

ATLANTA, GEORGIA, JULY 20-27, 1907

11651 THE STAIRS

The question this amendment addresses is the demonstration of a "reasonable modicum of support." Under case law from the U.S. Supreme Court, it is unconstitutional for a state to deny ballot access to a political organization, which has demonstrated more than a "reasonable modicum of support" among the voters of the state.

The current law requires a political group to either receive at least 3% of the votes cast in a single statewide race (in 2004 it was the U.S. Senate race) or to have registered members equal in number to 3% of the voters who voted for Governor in the last general election. No other state has a registration requirement as difficult to meet. States that have requirements for both a ballot test and a registration test all require a tiny fraction of registrations compared to receipt of votes cast.

States with ballot test AND registration test requirements:

State	Vote Req	Registration Req.	% of Registration to vote test.
AK	3%	3%	100.00
AZ	5%	2/3 of 1%	13.33
CO	1%	1000 reg. Voters	Approx. 1/10 of 1%
MA	3%	1%	33.33
NM	5%	plus 0.3% regis.	6.00

In "Vogler I" the Alaska Supreme Court acknowledged that the State has a legitimate interest in eliminating confusion among voters resulting from large numbers of candidates on ballots, the Court also ruled in Vogler I, that the restrictions must be

"...the least restrictive alternative possible consistent with the achievement of these goals."

The Court further observed:

"...that application of this standard in ballot access cases requires an inquiry into whether less restrictive alternatives will adequately protect any asserted governmental interest"

In Vogler I, the court also said:

"...only a regulation which impinges on the right to speak and associate to the least degree possible consistent with the states legitimate goals will pass constitutional muster."

The Supreme Court of Alaska has ruled that Alaska's voters are entitled to the least restrictive mechanisms possible consistent with the State's need to achieve its legitimate goals. The Supreme Court of Alaska has also ruled that the difficulty of qualifying through one route cannot be justified by the openness of the other. In effect, at a minimum, Alaska's parties and voters are entitled to the least

restrictive of all the most common mechanisms of qualifying for full ballot access in both the primary and in the general election.

When addressing the issue of multiple parties in *Vogler I*, the Court said:

"Competition in ideas and government policies is at the core of our electoral process and of the First Amendment freedoms. New parties struggling for their place must have the time and opportunity to organize in order to meet reasonable requirements for ballot position, just as the old parties had in the past... The right to form a party for the advancement of political goals means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes. So also, the right to vote is also heavily burdened if that vote can be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot."

In granting an order for preliminary injunction to keep the Green Party recognized for the 2004 ballot Superior Court Judge Reese plainly stated twice that the Green Party had demonstrated a modicum of support even though it had not met the 3% ballot test in the Governor's race:

**"The Green Party did have a modicum of support during the 2002 election. Although the candidate for governor did not receive the requisite 3% vote, two other statewide candidates did receive over 6% of the votes."
[Order, October 30, 2003, p.7, Case No. 3AN 03-9936C]**

The impetus for the proposed amendment is to have a fair and clear public policy for all political parties in Alaska. For example, one of Alaska's smallest political parties has clearly demonstrated activity and "modicum of support" since it became a political party in 1990 whether acquiring the 3% in the designated race, another statewide race, or both.

Green Party of Alaska Statewide Races 2002-1990

Seat	Vote %
2004 US Senate	0.99
2004 US House	3.82
2002 US Senate	7.24
2002 US House	6.34
2002 Gov/Lt Gov	1.26
2000 US House	8.18
1998 US Senate	3.21
1998 US House	2.65
1998 Gov/Lt Gov	3.01
1996 US Senate	12.5
1996 US House	1.9
1994 US House	10.2
1994 Gov/Lt Gov	4.1
1992 US Senate	8.3
1992 US House	3.9
1990 Gov/Lt Gov	3.3

The proposed amendment will:

- 1) Simplify the current law in line with the need for a political party to show a "modicum of support" in any statewide race that garners 3% of the vote,
- 2) Recognize the extremely higher degree of difficulty in registering voters to a particular political party over the much easier task of receiving votes during an election or the still easier requirement of gathering petition signatures,
- 3) Set a reasonable and legally defensible requirement for political party recognition, while retaining the ability of Alaskans to have a variety of choices they have demanded—especially among the 51% not registered to any political party.

If there are any questions or suggestions, please contact me at 745-6962 or send an email to jsvkes@ak.net. Thank you for working to make our election laws more clear and fair for all.

Jim Sykes

From: David Koester <swarming@mosquitonet.com>
To: Fairbanks_LIO@legis.state.ak.us
Date: Tue, March 15, 2005 10:47 am
Subject: Public Testimony on HB94 - State Affairs Committee

Dear Committee Members,

You are now considering a bill that would raise the cost of voter-initiated statewide recounts to \$50,000. In essence, you are now considering a bill that would eliminate voter-initiated statewide recounts. In the electronic age, a vote recount is one of the means by which vote-tally security can be maintained. Regular audits of the system need to be conducted to prevent or catch, fraud, hacking or systematic machine error. Alaska has an excellent system to check the functioning of user-initiated voting machine programming and insure that the optical scanning machines are set the way that they should be.

Alaska does not and cannot, however, control the hard programming of the machines including the programming by which the machines receive instructions. It is important to understand that, in theory, any card that enters an optical scanning machine can reprogram the machine. Any electronic hookup of the machine via modem also presents a security risk. These risks are an unavoidable downside of electronic technology. The upside is that using optical scanning of physical ballots means that it is always possible to recount those paper ballots and that this can be done efficiently and securely by a combination of machine and hand recounting.

There are two good security options.

One that is recommended by voting experts is random hand recounts of every election. Depending on the distribution of machines, recounting of something less than ten percent of precincts or machines could provide very secure results.

Alternatively, allowing for occasional recounts that check the integrity of the whole system can catch errors when there is reason to think it might have occurred. This is possible with voter-initiated recounts, the system we currently have. The potential for a recount not only checks the count done by the machines but offers a significant disincentive for anyone who would seek to tamper with elections.

This past fall Alaskans for Fair Elections were barely able to raise the necessary funds in time for a statewide recount with the limit at \$10,000. Raising the limit to \$50,000 would open the system to considerable security risk because it would essentially remove the audit possibility. Lowering the fee to, say, \$5000 would provide the proper balance of preventing overuse of the recount yet sufficient access to maintain security.

It is important to note as well that most of the recount done in 2004 was done by machines, checked by random hand counts. This very secure procedure is much cheaper than that which could have been anticipated by the original legislation that called for a \$10,000 deposit.

Voting and the will of the voters is the heart of democracy. In the electronic age we need proper safeguards to protect the sanctity of this institution. Voter-initiated audits of the system is a critical safeguard that should not be put out of reach.

David Koester, Ph.D.
Fairbanks

Christine Marasigan

From: Mendez, Paul, Mr., OSD P&R/FVAP [mendszp@fvap.ncr.gov]
Sent: Wednesday, February 16, 2005 6:53 AM
To: Christine Marasigan
Cc: vote
Subject: RE: absentee ballot witness question
Importance: High

Christine R. Marasigan, Legislative Aide
Representative Gabriel e LeDoux
District 36
State Capitol
Juneau, Alaska 99801

Dear Ms. Marasigan:

It is up to the State to decide who can witness or notarize and there is no requirement that witnesses be US citizen. However, the witness requirement creates problems for individuals living overseas where this may be difficult, if not impossible, to obtain. For example those U.S. citizens of Alaska that do not live near an American Embassy. Also, some small military installations may have no commissioned officer assigned. We recommend Alaska remove all witness requirement for all absentee balloting materials. **Thirty-six** states and territories have eliminated the notary and witness requirement on all election materials.

Sample Language

If a voter is residing outside the United States or is a member of the United States Uniformed Services, merchant marine, or a family member, and he or she is a qualified elector and is required to execute an affidavit or form for voter registration or an absentee ballot, he or she may subscribe to a self-administered oath, under penalty of perjury.

For information on other state election laws, please see the State-By-State Instructions in Chapter 3 of the 2004-05 Voting Assistance Guide available on the FVAP website at www.fvap.gov.

Fell free to contact me if you need further assistance.

Sincerely,

Paul Mendez
Program Analyst
Federal Voting Assistance Program
703-588-1584

Rep. Paul Seaton

From: Elizabeth Villarreal [no-reply@democracyinaction.org]
Sent: Monday, March 07, 2005 5:16 PM
To: Rep. Paul Seaton
Subject: Please Ensure Alaska's Elections Are Verifiable

Congressman

As you consider Election Reform Bill HB 94, please do not include any amendment seeking to increase the cost or fee for recounts above \$10,000. A proposed increase to \$50,000 would severely impede the public's ability to obtain a recount when needed, and would have a very negative impact on the verifiability of our elections in this state.

Please support an amendment calling for automatic recounts of a percentage of randomly selected precincts. Such a measure will increase rather than decrease the transparency and public verifiability of our voting system.

To recap, please ensure that the language in HB94 is not modified to increase recount fees, and that it will allow randomized recounts of a percentage of precincts if such an amendment is offered. This will ensure reliable and publicly verifiable elections in Alaska.

Elizabeth Villarreal
POB 1453

Homer, AK 99603

FAX CONTAINS 3 pages including this page. Please phone 745-8962 if there are any difficulties receiving this transmission. Thank you.

DT: Feb 21, 2005

FAX TO: Representative Paul Seaton, Chairman, House State Affairs Committee

FR: Jim Sykes, 745-8962

RE: HB94 Amendment

Hello Representative Seaton—

It was good to talk with you earlier this afternoon on a proposed HB94 amendment. I marked up a draft of a proposed amendment in two different ways.

Idea "A" eliminates the Presidential race and stays with the registration requirement of 3% in the preceding Governor's race (which was the law for a long time).

Idea "B" also eliminates the Presidential race and changes the registration requirement to 1% of ALL registered voters, not just those who show up to vote. I've summarized the more precise numbers below that we discussed over the phone. I think that Idea "B" is more defensible as public policy and more legally defensible. If the current legislature cannot support it at this time then it may be premature to try. Then "A" is OK.

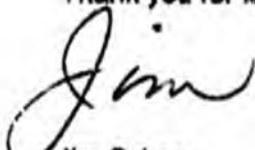
The current law pegs 3% of the US Senate race (for 2004) which makes the registration requirement 9,249 registered voters—a figure that can change drastically depending on how many people vote from election to election.

The previous law required 3% of the Governor's race, which would be 6,988 based on the 2002 race.

The proposal in Idea "B" would require 1% of ALL registered voters (476,646) which would be 4,766. It would more fairly recognize the degree of difficulty in registering voters to a particular party, it would be easier for the Division of Elections to monitor and it would eliminate the wild fluctuations that are inherent in establishing a percentage attached to a statewide race.

Hopefully Idea "B" is seen as a good idea by all sides. If not, Idea "A" will be a partial solution.

Thank you for looking into this.



Jim Sykes

DT: February 9, 2005
 TO: Representative Max Gruenberg
 FR: Jim Sykes
 RE: HB94 Amendment

FAX IS
 2 pages
 Please call
 907-45-6962
 if there are
 difficulties.
 Thanks

Hello Representative Gruenberg—

The attached sheet contains a proposed amendment that will accomplish important public policy goals.

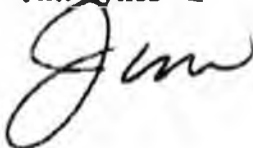
- 1) It will simplify the current law in line with the need for a political party to show a "modicum of support" in any statewide race that garners 3% of the vote,
- 2) It will recognize the extremely higher degree of difficulty in registering voters to a particular political party over the much easier task of receiving votes during an election or the still easier requirement of gathering petition signatures,
- 3) It will set a reasonable requirement for political party recognition, while retaining the ability of Alaskans to have a variety of choices they have demanded—especially among the 51% not registered to any political party.

One of the questions when this issue was raised last year was the "modicum of support." In granting an order for preliminary injunction to keep the Green Party recognized for the 2004 ballot Superior Court Judge Reese plainly stated twice that the Green Party had demonstrated a modicum of support even though it had not met the 3% ballot test in the Governor's race:

*"The Green Party did have a modicum of support during the 2002 election. Although the candidate for governor did not receive the requisite 3% vote, two other statewide candidates did receive over 6% of the votes."
 [p. 7 Order, October 30, 2003, Case No. 3AN 03-9936C]*

I do not have to report to my jury pool tomorrow and I will try to be online to make a brief presentation on behalf of the proposed amendment. Please call me at 745-6962 if there are any problems, questions or suggestions. Thanks for your work on this important matter!

Jim Sykes



March 8, 2005

I urge you to **reject** a provision that raises the fee for requesting a ~~hand~~ recount. It was extremely hard to raise the \$10,000 fee currently in Alaska law. Provisions that would tie recount fees to a margin of difference between candidates wouldn't make much sense, since anyone bent on fraud involving programming could get whatever margin they wanted. And an increase in the price of statewide recounts from \$10,000 to \$50,000 to start and responsibility for anything the Division of Elections spends OVER that amount would be a serious setback for democratic processes for the citizens of Alaska and should be removed. Alaska is a MODEL state in terms of elections, and we should not degrade it by raising the fee for a citizen recount to a prohibitive \$50,000.

I encourage you to consider an amendment that would require automatic **manual** counts of election results of at least 1 precinct per District, said precinct to have at least 5% of the district's voters in it. I believe it is an important element in improving Alaska elections that would give citizens greater confidence in the democratic process. Some may say we do not have a problem of computer hacking in Alaska that would indicate a need for such measures. It would be wise to be proactive in setting procedures in place that would uncover any such tampering should there be a reason to suspect it some time in the future. This is not a wild speculation. There are well-founded suspicions that this may have occurred elsewhere already.

Another important electoral reform which should be adopted would let felons vote again once released from prison automatically (even if on probation or parole), rather than having to make special application for that right to be re-instated. People who have paid for their crimes by serving time in prison need to feel they can recover their rights of citizenship. To deny them this implies that we do not believe people can be rehabilitated.

