamation shall specify a day for the special election and a day for a special primary. The special election shall be held not more than 3 months from the date that the vacancy occurs, except that, if vacancy occurs within 6 months of a general election, the special election may be held the same day as the general election (Sec. 2621). The governor may make an interim appointment to fill a vacancy in the office of United States Senator, pending the filling of the vacancy by special election (Sec. 2622).

VIRGINIA

When any vacancy occurs in the representation of the Commonwealth of Virginia in the United States Senate, the Governor shall issue a writ of election to fill the vacancy for the remainder of the unexpired term. The election shall be held on the next succeeding November general election date or, if the vacancy occurs within 120 days prior to that date, on the second succeeding November general election date. The Governor may make a temporary appointment to fill the vacancy until the qualified voters fill the same by election. (Sec. 24.2-207).

WASHINGTON

When a vacancy happens in the representation of the State in the Senate of the United States, the Governor shall make a temporary appointment until the people fill the vacancy by election (Sec. 29.68.070).

Whenever a vacancy occurs in the office of United States representative or United States senator from this state or any congressional district of this state, the governor shall order a special election to fill the vacancy. Within 10 days of such vacancy occurring, he or she shall issue a writ of election fixing a date for the special vacancy election not less than 90 days after the issuance of the writ, fixing a date for the primary for nominating candidates for the special vacancy election not less than 30 days before the day fixed for holding the special vacancy election, fixing the dates for the special filing period, and designating the term or part of the term for which the vacancy exists. If the vacancy occurs less than 6 months before a state general election and before the second Friday following the close of the filing period for that general election, the special primary and special vacancy elections shall be held in concert with the state primary and state general election in that year. If the vacancy occurs on or after the first day for filing under RCW 29.18.030 and on or before the second Friday following the close of the filing period, a special filing period of 3 normal business days shall be fixed by the governor and notice thereof given to all media, including press, radio, and television within the area in which the vacancy election is to be held, to the end that, insofar as possible, all interested persons will be aware of such filing period. The last day of the filing period shall not be later than the third Tuesday before the primary at which candidates are to be nominated. The names of candidates who have filed valid declarations of candidacy during this 3-day period shall appear on the approaching primary ballot. If the vacancy occurs later than the second Friday following the close of the filing period, a special primary and special vacancy election to fill the position shall be held after the next state general election but, in any event, no later than the 90th day following the November election. As used in this chapter, "county" means in the case of a vacancy in the office of United States senator, any or all of the counties in the state and, in the case of a vacancy in the office of United States representative, only those counties wholly or partly within the congressional district in which the vacancy has occurred (Sec. 29.6S.0S0).

WEST VIRGINIA

Any vacancy occurring in the office of secretary of state, auditor, treasurer, attorney general, commissioner of agriculture, United States Senator, judge of the supreme court of appeals, or in any office created or made elective, to be filled by the voters of the entire state, or judge of a circuit court, shall be filled by the governor of the state by appointment. If the unexpired term of a judge of the supreme court of appeals, or a judge of the circuit court, be for less than 2 years, or if the unexpired term of any other office named in this section be for a period of less than 2 years and 6 months, the appointment to fill the vacancy shall be for the unexpired term. If the unexpired term of any office be for a longer period than above specified, the appointment shall be until a successor to the office has timely filed a certificate of candidacy, has been nominated at the primary election next following such timely filing and has thereafter been elected and qualified to fill the unexpired term. Proclamation of any election to fill an unexpired term shall be made by the governor of the state, and, in the case of an office to be filled by the voters of the entire state, shall be published prior to such election as a Class II-0 legal advertisement in compliance with the provisions of article 3 [Sec. 59-3-1 et seq.], chapter 59 of this code, and the publication area for such publication shall be each county of the state. If the election is to fill a vacancy in the office of judge of a circuit court, the proclamation shall be published prior to such election as a Class II-0 legal advertisement in compliance with the provisions of article 3, chapter 59 of this code, and the publication area for such publication shall be each county in the judicial circuit (Sec. 3-10-3).