Amy Paige
Volunteer recount observer for Alaskans for Fair Elections
592 Seatter Street
Juneau, Alaska 99801
586-4409

Louie Flora

From: Lesley M. Lyman [lesleymlyman@hotmail.com]
Sent: Monday, March 14, 2005 9:24 PM
To: Louie Flora; Peter Naoroz
Subject: HB94- oppose fee hikes!

Please honor our democratic system and do not allow fee hikes for recounts.
Recounts protect everyone from election tampering and show that that our system works!
Recounts may seem like a frivolous expenditure, but they keep our system honest and
reaffirm the voters' faith in it. No faith = decrease in voters= death of democracy in
the long run. Thank you for your attention!

Rep. Paul Seaton

From: Nina Faust [no-reply@democracyinaction.org]
Sent: Monday, March 07, 2005 6:12 PM
To: Rep. Paul Seaton
Subject: Please Ensure Alaska's Elections Are Verifiable

Congressman

As you consider Election Reform bill HB 94, please do not include any amendment seeking to increase the cost or fee for recounts above \$10,000. A proposed increase to \$50,000 would severely impede the public's ability to obtain a recount when needed, and would have a very negative impact on the verifiability of our elections in this state.

Please support an amendment calling for automatic recounts of a percentage of randomly selected precincts. Such a measure will increase rather than decrease the transparency and public verifiability of our voting system.

To recap, please ensure that the language in HB94 is not modified to increase recount fees, and that it will allow randomized recounts of a percentage of precincts if such an amendment is offered. This will ensure reliable and publicly verifiable elections in Alaska.

Nina Faust
P.O. Box 2994

Homer, AK 99603



Alaska State Legislature

Please enter into the record my testimony to the HOUSE STATE AFFAIRS
 committee name
 committee on HB 94, dated Mar 8 2005
 bill/subject

I would like to encourage this House Committee to accept and endorse the amendment to this bill that would grant state ballot recognition to any political party that obtains three percent (3%) of the vote in a statewide election, or can register to that party 3% of registered voters.

If the state of Alaska wishes to affirm that it is a genuine democracy, it must allow, for inclusion, into the political process smaller independent parties. The amendment to HB 94 is a very, very small but essential step in that direction.

Signed: Timothy Feller *Timothy Feller*
 Testifier
Himself and Green Party of Alaska
 Representing (Optional)
536 W. 13th Avenue Anchorage Ak 99501
 Address
278-7637
 Phone No.

Louie Flora

From: Michael J Murray III [mjm3iii@netscape.net]
Sent: Friday, March 11, 2005 9:31 PM
To: Louie Flora
Subject: Oppose ridiculous fee hikes!

Raising the recount fee to such a astronomical amount is the same as eliminating the problem. Takes democracy out of the equation and a neat trick!

I am opposed to this maneuver to subdue the democratic process!

--
mjm3iii

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Louie Flora

From: lookitover99821 [lookitover@worldnet.att.net]
Sent: Wednesday, March 09, 2005 1:04 PM
To: Louie Flora
Subject: Testimony on Increasing fee for vote recount

I would recommend only a reasonable adjustment for inflation over the period since this \$10,000 figure was calculated.

More important than that, however, is this:

Because of recent supreme court judgements, state funded political primaries now are actually heavily subsidized forums for PRIVATE CLUBS - called registered political parties - candidate elections.

By documented demographics, the majority of Alaskans are now subsidizing the private elections of political parties they do not belong to. This subsidy is justified as a public expenditure, despite this fact.

Thus, while we need a fee to curb frivolous recounts, it is black hypocrisy to make petitioners for recounts pay for the whole thing. Paying for vote recounts are MORE of a public expenditure than subsidizing candidate elections of private political clubs. This is obvious through the use of grade school arithmetic.

The potential legal fallout from practising legislative hypocrisy constitutes waste of public funds -- potentially more costly than the cost overruns from doing vote recounts. So I caution the Legislature to exercise care with this issue.

CONCLUSION: Subsidizing vote recounts in this state has the same logical and political justification as subsidizing state election primaries. So you cannot invalidate public subsidy of vote recounts without also invalidating the legitimacy of public subsidy of primary elections.

Stuart Thompson
PO Box 211228
Auke Bay, AK 99821
1-877-950-7980

Rep. Paul Seaton

From: Randy Ruedrich [raraep@gci.net]
Sent: Sunday, January 30, 2005 9:22 PM
To: Kevin Jardell; Rep. Mark Nauman; Rep. Bill Stoltze; Rep. Bill Williams; Rep. Bob Lynn; Rep. Bruce Weyhrauch; Rep. Carl Gatto; Rep. Bill Thomas; Rep. Gabrielle LeDoux; Rep. Mike Kelly; Rep. Jim Holm; Rep. John Coghill; Rep. John Harris; Rep. Kurt Olson; Rep. Kevin Meyer; Rep. Lesil McGuire; Rep. Mike Chenault; Rep. Mike Hawker; Rep. Nancy Dahlstrom; Rep. Jay Ramras; Rep. Norman Rokeberg; Rep. Paul Seaton; Representative Peggy Wilson; Rep. Ralph Samuels; Rep. Richard Foster; Rep. Tom Anderson; Rep. Vic Kohring; Rep. Pete Kott; Sen. Tom Wagoner; Sen. Charlie Huggins; Sen. Ralph Seekins; Sen. Lyda Green; Sen. John Cowdery; Sen. Gene Therriault; Sen. Gary Wilken; Sen. Gary Stevens; Sen. Fred Dyson; Sen. Bert Stedman; Senator Con Bunde; Sen. Ben Stevens
Cc: Joseph Balash; Whitney Brewster; Laura Glaiser
Subject: AFP Resolution to Relocate Absentee Ballot Processing
Attachments: 041204 Resolution - DOE.doc



The Alaska Republican Party on December 4 adopted the attached Resolution to relocate the Division of Election Absentee Ballot Section to Anchorage.

The resolution recognizes the need to expedite the entire absentee ballot handling process. Too much time is lost sending applications to Juneau and get them back to Alaskan Voters.

Lets improve the DOE process and relocate the absentee ballot process to Anchorage to benefit from direct access to the Anchorage US Post Office. More Alaskans will have the chance to vote.

The Alaska Republican Party provided this Resolution to Lt. Governor Leman who was in attendance at the State Central Committee on December 4.

Please call me at 907 227-3031 if you have any questions.

Randy Ruedrich
Chair - Alaska Republican Party

**Alaska Republican Party
Resolution #4 -1**

Changes for Alaska Division of Elections

Whereas, assuring all citizens the opportunity to vote is a paramount responsibility of the Division of Elections in the office of the Lt. Governor and;

Whereas, Juneau is not the primary distribution post office for Alaska which increases two-way mail times by at least two days for most voters and,

Whereas, Juneau is subject to airport service disruptions that negatively impact the orderly flow of mail and;

Whereas, legal interventions in the election process and the related delays are becoming more common and;

Whereas, more voters in our mobile culture are applying for absentee ballots and;

Whereas, the failure of timely absentee ballot distributions disenfranchises many Alaskan voters;

Therefore, be it resolved that the Republican Party of Alaska request the Alaska Legislature to relocate the absentee ballot application processing function to Anchorage to improve the distribution process and its timeliness.

Adopted by the Alaska Republican Party on December 4, 2004.

to:
the Alaska State House Affairs Committee
Alaska Legislature

from:
Nina Mollett
PO Box 22590
Juneau, Alaska 99802

Regarding HB94 and related election reform legislation

March 8, 2005

To Representatives Seaton, Gatto, Elins, Gardner, Gruenberg, Lynn, and Ramras,

I am one of those who requested the recount of our Senate race. I am currently in Tucson, Arizona, receiving medical treatment for a serious illness. I've had to cut my activities down to a few I really care about. One of the things I care about the most is what is happening to democracy in America.

Alaska has so far been a model state when it comes to elections. Alaska is one of only two states which received an A+ in 2000 from Common Cause for the integrity of its elections. In no small part this is because of the overhaul of Alaska's election system under our last lieutenant governor, Fran Ulmer, who bent over backwards to be fair to all sides and instituted both a careful system of checks and safeguards, and rules forbidding conflicts of interest among elections officers. In Alaska, unlike some states, you won't find yourself with the same person trying to run an impartial election while chairing one candidate's election effort.

Alaska's recount system is also better than most states. We chose to install opti-scan machines which use paper ballots. The paper trail is one of the most important aspects of election reform nationwide, but it does no good to have it if you don't use it. We were able to recount our ballots in the recent Senate race recount, using different machines, newly programmed. The elections division agreed to our request to recount one tenth of the precincts by hand. Those precincts were picked from a hat. In Ohio, by contrast, whose recount reassured nobody, people complained that precincts to be recounted were preselected, and not chosen randomly.

Most all the citizens who asked for the recount were satisfied that it was fair, and that the winner of the Senate race was the real winner. This enhanced Alaska's image nationwide, as we got the word out that Alaska's elections officials seem to have real integrity, and that Alaska has a better system than most. Indeed, one of the things that most worried us beforehand is the partnership with Diebold, a company much in the news for its questionable ethics. It appears that although Diebold makes and repairs our machines, Alaska does its own independent election programming and counting, which is not the

case in many states. This was quite reassuring, and we hope it stays that way.

What is not so reassuring is that our recount is being used as an excuse by the governor to push for raising the amount citizens must raise for a recount to \$50,000. It was exceedingly hard to raise \$10,000 in five days, and \$50,000 would not be doable by ordinary citizens.

It's not as if a citizen recount were a common occurrence. The last statewide recount was ten years ago, and was triggered automatically by the close margin between the candidates. Indeed, it was hard enough to raise the money that the likelihood of this occurring again any time soon is very small.

It is indeed rather unseemly for Gov. Murkowski to be injecting himself in this issue, since his daughter was involved, but I will say that nobody I know suspected Lisa herself of being involved in rigging the election, nor of being the type of person who would have agreed to any such thing. It would have had to occur behind her back. What was of concern was the intense national interest in Alaska's Senate race. With power in the Senate in the balance, if Alaska's system were easy to game, this would have been a likely year for someone to try to game it.

A recount amounts to an audit, and as such should be part of the cost of doing business. Computer experts in all government agencies and at major corporations are constantly on the alert for hackers. The same should be true of all election offices. You assume that someone is trying to tamper with your system, and you do everything you can to prevent or detect such activity. The prospect of a possible recount is a deterrent to hackers. The cost to the state of this recount, about \$40,000, was minor in comparison to other avoidable costs this year, particularly \$238,000 to reprint a poorly worded ballot, which could have been easily avoided, and would have paid for six recounts at \$40,000 each. If the governor really wishes to lower frivolous elections costs, he might introduce legislation to create a nonpartisan committee to ensure that ballots are worded correctly and in a non-biased way.

In this day and age when about 100,000 voters registered complaints after the last election that reached the U.S. House Judiciary Committee, and many people in other states no longer believe that their votes are being counted fairly, Alaska should be strengthening its voting system, not weakening it. We should be lowering the cost to citizens of requesting a recount, not raising it. And we should be taking other measures. Experts in voting technology at Stanford, Harvard, the University of Iowa and elsewhere have been publicly recommending that a statistically valid number of random hand recounts be done routinely after every election.

Another idea would be to conduct a complete hand recount every election. That would amount to duplicate data entry, which is often used in social science research to ensure accuracy. It would ensure fair elections, but the cost is higher than we are likely to want to pay. If you put the occasional citizen-requested recount, mostly conducted by machine, against a more rigorous audit system, what we do doesn't seem so expensive.

The audit method we use is cheaper because it only occurs occasionally, but it does act as a deterrent to fraud because it is always a possibility. If the cost to citizens of requesting a recount is raised further, we lose the deterrent effect of our law. We also use the point of having paper ballots if we never actually recount them.

This issue may appear partisan to some. Democrats and independents have been feeling most threatened lately, nationwide. But of course, vote tampering is as old as elections themselves and the chips can fall either way. In Washington State right now it is Republicans who are arguing that the State and its taxpayers should pay not thousands but millions, not for a recount but a revote.

Republicans could bully through this idea to raise the amount citizens must raise to a prohibitive \$50,000. But please reconsider. Last year a bill passed with bipartisan support requiring a paper trail by 2006 in any voting machine used in Alaska. In the current atmosphere of nationwide concern, it makes no sense to weaken our safeguards. Voting is our most basic right.

Here in Alaska we can still pride ourselves on a system that is not corrupt. But we must not allow it to erode, and that could happen easily. Governor Murkowski and Loren Leman inherited a system that was well-designed and fair to everyone. All they, and you, have to do, in order to live up to Alaska's history, is to be fair, too.

Sincerely yours,

Nina Mollett

Nina Mollett

Written Testimony of Dr. Joe Sonneman on HB 94 Amendments

[Joe Sonneman, an Alaskan for 33+ years, earned a Ph.D. in Government (Public Finance) from Claremont and a J.D. (cum laude) from Georgetown. He's also worked many Alaskan jobs, from fighting forest fires, to building mountain hiking trails, commercial fishing, delivering the mail, driving tour bus and taxi cab, reporting on the Legislature for the All-Alaska Weekly and other newspapers and television, teaching at the University of Alaska, and working as a State employee (budget analyst and internal auditor. In Fall 2004, he chaired "Alaskans for Fair Elections," the group that raised \$10,000 in five days to start the Recount of the U.S. Senate race. Sonneman lives at 324 Willoughby, Juneau AK 99801, phone is 463-2624. He writes independently, not representing here any group he may be a member of.]

G.1, New Section 8, rotating candidate names, and related G.2

For about 70 years Alaska rotated candidate names on ballots, to assure fair elections.

With the discovery of statistics, people realized that voters often voted more often for the top name on a candidate list. Back then, government listed candidates in alphabetic order, so when the word got out about a top-of-list advantage, some candidates changed their names to be first. To prevent such 'strategic' name changes, many States and also the then-Territory of Alaska, went to ballot rotation.

With paper ballots, ballot rotation was easy.

Ballot rotation of candidate names was fair and seen to be fair. But under Lt. Gov. Fran Ulmer, the Division of Elections changed the system, allegedly for cost savings. Now Elections has a drawing to order names. Whoever wins the drawing in that district gets ALL of whatever advantage there may be to a top position.

Although a drawing may be fair, yet also a drawing is not an ELECTION. When the top position may give that candidate an extra 5% of votes, ballot rotation of names fairly distributes that extra percentage among all candidates. The new method gives all that benefit to ONE candidate.

So please return to the method that worked so well for Alaska for so long: ballot rotation.

Some concerns arise about ballot rotation and here's how to handle those concerns.

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There is new language in Draft F which allows the director of Elections to approve a voting machine or tally system. The new language does not specifically refer to the requirement created last year for creation of a paper receipt or ballot. Amendment F.7 just makes that requirement explicit.

[Comment on Style: I dislike cross-references, but understand that is the present style the Legislature uses. I think it would be better to state what the requirements are, than to use a number as shorthand. I think the 'cleaner' law, more understandable to the general public, would be:

The director may approve a voting machine or vote tally system only if that machine or system produces a paper receipt or ballot which the voter can see accurately reflects the voter's choices and which can be used in recounts or election contests.

G.12 This section would increase greatly (5-12 times) the Deposit which candidates or citizens have to deposit to initiate a Recount and would make their liability for Elections Division costs unlimited.

Recounts perform a Needed Audit Function I chaired Alaskans for Fair Elections during the 2004 Recount. Prof. David Koester, who teaches at UAF, wrote a paper in our draft White Paper which says essentially that Recounts have a audit function in elections, much as audits of money have for a bank.

The threat of Recounts helps to prevent vote fraud and actual Recounts helps to find out intentional fraud or error in elections, just as the threat of audits helps to prevent embezzlement at a bank and actual audits help catch fraud or error in accounting.

Raising the Deposit is like Telling Everyone Alaska Rarely Audits Elections So if Alaska announces a huge and unlimited increase in liability for Recounts, that's equivalent to Alaska announcing that it's not going to audit elections very often. And telling the world that election audits will be rare, is just like issuing an invitation to vote fraud specialists.

The Deposit is Already Too High At \$10,000, the Deposit requirement for recounts is already too high, because the time period is just five (5) days. Members of Alaskans for Fair Elections are not, so far as is known, personally wealthy. Most of the money was raised through contributions. Alaskans for Fair Elections raised only \$9,600 through contributions in the five days allowed, the \$400 balance being contributed by a member of Alaskans for Fair Elections.

Recount Deposits are Not "User Fees" The proposed Amendment treats those who request Recounts as if they (alone) were the users and beneficiaries of the Recount. That's just not true. A Recount establishes that the election count was accurate. All Alaskans, all candidates, and Alaska's government itself all benefit by knowing the election count was accurate. So since everyone benefits, Government (everyone) ought to pay—not just the people who request a Recount. The "user fee" approach is wrong.

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services
Department of Education & Early Development
State of Alaska

Written Testimony of Dr. Joe Sonneman on HB 94 Amendments

[Joe Sonneman, an Alaskan for 33+ years, earned a Ph.D. in Government (Public Finance) from Claremont and a J.D. (cum laude) from Georgetown. He's also worked many Alaskan jobs, from fighting forest fires, to building mountain hiking trails, commercial fishing, delivering the mail, driving tour bus and taxi cab, reporting on the Legislature for the All-Alaska Weekly and other newspapers and television, teaching at the University of Alaska, and working as a State employee (budget analyst and internal auditor. In Fall 2004, he chaired "Alaskans for Fair Elections," the group that raised \$10,000 in five days to start the Recount of the U.S. Senate race. Sonneman lives at 324 Willoughby, Juneau AK 99801, phone is 463-2624. He writes independently, not representing here any group he may be a member of.]

G.1, New Section 8, rotating candidate names, and related G.2

For about 70 years Alaska rotated candidate names on ballots, to assure fair elections.

With the discovery of statistics, people realized that voters often voted more often for the top name on a candidate list. Back then, government listed candidates in alphabetic order, so when the word got out about a top-of-list advantage, some candidates changed their names to be first. To prevent such 'strategic' name changes, many States and also the then-Territory of Alaska, went to ballot rotation.

With paper ballots, ballot rotation was easy.

Ballot rotation of candidate names was fair and seen to be fair. But under Lt. Gov. Fran Ulmer, the Division of Elections changed the system, allegedly for cost savings. Now Elections has a drawing to order names. Whoever wins the drawing in that district gets ALL of whatever advantage there may be to a top position.

Although a drawing may be fair, yet also a drawing is not an ELECTION. When the top position may give that candidate an extra 5% of votes ballot rotation of names fairly distributes that extra percentage among all candidates. The new method gives all that benefit to ONE candidate.

So please return to the method that worked so well for Alaska for so long: ballot rotation.

Some concerns arise about ballot rotation and here's how to handle those concerns.

First, Division of Elections routinely prints sample ballots and publicizes those sample ballots in newspapers. Voters were getting confused, because they would fill out a sample ballot at home, bring it with them to the polling place, and there get a ballot with names in different order than was printed in the newspapers.

But the problem there is with Division of Elections, not with ballot rotation. If only Elections told the public that names would rotate, the public would not be confused. Amendment G.2 goes a long way to erasing any claimed confusion. An Alaska Supreme Court decision even suggests a law change such as G.2.

Second, there is some concern that Elections might need to print too many different combinations of ballots, what with Presidential or Gubernatorial races, U.S. Senate and U.S. House races, as well as State Senate and State House races. But one way to reduce the number of different printings is to have a separate ballot for statewide races, and another ballot for State Senate and State House races. That way the combination of statewide races only ADDS to the combination of 'local' races, and does not MULTIPLY.

Third, there is some undeniable additional cost to ballot rotation. On the other hand, ballot rotation is more fair, because any top position advantage is allocated equally among all candidates. So Alaska pays more, but gets a more fair result. Considering the importance of fair elections in our form of Government, that's not unreasonable.

I brought suit against Election's new method. The Lt. Governor's Transition team had estimated the savings at about \$240,000, but the Alaska Supreme Court noted the actual savings were more on the order of \$60,000, according to Division of Election's own numbers.

So, yes, ballot rotation does cost somewhat more, but Alaska gets fairer elections as a result. For 70 years Alaska thought fair elections worth the extra cost and most of that time Alaska did not have oil billions. If Alaska could afford the extra cost then, Alaska can afford the extra cost of fair elections now.

G.3, Section 7

Public notice of voting-related precinct boundary changes seems fair and right.

Need for another public notice When I chaired Alaskans for Fair Elections during the 2004 Recount, I notified the U.S. Senate candidates and political parties of the time and location of the Recount. Some of the candidates said they had not been so notified by the Division of Elections. Some other States by law require their Elections system to notify all affected candidates of Recount details. Alaska ought to do the same, just out of fairness.

F.7

Members of Alaskans for Fair Elections are quite concerned that any voting system have an auditable paper trail. The reason for this concern is in part that technology has created DRE voting machines—direct response electronic voting machines. Alaska already requires that any voting machine create a paper receipt or ballot which the voter can check accurately records the voter's choice and which paper receipt or ballot can be used in any recount.

There is new language in Draft F which allows the director of Elections to approve a voting machine or tally system. The new language does not specifically refer to the requirement created last year for creation of a paper receipt or ballot. Amendment F.7 just makes that requirement explicit.

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(4)

Recount Deposits are Not a Penalty International environmental law uses the "polluter pays principle." But a Recount is not pollution. As noted above, everyone benefits from knowing, through a Recount, that the election count was accurate. With pollution, everyone (except maybe the polluter) loses. So it's *right* to make polluters pay. Just so. It's *wrong* to make Recount requesters pay. A Recount is NOT pollution, not like pollution.

Not All Non-Automatic Recounts are "Frivolous" Under the proposed Amendment, Deposits are not required if the percentage difference is 0.5% and Deposits are refunded if the first-declared winner is replaced with another, or if the requesting candidate gains 4+% votes. In all other cases, the requesting candidate's—or the requesting citizens' group's—Deposit is used to pay the State's recount expenses, but, if the State's expenses are more, the requesting group or candidate is liable for ANY overage.

Too Drastic This proposed rule wrongly implies that all Recounts (other than automatic Recounts) are frivolous, except where the Deposit is refunded. That's too drastic a rule.

The Maine Way The State of Maine has a better approach. As the percentage difference between the winner and a recount-requesting candidate rises, the amount of the Deposit rises also. As the percentage difference between the winner and a recount-requesting candidate drops, the Deposit amount required also drops. The Maine deposit amount reaches its maximum when the percentage difference exceeds 10%. By using a graduated, proportionate Deposit, Maine really does make more 'frivolous' Recount requests more expensive, and also makes more 'real' Recount requests less expensive.

What's Wrong with Percentage Differences But in this computerized, electronic age, any 'percentage difference' method—even Maine's—has a serious flaw. If you accept that computerized, programmable vote-counting-machines can be 'hacked' or 'mis-programmed,' then any competent programmer or hacker can make the vote-counting machine produce a result that is outside the 'free' Recount area and even outside the 'cheap' Recount area. That is, for example, in a state using the Maine system, a programmer or hacker could make the result appear to be just over 10% different.

Computers Change Everything Computers change everything. The risk of cheating is greater and the risk of detection is less ... except when there is a manual count or manual recount of all or at least a sample of all ballots. Alaska is particularly vulnerable because Alaska uses only ONE programmer for ALL of its voting machines. Alaskans for Fair Elections draft White Paper cited reasons why "end-use" programmers need supervision by centralized Information Technology departments.

Danger of One Programmer But if you think about a small bank with only one teller or one cashier, if you were the Bank President, you would be all the MORE certain to audit that teller or cashier just because there is no one else working with them who might blow the whistle on any embezzlement. When candidates spend literally millions of dollars on campaigns, how can anyone know that someone has not made "an offer you can't refuse" to the State's ONE unaudited, unchecked, civil servant programmer?

Automatic Manual Sample Count Accordingly, a number of Alaskans for Fair Elections members would favor Rep. Gardner's amendment, which called for automatic manual counting of at least one precinct per district, holding at least 5% of the district's voters, at every election. Regrettably, the Committee declined at first to accept that amendment, because that problem had not yet occurred. This is like a local assembly refusing to erect a "Stop" sign at a pedestrian crossing over a highway, just because no one had yet died there. Problem is, with computers and programmers in charge of counting votes, if vote fraud occurs and there is no manual count, no one but the miscreants will know fraud occurred!! ... except that there may be an unusually high difference between the announced results and exit polls. Some members of Alaskans for Fair Elections would like the Committee to re-consider the Gardner amendment, because computers make it so hard to find out when cheating takes place.

Four Percent Is Too High The Amendment as written allows Elections to keep the Recount Deposit even if Elections's own initial count was wrong by 3,999 votes per 100,000 votes cast. That's quite a bit of 'sloppiness', yes? If Recounts are automatic when the challenger is within 0.5% of the winner, isn't it fair for Elections to have to refund Deposits if the initial Elections count is more than 0.5% off the Recount total? That would be 500 votes off, per 100,000 votes cast, still quite a wide margin. In the 2004 Recount, the biggest precinct variation I remember was 7 votes, and there was no persistent trend. The Accu-Vote machines proved quite accurate, given no tampering or vote fraud. Elections needs to be held to a tighter standard.

No Unlimited Spending for Elections The G.12 amendment also gives Elections unlimited ability to spend, without any thought of economizing, during a Recount, because Elections may well be able to make the Recount requester pay ANY amount by which the Recount cost exceeds the Deposit. That's wrong. Elections needs to economize. Recount requesters need to know what fixed amount they must raise. Unfair to tag requesters with what could be gold-plated Recounts under the proposal.

RECOMMENDATIONS RE: AMENDMENT G.12

- a. Leave the Deposit rules as they are, or,
- b. Re-consider and pass the Gardner Amendment or something similar, or
- c. Pass a Maine-like system of graduated Deposits, and
- d. In every and any event, drop or cut or excise the last sentence of G.12, and
- e. Change the 4% rule for refunds to 0.5% (500 votes per 100,000), because the machines are pretty accurate and a 4% rule permits too much sloppiness in counting.

I do commend the Division of Elections actions in the 2004 Recount in agreeing to hand-count a random sample of 44 precincts, said sample being taken from only those precincts machine counted Election night. That was my suggestion, they did it, and I thank them for it. By doing this, they showed everyone that the machines were accurate and that, very likely, no programming or other errors had occurred. This procedure would be good for you to enact as a requirement or law of Recounts, but it was commendable that the Division did it in 2004.

DT: February 9, 2005
 TO: Representative Max Gruenberg
 FR: Jim Sykes
 RE: HB94 *A amendment*

*FAX is
 2 pages
 Please call
 907-745-6962
 if there are
 difficulties.
 Thanks*

Hello Representative Gruenberg—

The attached sheet contains a proposed amendment that will accomplish important public policy goals.

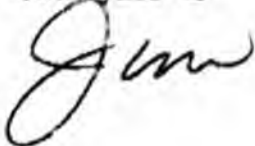
- 1) It will simplify the current law in line with the need for a political party to show a "modicum of support" in any statewide race that garners 3% of the vote,
- 2) It will recognize the extremely higher degree of difficulty in registering voters to a particular political party over the much easier task of receiving votes during an election or the still easier requirement of gathering petition signatures,
- 3) It will set a reasonable requirement for political party recognition, while retaining the ability of Alaskans to have a variety of choices they have demanded—especially among the 51% not registered to any political party.

One of the questions when this issue was raised last year was the "modicum of support." In granting an order for preliminary injunction to keep the Green Party recognized for the 2004 ballot Superior Court Judge Reese plainly stated twice that the Green Party had demonstrated a modicum of support even though it had not met the 3% ballot test in the Governor's race:

*"The Green Party did have a modicum of support during the 2002 election. Although the candidate for governor did not receive the requisite 3% vote, two other statewide candidates did receive over 6% of the votes."
 [p. 7 Order, October October 30, 2003, Case No. JAN 03-9936CI]*

I do not have to report to my jury pool tomorrow and I will try to be online to make a brief presentation on behalf of the proposed amendment. Please call me at 745-6962 if there are any problems, questions or suggestions. Thanks for your work on this important matter!

Jim Sykes



Gwenberg

PROPOSED AMENDMENT TO HOUSE BILL NO. 94.