WISCONSIN

Vacancies in the office of U.S. Senator shall be filled by election, as provided in Sec. 8.50(4)(b), for the residue of the unexpired term (Sec. 17.18). A vacancy in the office of U.S. Senator occurring prior to the 2nd Tuesday in May in the year of the general election shall be filled at a special primary and election. A vacancy in that office occurring between the 2nd Tuesday in May and the 2nd Tuesday in July in the year of the general election shall be filled at the September primary and general election (Sec. 8.50(4)(b)).

WYOMING

If a vacancy occurs in the office of United States Senator, the governor shall fill the vacancy by temporary appointment according to specified rules (Sec. 22-18-111(a)(i)).

APPENDIX C

Summary of State Laws Governing U.S. Senate Vacancies

	Date of Special Election	Interim Appointment	Term of Appointee	Restrictions on Appointment
Alabama	Such as the governor directs, if vacancy occurs more than 4 months before next general election	Yes - governor	Until successor is elected and qualified	None
Alaska	On date of the first primary & general that is held more than 30 days after the vacancy	Yes - governor	If predecessor's term has 30 months or more remaining, until special election is held.	Within 30 days Qualified person of same political party of predecessor
Arizona	Next general election	Yes - governor	Unexpired term of vacated office	Same political party as person vacating office
Arkansas	Next state/county general election more than 60 days and less than 12 months after vacancy occurs; if no general election falls during that time, governor must call a special to be held no less than 60 and no more than 120 days after the vacancy occurs	Yes - governor	Until next general election	None
California	Next general election succeeding vacancy; must be proclaimed within 14 days of vacancy; governor may decline to issue election proclamation if vacancy occurs after close of nomination period in final year of the term of office	Yes - governor	Until successor is elected, qualifies and is admitted to his seat by the Senate	An elector of the state who possess the qualifications for the office
Colorado	Next general election	Yes - governor	Until office is filled by election	None
Connecticut	Next general state election	Yes - governor	If vacancy occurs 60 or more days before an election, until Jan. 3 following election.	None
Delaware	Next general election	Yes - governor	Until vacancy is filled at next general election	Qualified elector of the state

	Date of Special Election	Interim Appointment	Term of Appointee	Restrictions on Appointment
Florida	Next general election	Yes – governor	Until vacancy is filled at next general election	None
Georgia	Next November election occurring at least 40 days after vacancy	Yes – governor	Until vacancy is filled at next general election	None
Hawaii	Following state general election, provided vacancy occurs no later than 4:30pm on 60 th day prior to primary; otherwise at state general election next following	Yes – governor	Until vacancy is filled at next general election	Registered member of same political party as Senator causing the vacancy
Idaho	Next regularly scheduled election for senator	Yes – governor	Until a Senator is regularly elected to fill such vacancy	None
Illinois	Next election of representatives in Congress	Yes – governor	Until vacancy filled at next general election	None
Indiana	Next general election	Yes – governor	Until the next general election	None
Iowa	If vacancy occurs 89 days or more prior to a general election, and unexpired term has more than 70 days to run after that election, vacancy is filled for balance of unexpired term at that general election	Yes – governor	Until vacancy is filled	None
Kansas	Next congressional election	Yes – governor	Until vacancy is filled at next election of representatives in Congress	None
Kentucky	Next congressional election	Yes – governor	Until vacancy is filled at next election of representatives in Congress	None
Louisiana	See RS 18:402(E)	Yes – governor	If unexpired term is more than one year, appointee serves until successor is elected at a special election	Within 10 days of receiving official notice of vacancy