The current AS 15.60.010 (23) is repealed and replaced by amendment to read:

(23) "political party" means an organized group of voters that represents a political program and that either nominated a candidate for Governor, or for U.S. Senator, or for U.S. Representative, or for President within the last four years who received at least three percent of the total votes cast in the general election in which that candidate ran; OR has registered voters in the state equal in number to at least one percent of the total votes cast for governor at the preceding general election.

(20)

Language that is repealed by above amendment to AS15.60.010(23):

[(23) "political party" means an organized group of voters that represents a political program and

(A) that nominated a candidate for governor who received at least three percent of the total votes cast for governor at the preceding general election or has registered voters in the state equal in number to at least three percent of the total votes cast for governor at the preceding general election;

(B) if the office of governor was not on the ballot at the preceding general election but the office of United States senator was on that ballot, that nominated a candidate for United States senator who received at least three percent of the total votes cast for United States senator at that general election or has registered voters in the state equal in number to at least three percent of the total votes cast for United States senator at that general election; or

(C) if neither the office of governor nor the office of United States senator was on the ballot at the preceding general election, that nominated a candidate for United States representative who received at least three percent of the total votes cast for United States representative at that general election or has registered voters in the state equal in number to at least three percent of the total votes cast for United States representative at that general election;]

Christine Marasigan

From: Mendez, Paul, Mr., OSD P&R/FVAP [mendezp@fvap.ncr.gov]
Sent: Wednesday, February 16, 2005 6:53 AM
To: Christine Marasigan
Cc: vote
Subject: RE: absentee ballot witness question
Importance: High

Christine R. Marasigan, Legislative Aide
Representative Gabrielle LeDoux
District 36
State Capitol
Juneau, Alaska 99801

Dear Ms. Marasigan:

It is up to the State to decide who can witness or notarize and there is no requirement that witnesses be US citizen. However, the witness requirement creates problems for individuals living overseas where this may be difficult, if not impossible, to obtain. For example those U.S. citizens of Alaska that do not live near an American Embassy. Also, some small military installations may have no commissioned officer assigned. We recommend **Alaska remove all witness requirement for all absentee balloting materials. Thirty-six states and territories have eliminated the notary and witness requirement on all election materials.**

Sample Language

If a voter is residing outside the United States or is a member of the United States Uniformed Services, merchant marine, or a family member, and he or she is a qualified elector and is required to execute an affidavit or form for voter registration or an absentee ballot, he or she may subscribe to a self-administered oath, under penalty of perjury.

For information on other state election laws, please see the State-By-State Instructions in Chapter 3 of the 2004-05 Voting Assistance Guide available on the FVAP website at www.fvap.gov.

Fell free to contact me if you need further assistance.

Sincerely,

Paul Mendez
Program Analyst
Federal Voting Assistance Program
703-588-1584

HB

97

24-GH1008\G.1
Chenoweth
2/3/05

AMENDMENT

Adopted

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 97(STA)

- 1 Page 4, line 13, following "(or County of _____)";
- 2 Insert "or Municipality of _____)"
- 3
- 4 Page 4, line 25, following "(or County of _____)";
- 5 Insert "or Municipality of _____)"
- 6
- 7 Page 5, line 8, following "(or County of _____)";
- 8 Insert "or Municipality of _____)"
- 9
- 10 Page 5, line 23, following "(or County of _____)";
- 11 Insert "or Municipality of _____)"
- 12
- 13 Page 6, line 6, following "(or County of _____)";
- 14 Insert "or Municipality of _____)"
- 15
- 16 Page 6, line 19, following "(or County of _____)";
- 17 Insert "or Municipality of _____)"

24-GH1008\G.2
Chenoweth
2/3/05

AMENDMENT #2

OFFERED IN THE HOUSE
TO: CSHB 97(STA)

BY REPRESENTATIVE GRUENBERG

1 Page 17, following line 11:

2 Insert:

3 "Sec. 44.50.073 ~~Handbook~~ ^{published manner} The lieutenant governor may ~~produce a~~ ^{publish for}
4 ~~handbook~~ ^{information} for commissioned notaries public ~~on the Internet~~ ^{by electronic means} and shall, upon request,
5 distribute ~~the handbook~~ to each person who is commissioned a notary public under
6 this chapter. ~~The handbook must contain a summary~~ ^{information containing a summary} of the provisions of this chapter
7 and the regulations adopted under this chapter."

Amended

24-GH1008\G
Bannister
1/28/05

CS FOR HOUSE BILL NO. 97(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:
Referred:

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

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the authority to take oaths, affirmations, and acknowledgments in
2 the state, to notarizations, to verifications, to acknowledgments, to fees for issuing
3 certificates with the seal of the state affixed, and to notaries public; and providing for an
4 effective date."

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

6 * Section 1. AS 09.63.010 is amended to read:

7 **Sec. 09.63.010. Oath, affirmation, and acknowledgment.** The following
8 persons may take an oath, affirmation, or acknowledgment in the state:

9 (1) a justice, judge, or magistrate of a court of the State of Alaska or of
10 the United States;

11 (2) a clerk or deputy clerk of a court of the State of Alaska or of the
12 United States;

13 (3) a notary public;

14 (4) a United States postmaster;

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(5) a commissioned officer under AS 09.63.050(4); [OR]

(6) a municipal clerk carrying out the clerk's duties under AS 29.20.380;

(7) the lieutenant governor when carrying out the lieutenant governor's duties under AS 24.05.150;

(8) the presiding officer of each legislative house when carrying out the officer's duties under AS 24.05.170.

* Sec. 2. AS 09.63.030(c) is amended to read:

(c) If the document is sworn to or affirmed before a notary public of the state, the notary public shall

(1) affix [ENDORSE AFTER THE SIGNATURE OF THE NOTARY PUBLIC THE DATE OF EXPIRATION OF THE NOTARY'S COMMISSION;

(2) PRINT OR EMBOSS THE NOTARY'S SEAL] on the document the

(A) notary public's official signature and official seal; and

(B) date of expiration of the notary public's commission;

and

(2) [; (3)] comply with AS 44.50.060 - 44.50.065 and [AS 44.50.060 - 44.50.080 OR] other applicable law.

* Sec. 3. AS 09.63.040(d) is amended to read:

(d) If the verification is sworn to or affirmed before a notary public of the state, the notary public shall

(1) affix [ENDORSE AFTER THE SIGNATURE OF THE NOTARY PUBLIC THE DATE OF EXPIRATION OF THE NOTARY'S COMMISSION;

(2) PRINT OR EMBOSS THE NOTARY'S SEAL] on the document the

(A) notary public's official signature and official seal; and

(B) date of expiration of the notary public's commission;

and

(2) [; (3)] comply with AS 44.50.060 - 44.50.065 and [AS 44.50.060 - 44.50.080 OR] other applicable law.

1 * Sec. 4. AS 09.63.090 is amended to read:

2 Sec. 09.63.090. Certificate of acknowledgment. The words "acknowledged
3 before me" mean that

4 (1) the person acknowledging

5 (A) appeared before the person taking the acknowledgment;

6 (B) acknowledged that the person executed the instrument;

7 (C) in the case of

8 (i) a natural person, acknowledged that the person
9 executed the instrument for the purposes stated in it;

10 (ii) an officer or agent of a corporation, acknowledged
11 that the person held the position or title set out in the instrument and
12 certificate, acknowledged that the person signed the instrument on
13 behalf of the corporation by proper authority, and acknowledged that
14 the instrument was the act of the corporation for the purposes stated in
15 it;

16 (iii) a member or manager of a limited liability
17 company, acknowledged that the individual signed the instrument
18 on behalf of the limited liability company by proper authority and
19 executed the instrument as the act of the limited liability company
20 for the purposes stated in it;

21 (iv) a partner or agent of a partnership, limited
22 partnership, or limited liability partnership, acknowledged that the
23 person signed the instrument on behalf of the partnership by proper
24 authority and executed the instrument as the act of the partnership for
25 the purposes stated in it;

26 (v) [(iv)] a person acknowledging as a principal by an
27 attorney in fact, acknowledged that the person executed the instrument
28 by proper authority as the act of the principal for the purposes stated in
29 it;

30 (vi) [(v)] a person acknowledging as a public officer,
31 trustee, administrator, guardian, or other representative, acknowledged

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that the person signed the instrument in the capacity and for the purposes stated in it; and

(2) the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging is the person named in the instrument or certificate.

* Sec. 5. AS 09.63.100 is amended to read:

Sec. 09.63.100. Forms of acknowledgment. (a) The forms of acknowledgment set out in this subsection may be used and are sufficient for their respective purposes under a law of the state. The authorization of the forms in this section does not preclude the use of other forms.

(1) For an individual acting in the individual's own right:

State of _____ Judicial
District (or County of _____)

The foregoing instrument was acknowledged before me this (date) by (name of person who acknowledged).

Signature of Person Taking
Acknowledgment

Title or Rank

Serial Number, if any

(2) For a corporation:

State of _____ Judicial
District (or County of _____)

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging) a (state or place of incorporation) corporation, on behalf of the corporation.

Signature of Person Taking

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Acknowledgment

Title or Rank

Serial Number, if any

(3) For a limited liability company:

State of _____ Judicial

District (or County of _____)

The foregoing instrument was acknowledged before me this (date) by (name of member or manager), member (or manager) of (name of limited liability company acknowledging) a (state or place of organization) limited liability company, on behalf of the limited liability company.

Signature of Person Taking

Acknowledgment

Member (or Manager)

Serial Number, if any

(4) For a partnership:

State of _____ Judicial

District (or County of _____)

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a (partnership, limited partnership, or limited liability partnership).

Signature of Person Taking

Acknowledgment

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Title or Rank

Serial Number, if any

(5) [(4)] For an individual acting as principal by an attorney in fact:

State of _____ Judicial

District (or County of _____)

The foregoing instrument was acknowledged before me this
(date) by (name of attorney in fact) as attorney in fact on behalf of
(name of principal).

Signature of Person Taking

Acknowledgment

Title or Rank

Serial Number, if any

(6) [(5)] By a public officer, trustee, or personal representative:

State of _____ Judicial

District (or County of _____)

The foregoing instrument was acknowledged before me this
(date) by (name and title of position).

Signature of Person Taking

Acknowledgment

Title or Rank

Serial Number, if any

(b) If a document is acknowledged before a notary public of the state, the
notary public shall

(1) affix [ENDORSE AFTER THE NOTARY'S SIGNATURE THE

1 DATE OF EXPIRATION OF THE NOTARY'S COMMISSION;

2 (2) PRINT OR EMBOSS THE NOTARY'S SEAL] on the document

3 the

4 (A) notary public's official signature and official seal; and

5 (B) date of expiration of the notary public's commission;

6 and

7 (2) [; (3)] comply with AS 44.50.060 - 44.50.065 and [AS 44.50.060 -
8 44.50.080 OR] other law.

9 * Sec. 6. AS 44.19.024 is amended to read:

10 **Sec. 44.19.024. Fees for issuing certificate.** For issuing each certificate with
11 the seal of the state affixed, the lieutenant governor shall collect a fee of \$5 for each
12 certificate [\$2 FOR THE FIRST THREE FOLIOS OR LESS AND 20 CENTS PER
13 FOLIO FOR EACH ADDITIONAL FOLIO. THE LIEUTENANT GOVERNOR
14 SHALL ACCOUNT FOR THE FEES RECEIVED UNDER THIS SECTION AND
15 SHALL PAY THEM INTO THE STATE TREASURY].

16 * Sec. 7. AS 44.50.010 is repealed and reenacted to read:

17 **Sec. 44.50.010. Notary public commission; term.** (a) The lieutenant
18 governor may commission for the state

19 (1) notaries public without limitation, who are authorized to use the
20 notary seal for all legal purposes; and

21 (2) limited governmental notaries public, who are state, municipal, or
22 federal employees authorized to use the notary seal only for official government
23 business.

24 (b) The term of a notary public commission is four years, except that the term
25 of a limited governmental notary public commission coincides with the term of
26 government employment.

27 (c) A person who is a state, municipal, or federal employee commissioned as a
28 limited governmental notary public may also be commissioned as a notary public
29 without limitation.

30 * Sec. 8. AS 44.50.020 is repealed and reenacted to read:

31 **Sec. 44.50.020. Qualifications.** To be commissioned as a notary public a

1 person

2 (1) shall submit an application under AS 44.50.032;

3 (2) shall be at least 18 years of age;

4 (3) shall have established residency in this state under AS 01.10.055;

5 (4) shall reside legally in the United States;

6 (5) may not have been incarcerated in a correctional facility for a
7 felony conviction within 10 years before the commission takes effect;

8 (6) may not have had a notary public commission revoked in this state
9 or another jurisdiction;

10 (7) may not have committed acts for which a notary public
11 commission may be denied or revoked under this chapter; and

12 (8) shall meet the other requirements in this chapter to be
13 commissioned as a notary public.

14 * Sec. 9. AS 44.50 is amended by adding new sections to read:

15 **Sec. 44.50.032. Application.** (a) A person applying for a commission as a
16 notary public shall submit a completed application as required by this section, using
17 the forms or format required by the lieutenant governor.

18 (b) A completed application for a commission under AS 44.50.010(a)(1) must
19 include

20 (1) an affirmation that the applicant meets the qualifications set out in
21 AS 44.50.020(2) - (7);

22 (2) the applicant's mailing and physical addresses; the applicant's
23 telephone number, if any; the applicant's employer or business; the physical address
24 and telephone number of the applicant's employer or business at the location where the
25 applicant works; and an electronic mailing address, if any, where the applicant can be
26 contacted;

27 (3) information concerning any denial, suspension, revocation, or
28 restriction of the applicant's commission as a notary public in this state or another
29 jurisdiction; that information must include

30 (A) identification of the jurisdiction;

31 (B) the date the jurisdiction issued the denial, suspension,

1 revocation, or restriction;

2 (C) the reasons for the denial, suspension, revocation, or
3 restriction; and

4 (D) information concerning final resolution of the matter;

5 (4) the applicant's notarized signature on the portion of the application
6 that contains the oath or affirmation required by AS 44.50.035;

7 (5) the fee required by AS 44.50.033; and

8 (6) the bond required by AS 44.50.034.

9 (c) A completed application for a commission under AS 44.50.010(a)(2) must
10 include

11 (1) a signed statement by the applicant's government employer that the
12 commission is needed for the purpose of conducting official government business;

13 (2) the applicant's mailing and physical addresses; the applicant's
14 telephone number, if any; the applicant's employer; the name, address, and telephone
15 number for the employer where the applicant works; and an electronic mailing
16 address, if any, where the applicant can be contacted;

17 (3) the affirmation, information, and signature required by (b)(1), (3),
18 and (4) of this section; and

19 (4) the fee required by AS 44.50.033.

20 **Sec. 44.50.033. Application fee.** A person applying for a commission as a
21 notary public shall pay a nonrefundable application fee of \$40. However, an applicant
22 for a limited governmental notary public commission under AS 44.50.010(a)(2) who is
23 employed by the state may not be required to pay an application fee.

24 **Sec. 44.50.034. Bond.** (a) A person applying for a commission as a notary
25 public without limitation under AS 44.50.010(a)(1) shall execute an official bond of
26 \$1,000 and submit the bond with the application under AS 44.50.032. The bond must
27 be for a term of four years from the date of commission.

28 (b) The lieutenant governor shall keep a bond submitted under this section for
29 two years after the end of the term of the commission for which the bond was issued.
30 Disposition of the bond after the end of the commission does not affect the time for
31 commencing an action on the bond.

1 **Sec. 44.50.035. Oath.** The application required by the lieutenant governor
2 under AS 44.50.032 must contain an oath or affirmation, in the form set out in
3 AS 39.05.045, to be signed by the applicant. A signed oath or affirmation submitted
4 in an application under AS 44.50.032 takes effect on the date of the applicant's
5 commission as a notary public under this chapter.

6 **Sec. 44.50.036. Denial of applications.** The lieutenant governor shall deny
7 an application for a notary public commission if the

- 8 (1) applicant does not meet the requirements of this chapter;
9 (2) application is not complete or contains a material misstatement or
10 omission of fact relating to the requirements for a commission under this chapter;
11 (3) applicant has been incarcerated in a correctional facility for a
12 felony conviction within 10 years before the commission is to take effect; or
13 (4) applicant's commission as a notary public has been revoked in this
14 state for a reason set out in AS 44.50.068, or in another jurisdiction for a substantially
15 similar reason.

16 **Sec. 44.50.037. Certificate of commission.** Upon commission of a notary
17 public under this chapter, the lieutenant governor shall provide to the notary public a
18 certificate of commission indicating the commission and the dates of the term of the
19 commission.

20 **Sec. 44.50.038. Subsequent commissions.** A notary public whose term of
21 commission is ending may apply for a new notary public commission by submitting a
22 new application under AS 44.50.032 and complying with the requirements of this
23 chapter. The lieutenant governor's approval of a new application for a commission for
24 a notary public without limitation under AS 44.50.010(a)(1) terminates an applicant's
25 existing commission under that paragraph.

26 **Sec. 44.50.039. Limited governmental notaries public.** A state, municipal,
27 or federal employee commissioned as a notary public under AS 44.50.010(a)(2)

- 28 (1) is designated a limited governmental notary public;
29 (2) may perform notarial acts only in the conduct of official
30 government business; and
31 (3) may not charge or receive a fee or other consideration for notarial

1 services provided under this chapter.

2 * Sec. 10. AS 44.50.060 is amended to read:

3 **Sec. 44.50.060. Duties.** A notary public shall

4 (1) administer oaths and affirmations [WHEN REQUESTED,
5 DEMAND ACCEPTANCE AND PAYMENT OF FOREIGN AND INLAND BILLS
6 OF EXCHANGE, OR PROMISSORY NOTES, PROTEST THEM FOR
7 NONACCEPTANCE AND NONPAYMENT, AND EXERCISE THE OTHER
8 POWERS AND DUTIES THAT BY THE LAW OF NATIONS AND ACCORDING
9 TO COMMERCIAL USAGES, OR BY THE LAWS OF ANY OTHER STATE,
10 GOVERNMENT, OR COUNTRY, MAY BE PERFORMED BY NOTARIES];

11 (2) take the acknowledgment of or proof of execution of [POWERS
12 OF ATTORNEY, MORTGAGES, DEEDS, GRANTS, TRANSFERS, AND OTHER]
13 instruments in [OF] writing, and give a notarial certificate of the proof or
14 acknowledgment, included in [ENDORSED ON] or attached to the instrument; the
15 notarial certificate shall be signed by the notary public in the notary public's
16 [NOTARY'S] own handwriting [;

17 (3) TAKE DEPOSITIONS AND AFFIDAVITS, AND ADMINISTER
18 OATHS AND AFFIRMATIONS, IN ALL MATTERS INCIDENT TO THE DUTIES
19 OF THE OFFICE, OR TO BE USED BEFORE A COURT, JUDGE, OFFICER, OR
20 BOARD IN THE STATE; A DEPOSITION, AFFIDAVIT, OATH, OR
21 AFFIRMATION SHALL BE SIGNED BY THE NOTARY IN THE NOTARY'S
22 OWN HANDWRITING, AND THE NOTARY SHALL ENDORSE AFTER THE
23 SIGNATURE THE DATE OF EXPIRATION OF THE NOTARY'S COMMISSION].

24 * Sec. 11. AS 44.50 is amended by adding new sections to read:

25 **Sec. 44.50.061. Unauthorized practice.** (a) A notary public who is not an
26 attorney may complete but may not select notarial certificates, and may not assist
27 another person in drafting, completing, selecting, or understanding a document or
28 transaction requiring a notarial act.

29 (b) This section does not prohibit a notary public who is qualified in and, if
30 required, licensed to practice, a particular profession from giving advice relating to
31 matters in that professional field.

1 (c) A notary public may not make representations to have powers,
2 qualifications, rights, or privileges that the office of notary public does not have.

3 **Sec. 44.50.062. Prohibited acts.** A notary public may not

4 (1) violate state or federal law in the performance of acts authorized by
5 this chapter;

6 (2) influence a person to enter into or avoid a transaction involving a
7 notarial act by the notary public;

8 (3) affix the notary public's signature or seal on a notarial certificate
9 that is incomplete;

10 (4) charge a fee for a notarial act unless a fee schedule has been
11 provided to the signer before the performance of the notarial act;

12 (5) affix the notary public's official seal to a document unless the
13 person who is to sign the document

14 (A) appears and signs the document before the notary public or,
15 for an acknowledgment, appears and indicates to the notary public that the
16 person voluntarily affixed the person's signature on the document for the
17 purposes stated within the document;

18 (B) gives an oath or affirmation if required under law or if the
19 notarial certificate states that the document was signed under oath or
20 affirmation; and

21 (C) is personally known to the notary public, produces
22 government-issued identification containing the photograph and signature of
23 the person signing, or produces

24 (i) government-issued identification containing the
25 signature of the person signing, but without a photograph; and

26 (ii) another valid identification containing the
27 photograph and signature of the person signing;

28 (6) perform a notarial act if the notary public

29 (A) is a signer of or named in the document that is to be
30 notarized; or

31 (B) will receive directly from a transaction connected with the

1 notarial act a commission, fee, advantage, right, title, interest, cash, property,
2 or other consideration exceeding in value the normal fee charged by the notary
3 for the notarial act.

4 **Sec. 44.50.063. Official signature.** (a) When performing a notarization, a
5 notary public shall

6 (1) sign in the notary public's own handwriting, on the notarial
7 certificate, exactly and only the name indicated on the notary public's commission
8 certificate; a notary public may not sign through the use of a facsimile stamp or an
9 electronic or graphic printing method; and

10 (2) affix the official signature only at the time the notarial act is
11 performed.

12 (b) A notary public shall comply in a timely manner with a request by the
13 lieutenant governor to supply a current sample of the notary public's official signature.

14 **Sec. 44.50.064. Official seal.** (a) A notary public shall keep an official seal,
15 which is the exclusive property of the notary public, and shall ensure that another
16 person does not possess or use the official seal.

17 (b) A notary public's official seal

18 (1) must contain

19 (A) the notary public's name exactly as indicated on the notary
20 public's commission certificate;

21 (B) the words "Notary Public" and "State of Alaska"; and

22 (2) may be a circular form not over two inches in diameter or may be a
23 rectangular form not more than one inch in width by two and one-half inches in
24 length.

25 (c) When not in use, a notary public's official seal shall be kept in a secure
26 area under the exclusive control of the notary public.

27 (d) Within 10 days after a notary public's official seal is stolen or lost, the
28 notary public shall provide the lieutenant governor with written notification of the
29 theft or loss.

30 (e) In order to avoid misuse, a notary public's official seal shall be destroyed
31 or defaced

- 1 (1) upon the notary public's resignation or death;
2 (2) upon the revocation or termination by the lieutenant governor of
3 the notary public's commission; or
4 (3) when the notary public's term of commission ends if the notary
5 public has not received a new commission under this chapter.

6 **Sec. 44.50.065. Seal impression or depiction.** (a) A sharp, legible,
7 photographically reproducible impression or depiction of a notary public's official seal
8 shall be affixed

9 (1) on the notarial certificate of each paper document notarized, near
10 the notary public's official signature; and

11 (2) only at the time the notarial act is performed.

12 (b) Illegible information within a seal impression or depiction may be typed or
13 printed legibly by the notary public adjacent to, but not within, the impression or
14 depiction.

15 (c) An embossed seal impression that is not photographically reproducible
16 may be used in addition to, but not in place of, the seal impression or depiction
17 required by (a) of this section.

18 **Sec. 44.50.066. Notary public's status notification.** (a) Within 30 days after
19 change of a notary public's name, mailing address, or physical address, the notary
20 public shall, on a form provided by the lieutenant governor, submit written notification
21 of the change, signed by the notary public.

22 (b) The lieutenant governor may require limited governmental notaries public
23 commissioned under AS 44.50.010(a)(2) who change departmental or agency
24 employers to submit written notification of the change on a form provided by the
25 lieutenant governor.

26 (c) A notary public commissioned under AS 44.50.010(a)(1) reporting a name
27 change shall submit to the lieutenant governor payment of the fee under AS 44.19.024
28 for the issuance of a replacement certificate of commission.

29 (d) A notary public reporting a name change under (a) and (c) of this section
30 shall use the person's former name for the performance of notarial acts until the person
31 has

1 (1) provided written notification of the name change to the surety for
2 any bond required under AS 44.50.034;

3 (2) received a replacement certificate of commission reflecting the
4 name change from the lieutenant governor; and

5 (3) obtained a new seal reflecting the name change.

6 (e) The lieutenant governor may require a notary public to update the
7 information required under AS 44.50.032, including the notary public's current
8 notarized signature.

9 **Sec. 44.50.067. Resignation.** (a) To resign a commission, a notary public
10 shall notify the lieutenant governor in writing of the resignation and the date that it is
11 effective. The notary public shall sign the notification.

12 (b) A notary public who does not any longer meet the requirements of this
13 chapter to be a notary public shall immediately resign the commission.

14 **Sec. 44.50.068. Disciplinary action.** The lieutenant governor may suspend or
15 revoke a notary public's commission or reprimand a notary public for good cause
16 shown, including

17 (1) a ground on which an application for a commission may be denied;

18 (2) failure to comply with this chapter; and

19 (3) incompetence or malfeasance in carrying out the notary public's
20 duties under this chapter.

21 **Sec. 44.50.069. Complaint; hearing; appeal; delegation.** (a) A person
22 harmed by the actions of a notary public may file a complaint with the lieutenant
23 governor. The complaint shall be filed on a form prescribed by the lieutenant
24 governor and shall be signed and verified by the person alleging misconduct by the
25 notary public.

26 (b) If the lieutenant governor determines that the allegations in the complaint
27 do not warrant formal disciplinary action, the lieutenant governor may decline to act
28 on the complaint or may advise the notary public of the appropriate conduct and the
29 applicable statutes and regulations governing the conduct. The lieutenant governor
30 shall notify the notary public and the complainant of the determination in writing.

31 (c) If the lieutenant governor determines that the complaint alleges sufficient

1 facts to constitute good cause for disciplinary action, the lieutenant governor shall
2 serve the notary public with a copy of the complaint as provided in Rule 4, Alaska
3 Rules of Civil Procedure. The notary public may file a written response to the
4 complaint with the lieutenant governor within 20 days after receipt of the complaint.
5 The lieutenant governor may extend the time for the notary public's response. The
6 lieutenant governor shall provide a copy of the notary public's response to the
7 complainant.

8 (d) The lieutenant governor shall review the complaint and the response to
9 determine whether formal disciplinary action may be warranted. The lieutenant
10 governor may determine that the allegations in the complaint do not warrant formal
11 disciplinary action, in which case the lieutenant governor may determine not to take
12 further action on the complaint or may determine to advise the notary public of the
13 appropriate conduct and the applicable statutes and regulations governing the conduct.
14 If the lieutenant governor determines that formal disciplinary action is not warranted,
15 the lieutenant governor shall provide the complainant and the notary public with a
16 written statement of the basis for the determination.

17 (e) If the lieutenant governor finds that formal disciplinary action may be
18 warranted, the lieutenant governor shall refer the matter to the office of administrative
19 hearings created under AS 44.64.010 for a hearing.

20 (f) The lieutenant governor may delegate the powers under AS 44.50.068 and
21 this section.

22 (g) An appeal from a decision of the lieutenant governor under this section
23 shall be in accordance with the procedures set out in AS 44.62 (Administrative
24 Procedure Act).

25 * **Sec. 12.** AS 44.50 is amended by adding new sections to read:

26 **Sec. 44.50.071. Confidentiality.** (a) An address, telephone number, and
27 electronic mail address of a notary public or an applicant that is submitted under
28 AS 44.50.032 or 44.50.038 and that is designated by the notary public or applicant as
29 confidential shall be kept confidential. However, a notary public shall provide a
30 nonconfidential address and telephone number at which the notary public can be
31 contacted.