	Date of Special Election	Interim Appointment	Term of Appointee	Restrictions on Appointment
Maine	Next general election	Yes – governor	Until the next regular election, if the vacancy occurs 60 days or more before a regular primary; until the next election following the one in question, if vacancy occurs less than 60 days before primary	None
Maryland	Next congressional election	Yes – governor	Until the people fill vacancy by nomination and election	None
Massachusetts	Next biennial state election	Yes – governor	Until next election	None
Michigan	Next general election	Yes – governor	Until first day of December following the next general November election which occurs more than 120 days after vacancy happens	None
Minnesota	Next November election	Yes – governor	Until next election	None
Mississippi	Within 90 days of appointment, unless vacancy occurs in the year of a regular general election, in which event the special election coincides with the general election	Yes, if unexpired term is more than 12 months – governor	Until successor is elected and commissioned	Appointment must be made within 10 days of receiving official notice of vacancy
Missouri	Next regularly scheduled election for senator	Yes – governor	Until successor is elected	None
Montana	Next general election	Yes – governor	Until election is held	None
Nebraska	Next general election	Yes – governor	Until following Jan. 3, if vacancy occurs within 60 days of a statewide general election and the term vacated expires on the following Jan. 3. If the term extends beyond the following Jan. 3, until Jan. 3 following the second statewide general election next succeeding his/her appointment.	None
Nevada	Next general election	Yes – governor	Until successor is elected	None
New Hampshire	Next general election	Yes – governor	Until next general election	None

	Date of Special Election	Interim Appointment	Term of Appointee	Restrictions on Appointment
New Jersey	If vacancy happens within 64 days of next primary, then it is filled at the second succeeding election unless the governor calls a special election	Yes – governor	Until a special election or general election is held	None
New Mexico	Next general election occurring not less than 30 days subsequent to the vacancy	Yes – governor	Until election is held to fill the vacancy for the unexpired term	None
New York	Next even-year general election	Yes – governor	If vacancy occurs in even-numbered year on or after the 59 th day prior to an annual primary, until the 3 rd day of January in the year following the next even-numbered calendar year. If vacancy occurs in an even year on or before the 60 th day prior to an annual primary, until the 3 rd of January in the next calendar year. If vacancy occurs in an odd year, until the 3 rd day of January in the next odd year.	None
North Carolina	Next election for members of the General Assembly	Yes – governor	Until election is held to fill the office	None
North Dakota	Next statewide primary or general election, whichever occurs first, and that occurs at least 90 days after the vacancy. If the next election at which the vacancy could be filled occurs in the year immediately preceding the expiration of the term, then no election may be held.	Yes – governor	Until election is held to fill the vacancy, or until the term expires if no election can be held	None

	Date of Special Election	Interim Appointment	Term of Appointee	Restrictions on Appointment
Ohio	Next regular state election	Yes – governor	Until Dec. 15 th succeeding the next regular state election which occurs more than 180 days after such vacancy happens; or if the unexpired term ends within 1 year immediately following the date of the next regular state election, the appointment is for the unexpired term	None
Oklahoma	Called by the governor within 30 days after occurrence of the vacancy. No special election if vacancy occurs after March 1 of an even year and the term of office expires the following year	If vacancy occurs after March 1 in an even year and the term of office expires the following year, the governor shall appoint the candidate elected to the office at the regular election to fill the unexpired term	Election Day – Jan. 3	Only the candidate elected at the regular election may be appointed
Oregon	Next general election, provided vacancy occurs more than 20 days prior to such general election. If vacancy occurs before 61 st day before the general election, the governor must call a special election. If a vacancy occurs after the 62 nd day before the general election and the term of that office is not regularly filled at that election, the governor must call a special election as soon as practicable after the general election	No	N/A	N/A
Pennsylvania	Next general or municipal election occurring at least 90 days after vacancy occurs	Yes – governor	Until vacancy is filled in an election	None
Rhode Island	Next general election after the expiration of 70 days from the date of the vacancy	Yes – governor	Until election	None