1 (b) Compilations and data bases of those addresses, telephone numbers, and
2 electronic mail addresses of notaries public that are confidential under (a) of this
3 section shall be kept confidential, except that the lieutenant governor may disclose
4 compilations and data bases if the lieutenant governor determines that disclosure is in
5 the public interest.

6 (c) A complaint filed under AS 44.50.069 shall be kept confidential unless the
7 lieutenant governor determines under AS 44.50.069(c) that the complaint alleges
8 sufficient facts to constitute good cause for disciplinary action.

9 **Sec. 44.50.072. Regulations.** The lieutenant governor may adopt regulations
10 under AS 44.62 (Administrative Procedure Act) to carry out the purposes of this
11 chapter.

12 * **Sec. 13.** AS 44.50 is amended by adding a new section to read:

13 **Sec. 44.50.200. Definitions.** In this chapter, unless the context otherwise
14 requires,

15 (1) "notarial act" means an act that is identified as a notarial act under
16 AS 09.63.120 and an act that a notary public is directed to perform under
17 AS 44.50.060;

18 (2) "notary public" means a person commissioned to perform notarial
19 acts under this chapter.

20 * **Sec. 14.** AS 44.50.030, 44.50.040, 44.50.070, 44.50.080, 44.50.090, 44.50.100,
21 44.50.110, 44.50.120, 44.50.130, 44.50.140, 44.50.170, 44.50.180(c), and 44.50.190 are
22 repealed.

23 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 **APPLICABILITY.** (a) AS 44.50.010, repealed and reenacted by sec. 7 of this Act,
26 and AS 44.50.032, 44.50.033, 44.50.035, 44.50.036, 44.50.037, and 44.50.039, enacted by
27 sec. 9 of this Act, do not apply to a notary public whose commission is in effect on the day
28 before the effective date of secs. 1 - 14 of this Act until the notary public's term of office
29 expires under former AS 44.50.030, the notary public resigns under AS 44.50.067, enacted by
30 sec. 11 of this Act, or the notary public's commission is revoked under AS 44.50.068, enacted
31 by sec. 11 of this Act.

1 (b) Notwithstanding (a) of this section, if a notary public whose commission is in
2 effect on the day before the effective date of secs. 1 - 14 of this Act has been incarcerated in a
3 correctional facility for a felony conviction within the 10 years before the notary public's term
4 of office expires under former AS 44.50.030, the lieutenant governor may take an action
5 under AS 44.50.068, enacted by sec. 11 of the Act, against the notary public.

6 * Sec. 16. The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 TRANSITION: REGULATIONS. The lieutenant governor may proceed to adopt
9 regulations necessary to implement the changes made by this Act. The regulations take effect
10 under AS 44.62 (Administrative Procedure Act), but not before the effective date of the
11 respective statutory change.

12 * Sec. 17. Section 16 of this Act takes effect immediately under AS 01.10.070(c).

13 * Sec. 18. Except as provided in sec. 17 of this Act, this Act takes effect July 1, 2005.

= Removed

■ = Altered

23-GH2022\U

CS FOR HOUSE BILL NO. 439(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/6/04

Referred: Finance

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the authority to take oaths, affirmations, and acknowledgments in
2 the state, to notarizations, to verifications, to acknowledgments, to fees for issuing
3 certificates with the seal of the state affixed, and to notaries public; and providing for an
4 effective date."

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

6 * Section 1. AS 09.63.010 is amended to read:

7 **Sec. 09.63.010. Oath, affirmation, and acknowledgment.** The following
8 persons may take an oath, affirmation, or acknowledgment in the state:

9 (1) a justice, judge, or magistrate of a court of the State of Alaska or of
10 the United States;

11 (2) a clerk or deputy clerk of a court of the State of Alaska or of the
12 United States;

13 (3) a notary public;

14 (4) a United States postmaster;

1 * Sec. 4. AS 09.63.090 is amended to read:

2 **Sec. 09.63.090. Certificate of acknowledgment.** The words "acknowledged
3 before me" mean that

4 (1) the person acknowledging

5 (A) appeared before the person taking the acknowledgment;

6 (B) acknowledged that the person executed the instrument;

7 (C) in the case of

8 (i) a natural person, acknowledged that the person
9 executed the instrument for the purposes stated in it;

10 (ii) an officer or agent of a corporation, acknowledged
11 that the person held the position or title set out in the instrument and
12 certificate, acknowledge that the person signed the instrument on
13 behalf of the corporation by proper authority, and acknowledge that
14 the instrument was the act of the corporation for the purposes stated in
15 it;

16 (iii) a member or manager of a limited liability
17 company, acknowledged that the individual signed the instrument
18 on behalf of the limited liability company by proper authority and
19 executed the instrument as the act of the limited liability company
20 for the purposes stated in it;

21 (iv) a partner or agent of a partnership, limited
22 partnership, or limited liability partnership, acknowledged that the
23 person signed the instrument on behalf of the partnership by proper
24 authority and executed the instrument as the act of the partnership for
25 the purposes stated in it;

26 (v) [(iv)] a person acknowledging as a principal by an
27 attorney in fact, acknowledged that the person executed the instrument
28 by proper authority as the act of the principal for the purposes stated in
29 it;

30 (vi) [(v)] a person acknowledging as a public officer,
31 trustee, administrator, guardian, or other representative, acknowledged

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services
Department of Education & Early Development
State of Alaska

= Removed

☐ = Altered

23-GH2022\U

CS FOR HOUSE BILL NO. 439(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/6/04

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the authority to take oaths, affirmations, and acknowledgments in
2 the state, to notarizations, to verifications, to acknowledgments, to fees for issuing
3 certificates with the seal of the state affixed, and to notaries public; and providing for an
4 effective date."

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

6 * Section i. AS 09.63.010 is amended to read:

7 **Sec. 09.63.010. Oath, affirmation, and acknowledgment.** The following
8 persons may take an oath, affirmation, or acknowledgment in the state:

9 (1) a justice, judge, or magistrate of a court of the State of Alaska or of
10 the United States;

11 (2) a clerk or deputy clerk of a court of the State of Alaska or of the
12 United States;

13 (3) a notary public;

14 (4) a United States postmaster;

- 1 (5) a commissioned officer under AS 09.63.050(4); [OR]
- 2 (6) a municipal clerk carrying out the clerk's duties under
- 3 AS 29.20.380;
- 4 (7) the lieutenant governor when carrying out the lieutenant
- 5 governor's duties under AS 24.05.160;
- 6 (8) the presiding officer of each legislative house when carrying
- 7 out the officer's duties under AS 24.05.170.

8 * Sec. 2. AS 09.63.030(c) is amended to read:

9 (c) If the document is sworn to or affirmed before a notary public of the state,
10 the notary public shall

11 (1) affix [ENDORSE AFTER THE SIGNATURE OF THE NOTARY
12 PUBLIC THE DATE OF EXPIRATION OF THE NOTARY'S COMMISSION;

13 (2) PRINT OR EMBOSS THE NOTARY'S SEAL] on the document

14 the

15 (A) notary public's official signature and official seal; and

16 (B) date of expiration of the notary public's commission;

17 and

18 (2) [; (3)] comply with AS 44.50.060 - 44.50.065 and [AS 44.50.060 -
19 44.50.080 OR] other applicable law.

20 * Sec. 3. AS 09.63.040(d) is amended to read:

21 (d) If the verification is sworn to or affirmed before a notary public of the
22 state, the notary public shall

23 (1) affix [ENDORSE AFTER THE SIGNATURE OF THE NOTARY
24 PUBLIC THE DATE OF EXPIRATION OF THE NOTARY'S COMMISSION;

25 (2) PRINT OR EMBOSS THE NOTARY'S SEAL] on the document

26 the

27 (A) notary public's official signature and official seal; and

28 (B) date of expiration of the notary public's commission;

29 and

30 (2) [; (3)] comply with AS 44.50.060 - 44.50.065 and [AS 44.50.060 -
31 44.50.080 OR] other applicable law.

= Removed

■ = Altered

23-GH2022U

CS FOR HOUSE BILL NO. 439(JUD)

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION**

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A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the authority to take oaths, affirmations, and acknowledgments in
2 the state, to notarizations, to verifications, to acknowledgments, to fees for issuing
3 certificates with the seal of the state affixed, and to notaries public; and providing for an
4 effective date."

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

6 * Section 1. AS 09.63.010 is amended to read:

7 **Sec. 09.63.010. Oath, affirmation, and acknowledgment.** The following
8 persons may take an oath, affirmation, or acknowledgment in the state:

9 (1) a justice, judge, or magistrate of a court of the State of Alaska or of
10 the United States;

11 (2) a clerk or deputy clerk of a court of the State of Alaska or of the
12 United States;

13 (3) a notary public;

14 (4) a United States postmaster;

1 (5) a commissioned officer under AS 09.63.050(4); [OR]

2 (6) a municipal clerk carrying out the clerk's duties under
3 AS 29.20.380;

4 (7) the lieutenant governor when carrying out the lieutenant
5 governor's duties under AS 24.05.160;

6 (8) the presiding officer of each legislative house when carrying
7 out the officer's duties under AS 24.05.170.

8 * Sec. 2. AS 09.63.030(c) is amended to read:

9 (c) If the document is sworn to or affirmed before a notary public of the state,
10 the notary public shall

11 (1) affix [ENDORSE AFTER THE SIGNATURE OF THE NOTARY
12 PUBLIC THE DATE OF EXPIRATION OF THE NOTARY'S COMMISSION;

13 (2) PRINT OR EMBOSS THE NOTARY'S SEAL] on the document
14 the

15 (A) notary public's official signature and official seal; and

16 (B) date of expiration of the notary public's commission;

17 and

18 (2) [; (3)] comply with AS 44.50.060 - 44.50.065 and [AS 44.50.060 -
19 44.50.080 OR] other applicable law.

20 * Sec. 3. AS 09.63.040(d) is amended to read:

21 (d) If the verification is sworn to or affirmed before a notary public of the
22 state, the notary public shall

23 (1) affix [ENDORSE AFTER THE SIGNATURE OF THE NOTARY
24 PUBLIC THE DATE OF EXPIRATION OF THE NOTARY'S COMMISSION;

25 (2) PRINT OR EMBOSS THE NOTARY'S SEAL] on the document
26 the

27 (A) notary public's official signature and official seal; and

28 (B) date of expiration of the notary public's commission;

29 and

30 (2) [; (3)] comply with AS 44.50.060 - 44.50.065 and [AS 44.50.060 -
31 44.50.080 OR] other applicable law.

1 * Sec. 4. AS 09.63.090 is amended to read:

2 **Sec. 09.63.090. Certificate of acknowledgment.** The words "acknowledged
3 before me" mean that

4 (1) the person acknowledging

5 (A) appeared before the person taking the acknowledgment;

6 (B) acknowledged that the person executed the instrument;

7 (C) in the case of

8 (i) a natural person, acknowledged that the person
9 executed the instrument for the purposes stated in it;

10 (ii) an officer or agent of a corporation, acknowledged
11 that the person held the position or title set out in the instrument and
12 certificate, acknowledge that the person signed the instrument on
13 behalf of the corporation by proper authority, and acknowledge that
14 the instrument was the act of the corporation for the purposes stated in
15 it;

16 (iii) a member or manager of a limited liability
17 company, acknowledged that the individual signed the instrument
18 on behalf of the limited liability company by proper authority and
19 executed the instrument as the act of the limited liability company
20 for the purposes stated in it;

21 (iv) a partner or agent of a partnership, limited
22 partnership, or limited liability partnership, acknowledged that the
23 person signed the instrument on behalf of the partnership by proper
24 authority and executed the instrument as the act of the partnership for
25 the purposes stated in it;

26 (v) [(iv)] a person acknowledging as a principal by an
27 attorney in fact, acknowledged that the person executed the instrument
28 by proper authority as the act of the principal for the purposes stated in
29 it;

30 (vi) [(v)] a person acknowledging as a public officer,
31 trustee, administrator, guardian, or other representative, acknowledged

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that the person signed the instrument in the capacity and for the purposes stated in it; and

(2) the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging is the person named in the instrument or certificate.

* Sec. 5. AS 09.63.100 is amended to read:

Sec. 09.63.100. Forms of acknowledgment. (a) The forms of acknowledgment set out in this subsection may be used and are sufficient for their respective purposes under a law of the state. The authorization of the forms in this section does not preclude the use of other forms.

(1) For an individual acting in the individual's own right:

State of _____ Judicial District (or County of _____)

The foregoing instrument was acknowledged before me this (date) by (name of person who acknowledged).

Signature of Person Taking
Acknowledgment

Title or Rank

Serial Number, if any

(2) For a corporation:

State of _____ Judicial District (or County of _____)

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging) a (state or place of incorporation) corporation, on behalf of the corporation.

Signature of Person Taking

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Acknowledgment

Title or Rank

Serial Number, if any

(3) For a limited liability company:

State of _____ Judicial

District (or County of _____)

The foregoing instrument was acknowledged before me this (date) by (name of member or manager), member (or manager) of (name of limited liability company acknowledging) a (state or place of organization) limited liability company, on behalf of the limited liability company.

Signature of Person Taking

Acknowledgment

Member (or Manager)

Serial Number, if any

(4) For a partnership:

State of _____ Judicial

District (or County of _____)

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a (partnership, limited partnership, or limited liability partnership).

Signature of Person Taking

Acknowledgment

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Title or Rank

Serial Number, if any

(5) [(4)] For an individual acting as principal by an attorney in fact:

State of _____ Judicial

District (or County of _____)

The foregoing instrument was acknowledged before me this
(date) by (name of attorney in fact) as attorney in fact on behalf of
(name of principal).

Signature of Person Taking

Acknowledgment

Title or Rank

Serial Number, if any

(6) [(5)] By a public officer, trustee, or personal representative:

State of _____ Judicial

District (or County of _____)

The foregoing instrument was acknowledged before me this
(date) by (name and title of position).

Signature of Person Taking

Acknowledgment

Title or Rank

Serial Number, if any

(b) If a document is acknowledged before a notary public of the state, the
notary public shall

(1) affix [ENDORSE AFTER THE NOTARY'S SIGNATURE THE

1 DATE OF EXPIRATION OF THE NOTARY'S COMMISSION;

2 (2) PRINT OR EMBOSS THE NOTARY'S SEAL.] on the document

3 the

4 (A) notary public's official signature and official seal; and

5 (B) date of expiration of the notary public's commission;

6 and

7 (2) [(3)] comply with AS 44.50.060 - 44.50.065 and [AS 44.50.060 -
8 44.50.080 OR] other law.

9 * Sec. 6. AS 44.19.024 is amended to read:

10 **Sec. 44.19.024. Fees for issuing certificate.** For issuing each certificate with
11 the seal of the state affixed, the lieutenant governor shall collect a fee of \$5 for each
12 certificate [\$2 FOR THE FIRST THREE FOLIOS OR LESS AND 20 CENTS PER
13 FOLIO FOR EACH ADDITIONAL FOLIO. THE LIEUTENANT GOVERNOR
14 SHALL ACCOUNT FOR THE FEES RECEIVED UNDER THIS SECTION AND
15 SHALL PAY THEM INTO THE STATE TREASURY].

16 * Sec. 7. AS 44.50.010 is repealed and reenacted to read:

17 **Sec. 44.50.010. Notary public commission; term.** (a) The lieutenant
18 governor may commission for the state

19 (1) notaries public without limitation, who are authorized to use the
20 notary seal for all legal purposes; and

21 (2) limited governmental notaries public, who are state, municipal, or
22 federal employees authorized to use the notary seal only for official government
23 business.

24 (b) The term of a notary public commission is four years, except that the term
25 of a limited governmental notary public commission coincides with the term of
26 government employment.

27 (c) A person who is a state, municipal, or federal employee commissioned as a
28 limited governmental notary public may also be commissioned as a notary public
29 without limitation.

30 * Sec. 8. AS 44.50.020 is repealed and reenacted to read:

31 **Sec. 44.50.020. Qualifications.** To be commissioned as a notary public a

1 person

2 (1) shall submit an application under AS 44.50.032;

3 (2) shall be at least 18 years of age;

4 (3) shall have established residency in this state under AS 01.10.055;

5 (4) shall reside legally in the United States;

6 (5) may not have been incarcerated in a correctional facility for a
7 felony conviction within 10 years before the commission takes effect;

8 (6) may not have had a notary public commission revoked in this state
9 or another jurisdiction;

10 (7) may not have committed acts for which a notary public
11 commission may be denied or revoked under this chapter; and

12 (8) shall meet the other requirements in this chapter to be
13 commissioned as a notary public.

14 * Sec. 9. AS 44.50 is amended by adding new sections to read:

15 **Sec. 44.50.032. Application.** (a) A person applying for a commission as a
16 notary public shall submit a completed application as required by this section, using
17 the forms or format required by the lieutenant governor.

18 (b) A completed application for a commission under AS 44.50.010(a)(1) must
19 include

20 (1) an affirmation that the applicant meets the qualifications set out in
21 AS 44.50.020(2) - (7);

22 (2) the applicant's mailing and physical addresses, the applicant's
23 telephone number, if any, the applicant's employer or business, the physical address
24 and telephone number of the applicant's employer or business at the location where the
25 applicant works, and an electronic mailing address, if any, where the applicant can be
26 contacted;

27 (3) information concerning any denial, suspension, revocation, or
28 restriction of the applicant's commission as a notary public in this state or another
29 jurisdiction; that information must include

30 (A) identification of the jurisdiction;

31 (B) the date the jurisdiction issued the denial, suspension,

1 revocation, or restriction;

2 (C) the reasons for the denial, suspension, revocation, or
3 restriction; and

4 (D) information concerning final resolution of the matter;

5 (4) the applicant's notarized signature on the portion of the application
6 that contains the oath or affirmation required by AS 44.50.035;

7 (5) the fee required by AS 44.50.033; and

8 (6) the bond required by AS 44.50.034.

9 (c) A completed application for a commission under AS 44.50.010(a)(2) must
10 include

11 (1) a signed statement by the applicant's government employer that the
12 commission is needed for the purpose of conducting official government business;

13 (2) the applicant's mailing and physical addresses, the applicant's
14 telephone number, if any, the applicant's employer, the name, address, and telephone
15 number for the employer where the applicant works, and an electronic mailing
16 address, if any, where the applicant can be contacted;

17 (3) the affirmation, information, and signature required by (b)(1), (3),
18 and (4) of this section; and

19 (4) the fee required by AS 44.50.033.

20 **Sec. 44.50.033. Application fee.** A person applying for a commission as a
21 notary public shall pay a nonrefundable application fee of \$40. However, an applicant
22 for a limited government's notary public commission under AS 44.50.010(a)(2) who is
23 employed by the state may not be required to pay an application fee.

24 **Sec. 44.50.034. Bond.** (a) A person applying for a commission as a notary
25 public without limitation under AS 44.50.010(a)(1) shall execute an official bond of
26 \$1,000 and submit the bond with the application under AS 44.50.032. The bond must
27 be for a term of four years from the date of commission.

28 (b) The lieutenant governor shall keep a bond submitted under this section for
29 10 years after the end of the term of the commission for which the bond was issued.
30 Disposition of the bond after the end of the commission does not affect the time for
31 commencing an action on the bond.

1 **Sec. 44.50.035. Oath.** The application required by the lieutenant governor
 2 under AS 44.50.032 must contain an oath or affirmation, in the form set out in
 3 AS 39.05.045, to be signed by the applicant. A signed oath or affirmation submitted
 4 in an application under AS 44.50.032 takes effect on the date of the applicant's
 5 commission as a notary public under this chapter.

6 **Sec. 44.50.036. Denial of applications.** The lieutenant governor shall deny
 7 an application for a notary public commission if the

8 (1) applicant does not meet the requirements of this chapter;

9 (2) application is not complete or contains a material misstatement or
 10 omission of fact relating to the requirements for a commission under this chapter;

11 (3) applicant has been incarcerated in a correctional facility for a
 12 felony conviction within 10 years before the commission is to take effect; or

13 (4) applicant's commission as a notary public has been revoked in this
 14 state for a reason set out in AS 44.50.068, or in another jurisdiction for a substantially
 15 similar reason.

16 **Sec. 44.50.037. Certificate of commission.** Upon commission of a notary
 17 public under this chapter, the lieutenant governor shall provide to the notary public a
 18 certificate of commission indicating the commission and the dates of the term of the
 19 commission.

20 **Sec. 44.50.038. Subsequent commissions.** A notary public whose term of
 21 commission is ending may apply for a new notary public commission by submitting a
 22 new application under AS 44.50.032 and complying with the requirements of this
 23 chapter. The lieutenant governor's approval of a new application for a commission for
 24 a notary public without limitation under AS 44.50.010(a)(1) terminates an applicant's
 25 existing commission under that paragraph.

26 **Sec. 44.50.039. Limited governmental notaries public.** A state, municipal,
 27 or federal employee commissioned as a notary public under AS 44.50.010(a), 2)

28 (1) is designated a limited governmental notary public;

29 (2) may perform notarial acts only in the conduct of official
 30 government business; and

31 (3) may not charge or receive a fee or other consideration for notarial

1 services provided under this chapter.

2 * **Sec. 10.** AS 44.50.060 is amended to read:

3 **Sec. 44.50.060. Duties.** A notary public shall

4 (1) administer oaths and affirmations [WHEN REQUESTED,
5 DEMAND ACCEPTANCE AND PAYMENT OF FOREIGN AND INLAND BILLS
6 OF EXCHANGE, OR PROMISSORY NOTES, PROTEST THEM FOR
7 NONACCEPTANCE AND NONPAYMENT, AND EXERCISE THE OTHER
8 POWERS AND DUTIES THAT BY THE LAW OF NATIONS AND ACCORDING
9 TO COMMERCIAL USAGES, OR BY THE LAWS OF ANY OTHER STATE,
10 GOVERNMENT, OR COUNTRY, MAY BE PERFORMED BY NOTARIES];

11 (2) take the acknowledgment of or proof of execution of [POWERS
12 OF ATTORNEY, MORTGAGES, DEEDS, GRANTS, TRANSFERS, AND OTHER]
13 instruments in [OF] writing, and give a notarial certificate of the proof or
14 acknowledgment, included in [ENDORSED ON] or attached to the instrument; the
15 notarial certificate shall be signed by the notary public in the notary public's
16 [NOTARY'S] own handwriting [;

17 (3) TAKE DEPOSITIONS AND AFFIDAVITS, AND ADMINISTER
18 OATHS AND AFFIRMATIONS, IN ALL MATTERS INCIDENT TO THE DUTIES
19 OF THE OFFICE, OR TO BE USED BEFORE A COURT, JUDGE, OFFICER, OR
20 BOARD IN THE STATE: A DEPOSITION, AFFIDAVIT, OATH, OR
21 AFFIRMATION SHALL BE SIGNED BY THE NOTARY IN THE NOTARY'S
22 OWN HANDWRITING, AND THE NOTARY SHALL ENDORSE AFTER THE
23 SIGNATURE THE DATE OF EXPIRATION OF THE NOTARY'S COMMISSION].

24 * **Sec. 11.** AS 44.50 is amended by adding new sections to read:

25 **Sec. 44.50.061. Unauthorized practice.** (a) A notary public who is not an
26 attorney may complete but may not select notarial certificates, and may not assist
27 another person in drafting, completing, selecting, or understanding a document or
28 transaction requiring a notarial act.

29 (b) This section does not prohibit a notary public who is qualified in and, if
30 required, licensed to practice, a particular profession from giving advice relating to
31 matters in that professional field.

1 (c) A notary public may not make representations to have powers,
2 qualifications, rights, or privileges that the office of notary public does not have.

3 **Sec. 44.50.062. Prohibited acts.** A notary public may not

4 (1) violate state or federal law in the performance of acts authorized by
5 this chapter;

6 (2) influence a person to enter into or avoid a transaction involving a
7 notarial act by the notary public;

8 (3) affix the notary public's signature or seal on a notarial certificate
9 that is incomplete;

10 (4) charge a fee for a notarial act unless a fee schedule has been
11 provided to the signer before the performance of the notarial act;

12 (5) affix the notary public's official seal to a document, unless the
13 person who is to sign the document

14 (A) appears and signs the document before the notary public or,
15 for an acknowledgment, appears and indicates to the notary public that the
16 person voluntarily affixed the person's signature on the document for the
17 purposes stated within the document;

18 (B) gives an oath or affirmation if required under law or if the
19 notarial certificate states that the document was signed under oath or
20 affirmation; and

21 (C) is personally known to the notary public, produces
22 government-issued identification containing the photograph and signature of
23 the person signing, or produces

24 (i) government-issued identification containing the
25 signature of the person signing, but without a photograph; and

26 (ii) another valid identification containing the
27 photograph and signature of the person signing;

28 (6) perform a notarial act if the notary public

29 (A) is a signer of or named in the document that is to be
30 notarized; or

31 (B) will receive directly from a transaction connected with the

1 notarial act a commission, fee, advantage, right, title, interest, cash, property,
2 or other consideration exceeding in value the normal fee charged by the notary
3 for the notarial act.

4 **Sec. 44.50.063. Official signature.** (a) When performing a notarization, a
5 notary public shall

6 (1) sign in the notary public's own handwriting, on the notarial
7 certificate, exactly and only the name indicated on the notary public's commission
8 certificate; a notary public may not sign through the use of a facsimile stamp or an
9 electronic or graphic printing method; and

10 (2) affix the official signature only at the time the notarial act is
11 performed.

12 (b) A notary public shall comply in a timely manner with a request by the
13 lieutenant governor to supply a current sample of the notary public's official signature.

14 **Sec. 44.50.064. Official seal.** (a) A notary public shall keep an official seal,
15 which is the exclusive property of the notary public, and shall ensure that another
16 person does not possess or use the official seal.

17 (b) A notary public's official seal

18 (1) must contain

19 (A) the notary public's name exactly as indicated on the notary
20 public's commission certificate;

21 (B) the words "Notary Public" and "State of Alaska"; and

22 (2) may be a circular form not over two inches in diameter or may be a
23 rectangular form not more than one inch in width by two and one-half inches in
24 length.

25 (c) When not in use, a notary public's official seal shall be kept in a secure
26 area under the exclusive control of the notary public.

27 (d) Within 10 days after a notary public's official seal is stolen or lost, the
28 notary public shall provide the lieutenant governor with written notification of the
29 theft or loss.

30 (e) In order to avoid misuse, a notary public's official seal shall be destroyed
31 or defaced

- 1 (1) upon the notary public's resignation or death;
 2 (2) upon the revocation or termination by the lieutenant governor of
 3 the notary public's commission; or
 4 (3) when the notary public's term of commission ends if the notary
 5 public has not received a new commission under this chapter.

6 **Sec. 44.50.065. Seal impression or depiction.** (a) A sharp, legible,
 7 photographically reproducible impression or depiction of a notary public's official seal
 8 shall be affixed

9 (1) on the notarial certificate of each paper document notarized, near
 10 the notary public's official signature; and

11 (2) only at the time the notarial act is performed.

12 (b) Illegible information within a seal impression or depiction may be typed or
 13 printed legibly by the notary public adjacent to, but not within, the impression or
 14 depiction.

15 (c) An embossed seal impression that is not photographically reproducible
 16 may be used in addition to, but not in place of, the seal impression or depiction
 17 required by (a) of this section.

18 **Sec. 44.50.066. Notary public's status notification.** (a) Within 30 days after
 19 change of a notary public's name, mailing address, or physical address, the notary
 20 public shall, on a form provided by the lieutenant governor, submit written notification
 21 of the change, signed by the notary public.

22 (b) The lieutenant governor may require limited governmental notaries public
 23 commissioned under AS 44.50.010(a)(2) who change departmental or agency
 24 employers to submit written notification of the change on a form provided by the
 25 lieutenant governor.

26 (c) A notary public commissioned under AS 44.50.010(a)(1) reporting a name
 27 change shall submit to the lieutenant governor payment of the fee under AS 44.19.024
 28 for the issuance of a replacement certificate of commission.