	Date of Special Election	Interim Appointment	Term of Appointee	Restrictions on Appointment
South Carolina	Next general election immediately preceding the expiration date of the appointment	Yes – governor	From date of appointment until January 3 of next succeeding general election. If vacancy occurs less than 100 days prior to general election, until January 3 following second general election next succeeding	None
South Dakota	If a primary or general election is to be held within 6 months, special election is held in conjunction with that election; other wise, special election is held not less than 80 nor more than 90 days after the vacancy occurs	Yes – governor	Until special election is held	None
Tennessee	Next regular November election	Yes – governor	Until successor is elected at next regular November election	None
Texas	If vacancy occurs during an odd year or after the 62 nd day prior to the next regular primary election, the remainder of the unexpired term is filled by a special election	Yes – governor	Until a successor is elected	None
Utah	Next regular general election	Yes – governor	Until vacancy is filled by election from one of three persons nominated by the state central committee of the same political party as the prior officeholder	None
Vermont	Special election held not more than 3 months from the date of the vacancy. If the vacancy occurs within 6 months of a general election, the special election may be held the same day as the general election	Yes – governor	Until vacancy is filled by special election	None

	Date of Special Election	Interim Appointment	Term of Appointee	Restrictions on Appointment
Virginia	Next succeeding November election, or if the vacancy occurs within 120 days prior to that date, on the second succeeding November general election date	Yes - governor	Until vacancy is filled by election	None
Washington	Special election not less than 90 days after issuance of writ (which must occur within 10 days of vacancy occurring). If vacancy occurs less than 6 months before a state general election, the special primary and vacancy election shall be held in concert with the state primary and general elections	Yes - governor	Until vacancy filled by election	None
West Virginia	Upon proclamation of the governor	Yes - governor	If unexpired term is less than 2 years and 6 months, appointment is for the unexpired term. If unexpired term is longer, appointment is until a successor is elected	None
Wisconsin	If vacancy occurs prior to the 2 nd Tuesday in May in the year of the general election, it is filled in a special election. A vacancy occurring between the 2 nd Tuesday in May and the 2 nd Tuesday in July in the year of the general election is filled at the September primary and general election.	No	N/A	N/A
Wyoming	??	Yes - governor	??	?? Gov. must select from a list of 3 nominated by the central comm. of same political party as predecessor. Sec. 22-18-111(a)(1).

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House and Senate Vacancies: How Are They Filled?

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Summary

Vacancies in Congress occur due to the death, resignation, or declination (refusal to serve) of a Senator or Representative, or as the result of expulsion or exclusion by either house. The Constitution requires that vacancies in both houses be filled by special election, but in the case of the Senate, it empowers state legislatures to provide for temporary appointments by the state governor until special elections can be scheduled.

In practice, most Senate vacancies are filled by such appointments in the interim, while all House vacancies are filled by special elections. If, however, a House vacancy occurs late in the life of a Congress, many states will leave the seat empty until general election day, when a special election for the balance of the term and a regular election for the forthcoming Congress are held simultaneously.

Nominations for Senate special elections are usually by primary, while those for House special elections can be by primary, nominating petition, or party action, as specified by state law.

A plurality is necessary to win in most special elections, although there are significant variations in certain states.

Procedures Governing Vacancies

Vacancies in Congress occur when a Senator or Representative dies, resigns, declines to serve, or is expelled or excluded from either house.

Senate

Procedures governing vacancies in the Senate were initially established by Article I, Section 3 of the Constitution, as later amended by paragraph 2 of the 17th Amendment. The latter states:

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided* that the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

Appointment of Interim Senators. Prevailing practice is for state governors to fill Senate vacancies by appointment, with the appointee serving until a special election has been held, at which time the appointment expires immediately. In the event a seat becomes vacant between the time of a general election and the expiration of the term, however, the appointee usually serves the balance of the term, until the next regularly scheduled general election. This practice originated with the constitutional provision that applied prior to the popular election of senators, under which governors were directed to make temporary appointments when state legislatures were in recess. It was intended to ensure continuity in a state's Senate representation during the lengthy intervals between state legislative sessions.