29 (d) A notary public reporting a name change under (a) and (c) of this section
 30 shall use the person's former name for the performance of notarial acts until the person
 31 has

1 (1) provided written notification of the name change to the surety for
2 any bond required under AS 44.50.034;

3 (2) received a replacement certificate of commission reflecting the
4 name change from the lieutenant governor; and

5 (3) obtained a new seal reflecting the name change.

6 (c) The lieutenant governor may require a notary public to update the
7 information required under AS 44.50.032, including the notary public's current
8 notarized signature.

9 **Sec. 44.50.067. Resignation.** (a) To resign a commission, a notary public
10 shall notify the lieutenant governor in writing of the resignation and the date that it is
11 effective. The notary public shall sign the notification.

12 (b) A notary public who does not any longer meet the requirements of this
13 chapter to be a notary public shall immediately resign the commission.

14 **Sec. 44.50.068. Disciplinary action.** The lieutenant governor may suspend or
15 revoke a notary public's commission or reprimand a notary public for good cause
16 shown, including

17 (1) a ground on which an application for a commission may be denied;

18 (2) failure to comply with this chapter; and

19 (3) incompetence or malfeasance in carrying out the notary public's
20 duties under this chapter.

21 **Sec. 44.50.069. Complaint; hearing; appeal.** (a) A person harmed by the
22 actions of a notary public may file a complaint with the lieutenant governor. The
23 complaint shall be filed on a form prescribed by the lieutenant governor and shall be
24 signed and verified by the person alleging misconduct by the notary public.

25 (b) If the lieutenant governor determines that the allegations in the complaint
26 do not warrant formal disciplinary action, the lieutenant governor may decline to act
27 on the complaint or may advise the notary public of the appropriate conduct and the
28 applicable statutes and regulations governing the conduct. The lieutenant governor
29 shall notify the notary public and the complainant of the determination in writing.

30 (c) If the lieutenant governor determines that the complaint alleges sufficient
31 facts to constitute good cause for disciplinary action, the lieutenant governor shall

1 serve the notary public with a copy of the complaint as provided in Rule 4, Alaska
 2 Rules of Civil Procedure. The notary public may file a written response to the
 3 complaint with the lieutenant governor within 20 days after receipt of the complaint.
 4 The lieutenant governor may extend the time for the notary public's response. The
 5 lieutenant governor shall provide a copy of the notary public's response to the
 6 complainant.

7 (d) The lieutenant governor shall review the complaint and the response to
 8 determine whether formal disciplinary action may be warranted. The lieutenant
 9 governor may determine that the allegations in the complaint do not warrant formal
 10 disciplinary action, in which case the lieutenant governor may determine not to take
 11 further action on the complaint or may determine to advise the notary public of the
 12 appropriate conduct and the applicable statutes and regulations governing the conduct.
 13 If the lieutenant governor determines that formal disciplinary action is not warranted,
 14 the lieutenant governor shall provide the complainant and the notary public with a
 15 written statement of the basis for the determination.

16 (e) If the lieutenant governor finds that formal disciplinary action may be
 17 warranted, the lieutenant governor may *shall refer the matter to the office of administrative*
 18 *hearings (AS 44.64.010) for a hearing.*

18 (1) hear the case and issue a decision; or

19 (2) appoint a hearing officer to hear the case and provide a
 20 recommended decision, including recommended disciplinary action.

21 (f) If a hearing officer is appointed, the lieutenant governor may

22 (1) adopt the hearing officer's recommended decision in its entirety;

23 (2) adopt portions of the recommended decision and modify the
 24 recommended disciplinary action;

25 (3) decide the case upon the record created at the hearing; or

26 (4) refer the case to the same or another hearing officer to take
 27 additional evidence and issue a new recommended decision, including, if appropriate,
 28 new recommended disciplinary action based upon the record from the hearing and the
 29 additional evidence.

30 ~~(f)~~ (g) The lieutenant governor may delegate the powers under AS 44.50.068 and
 31 this section.

(9)

1 ~~(h)~~ An appeal from a decision of the lieutenant governor under this section
 2 shall be in accordance with the procedures set out in AS 44.62 (Administrative
 3 Procedure Act).

4 * Sec. 12. AS 44.50.069 is repealed and reenacted to read:

5 **Sec. 44.50.069. Complaint; hearing; appeal.** (a) A person harmed by the
 6 actions of a notary public may file a complaint with the lieutenant governor. The
 7 complaint shall be filed on a form prescribed by the lieutenant governor and shall be
 8 signed and verified by the person alleging misconduct by the notary public.

9 (b) If the lieutenant governor determines that the allegations in the complaint
 10 do not warrant formal disciplinary action, the lieutenant governor may decline to act
 11 on the complaint or may advise the notary public of the appropriate conduct and the
 12 applicable statutes and regulations governing the conduct. The lieutenant governor
 13 shall notify the notary public and the complainant of the determination in writing.

14 (c) If the lieutenant governor determines that the complaint alleges sufficient
 15 facts to constitute good cause for disciplinary action, the lieutenant governor shall
 16 serve the notary public with a copy of the complaint as provided in Rule 4, Alaska
 17 Rules of Civil Procedure. The notary public may file a written response to the
 18 complaint with the lieutenant governor within 20 days after receipt of the complaint.
 19 The lieutenant governor may extend the time for the notary public's response. The
 20 lieutenant governor shall provide a copy of the notary public's response to the
 21 complainant.

22 (d) The lieutenant governor shall review the complaint and the response to
 23 determine whether formal disciplinary action may be warranted. The lieutenant
 24 governor may determine that the allegations in the complaint do not warrant formal
 25 disciplinary action, in which case the lieutenant governor may determine not to take
 26 further action on the complaint or may determine to advise the notary public of the
 27 appropriate conduct and the applicable statutes and regulations governing the conduct.
 28 If the lieutenant governor determines that formal disciplinary action is not warranted,
 29 the lieutenant governor shall provide the complainant and the notary public with a
 30 written statement of the basis for the determination.

31 (e) If the lieutenant governor finds that formal disciplinary action may be

1 warranted, the lieutenant governor shall refer the matter to the office of administrative
2 hearings for a hearing.

3 (f) The lieutenant governor may delegate the powers under AS 44.50.068 and
4 this section.

5 (g) An appeal from a decision of the lieutenant governor under this section
6 shall be in accordance with the procedures set out in AS 44.62 (Administrative
7 Procedure Act).

8 * Sec. ~~44~~¹² AS 44.50 is amended by adding new section ~~68~~ to read:

9 **Sec. 44.50.071. Handbook.** The lieutenant governor may produce a
10 handbook for commissioned notaries public on the Internet and shall, upon request,
11 distribute the handbook to each person who is commissioned a notary public under
12 this chapter. The handbook must contain a summary of the provisions of this chapter
13 and the regulations adopted under this chapter.

14 **Sec. 44.50.072⁷¹ Confidentiality.** (a) An address, telephone number, and
15 electronic mail address of a notary public or an applicant that is submitted under
16 AS 44.50.032 or 44.50.038 and that is designated by the notary public or applicant as
17 confidential shall be kept confidential. However, a notary public shall provide a
18 nonconfidential address and telephone number at which the notary public can be
19 contacted.

20 (b) Compilations and data bases of those addresses, telephone numbers, and
21 electronic mail addresses of notaries public that are confidential under (a) of this
22 section shall be kept confidential, except that the lieutenant governor may disclose
23 compilations and data bases if the lieutenant governor determines that disclosure is in
24 the public interest.

25 (c) A complaint filed under AS 44.50.069 shall be kept confidential unless the
26 lieutenant governor determines under AS 44.50.069(c) that the complaint alleges
27 sufficient facts to constitute good cause for disciplinary action.

28 **Sec. 44.50.073⁷¹ Regulations.** The lieutenant governor may adopt regulations
29 under AS 44.62 (Administrative Procedure Act) to carry out the purposes of this
30 chapter.

31 * Sec. ~~14~~¹³ AS 44.50 is amended by adding a new section to read:

1 **Sec. 44.50.200. Definitions.** In this chapter, unless the context otherwise
2 requires,

3 (1) "notarial act" means any act that a notary public is authorized to
4 perform under AS 09.63.120 or AS 44.50.060;

5 (2) "notary public" means a person commissioned to perform notarial
6 acts under this chapter.

7 * ~~Sec. 15.~~¹⁴ AS 44.50.030, 44.50.040, 44.50.070, 44.50.080, 44.50.090, 44.50.100,
8 44.50.110, 44.50.120, 44.50.130, 44.50.140, 44.50.170, 44.50.180(c), and 44.50.190 are
9 repealed.

10 * ~~Sec. 16.~~¹⁵ The uncoded law of the State of Alaska is amended by adding a new section to
11 read:

12 **APPLICABILITY.** (a) AS 44.50.010, repealed and reenacted by sec. 7 of this Act,
13 and AS 44.50.032, 44.50.033, 44.50.035, 44.50.036, 44.50.037, and 44.50.039, enacted by
14 sec. 9 of this Act, do not apply to a notary public whose commission is in effect on the day
15 before the effective date of secs. 1 - 11, 13 - 16, and 18 of this Act until the notary public's
16 term of office expires under former AS 44.50.030, the notary public resigns under
17 AS 44.50.067, enacted by sec. 11 of this Act, or the notary public's commission is revoked
18 under AS 44.50.068, enacted by sec. 11 of this Act.

19 (b) Notwithstanding (a) of this section, if a notary public whose commission is in
20 effect on the day before the effective date of secs. 1 - 11, 13 - 16, and 18 of this Act has been
21 incarcerated in a correctional facility for a felony conviction within 10 years before the notary
22 public's term of office expires under former AS 44.50.030, the lieutenant governor may take
23 an action under AS 44.50.068, enacted by sec. 11 of the Act, against the notary public.

24 * ~~Sec. 17.~~¹⁶ The uncoded law of the State of Alaska is amended by adding a new section to
25 read:

26 **TRANSITION: REGULATIONS.** The lieutenant governor may proceed to adopt
27 regulations necessary to implement the changes made by this Act. The regulations take effect
28 under AS 44.62 (Administrative Procedure Act), but not before the effective date of the
29 respective statutory change.

30 * ~~Sec. 18.~~¹⁷ The uncoded law of the State of Alaska is amended by adding a new section to
31 read:

1 CONDITIONAL EFFECT OF AS 44.50.069, ENACTED BY BILL SECTION 12.
 2 Section 12 of this Act takes effect only if a bill is passed by the Twenty-Third Alaska State
 3 Legislature that establishes an office of administrative hearings to conduct adjudicative
 4 administrative hearings and requires the office of administrative hearings to conduct all
 5 adjudicative administrative hearings required under AS 44.50, and the bill is enacted into law.

6 * Sec. 19. If, under sec. 18 of this Act, sec. 12 of this Act takes effect, it takes effect on the
 7 later of

8 (1) one day after the effective date of sec. 11 of this Act; or

9 (2) the effective date of the jurisdictional section of the bill that is passed by
 10 the Twenty-Third Alaska State Legislature that establishes an office of administrative
 11 hearings to conduct adjudicative administrative hearings and requires the office of
 12 administrative hearings to conduct all adjudicative hearings under AS 44.50; in this
 13 paragraph, "jurisdictional section" means the section that sets out the statutes to which the
 14 jurisdiction of the office of administrative hearings applies.

15 * Sec. ¹⁷~~20~~ Section ¹⁶~~17~~ of this Act takes effect immediately under AS 01.10.070(c).

16 * Sec. ¹⁸~~21~~ Except as provided in secs. ¹⁷~~19~~ and ~~20~~ of this Act, this Act takes effect July 1,
 17 2004.

HB 97



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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 20, 2005

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

Dear Speaker Harris:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the authority to take oaths, affirmations, and acknowledgments in the state, to notarizations, verifications, and acknowledgements, to notaries public, and to fees for issuing certificates with the seal of the state affixed.

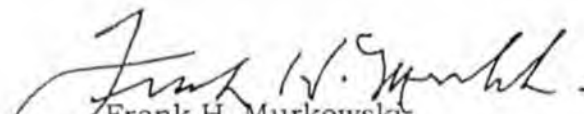
The primary purpose of the bill is to comprehensively update AS 44.50, the chapter that governs notaries public, which includes among its provisions the qualifications to become a notary public, duties of notaries public, and liability in the event of misconduct or neglect. AS 44.50 has not been comprehensively revised since it was enacted in 1961. These changes will allow the Lieutenant Governor to: focus attention on web-based education for notaries, allow businesses which employ large groups of notaries to keep track of their terms of office, lay a foundation for e-signatures for the future, and continue to provide information to notaries without internet access. Sections 7-14 of the bill would repeal obsolete provisions in AS 44.50, update antiquated language, and add new provisions as needed.

Sections 1-5 of the bill would update statutes in AS 09, the Alaska civil code, relating to the taking of oaths, affirmations, and acknowledgements and to notaries' responsibilities when notarizing, verifying, and acknowledging signed instruments. Section 6 of the bill would change the fee for the lieutenant governor's issuance of a certificate with the seal of the state affixed. Sections 15 and 16 of the bill contain applicability and transition provisions, respectively.

A more detailed description of the bill is found in a sectional analysis of the bill available from the office of the lieutenant governor.

I urge your prompt and favorable action on this measure.

Sincerely yours,


Frank H. Murkowski
Governor

Enclosure

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
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MEMORANDUM

January 28, 2005

SUBJECT: CSHB 97(STA) relating to notaries public and other related matters (Work Order No. 24-GH1008\G)

TO: Representative Paul Seaton
Chair of the House State Affairs Committee
Attn: Louie

FROM:  Theresa Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above.

1. Changes. Semicolons replace commas in sec. 44.50.032(b)(2) and (c)(2) to make the paragraphs clearer to read. An addition ("; delegation") has been made to the catchline of sec. 44.50.069. In sec. 44.50.069(e), the parentheses have been removed and "created under" added. In the definition of "notary public" in sec. 44.50.200(1), the language accompanying the cross-referenced sections has been rewritten to be more precise.

2. Suggested change. The introductory language to sec. 44.50.060 (notary public duties) uses the mandatory word, "shall." I suggest replacing "shall" with "may" since a notary public, even though commissioned to act as a notary public, is not required to exercise the duties of a notary public.

If I may be of further assistance, please advise.

TLB:med
05-063.med

Enclosure