The governor's direct authority to make interim appointments is specified in the various state laws. Oregon¹ and Wisconsin² do not allow the governor to make interim appointments, requiring, instead, a special election to fill any Senate vacancy. The State of Oklahoma also requires that Senate vacancies be filled by special elections, with an exception. If the vacancy occurs after March 1 of any even-numbered year and the term expires the following year, no special election is held; rather, the governor is required to appoint the candidate elected in the regular general election to fill the unexpired term.³ At least five states restrict the governor's power to appoint interim Senators. Alaska, Arizona, and Hawaii require the governor to fill Senate vacancies with a person affiliated with the same political party as the previous incumbent.⁴ Utah and Wyoming require the governor to select an interim senator from a list of three candidates proposed by the state central committee of the political party with which the previous incumbent was affiliated.⁵

Many states limit the term of office for interim senators to the date set for the special election. In these cases, the term of the interim senator expires immediately upon the election of the popularly chosen successor, who serves the balance of the Senate term, whether it is a few weeks or several years. Moreover, when an interim appointment is made late in the term, it is often customary for the interim senator to resign his or her seat immediately after the election, and for the governor to appoint the special election winner to serve the balance of the term. It is also customary, for the purposes of determining seniority, for the newly elected replacement senator to be sworn in as soon as possible.

Nominations. Nomination procedures for Senate special elections vary widely among the states. The majority require a special primary election to determine the major

¹ Or. Rev. Stat. §188.120 (2001).

² Wis. Stat. § 17.18 (1999-2000).

³ Okla. Stat. tit. 26, §12-101.

⁴ Alaska Stat. §15.40.010 (2001); Ariz. Rev. Stat. §16.222 (2001); and Haw. Rev. Stat. § 17-1 (2001).

⁵ Utah Code Ann. § 20A-1-502(2) (2001) and Wyo. Stat. § 22-18-111 (i) (2002).

party nominees, while minor party and independent candidates generally qualify by filing a requisite number of petitions for general election ballot placement. Finally, some states provide for nomination by party-determined procedures, such as by the party's state committee, or at a state party convention. Louisiana and Texas, which provide the major exceptions to these rules, are treated in the next section of this report.

General Elections. Generally, the governor has the authority to set the dates for both primary and general special elections within either a window of time or a specific number of days after the vacancy occurs, according to state requirements. In the interests of convenience, enhanced voter interest and participation, and economy, special elections are often scheduled to coincide with regular elections. A plurality of votes in the primary and general elections is sufficient to nominate or elect in most cases, although a number of southern states require a majority to nominate, providing for a runoff election if no candidate attains a majority.

Special election procedures in Georgia, Louisiana, and Texas constitute significant variations from the norm. Georgia requires a majority to elect in all congressional and statewide special elections. Louisiana and Texas provide for an all-parties special primary election. All candidates qualifying for placement on the ballot participate in the election, in which a majority is necessary to elect. Any candidate receiving more than 50% of the vote is declared elected. If no candidate receives a majority, the two receiving the most votes, regardless of party affiliation, compete in a second election, termed a general election in Louisiana and a runoff in Texas. Louisiana mandates the all-parties primary for regular as well as special elections, while the Texas practice is unique to that state's special elections.

One of the more interesting developments in Senate special elections in recent years was Oregon's 1996 decision to conduct both the primary and general elections to fill a Senate vacancy by mail-in ballot only, with no in-person voting at polling places.⁶

Staff Disposition. In the event of a Senator's death, his or her staff continue to be compensated for a period not exceeding 60 days (unless the Senate Committee on Rules and Administration determines that more time is needed to complete the closing of the office), performing duties under the direction of the Secretary of the Senate.⁷

House of Representatives

The Constitution provides for cases in which House seats become vacant in Article I, Section 2, clause 4:

⁶ In 1998, voters in Oregon passed a ballot initiative that requires Oregon's biennial primary and general elections to be conducted by mail. This "vote-by-mail" system replaces traditional polling place elections, but voters can still hand-deliver their ballots to designated drop sites.

⁷ S. Res. 458, 98th Cong., 2nd Sess., Oct. 4, 1984; as amended by S. Res. 173, 100th Cong., 1st Sess., Mar. 4, 1987, "Closing The Office of a Senator or Senate Leader Who Dies or Resigns," in U.S. Congress, Senate Committee on Rules and Administration, *Senate Manual, 106th Congress*, "Standing Orders of the Senate," Sec. 72, p. 108 (Washington: GPO, 2000).