

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 HSTA 12375

LEGISLATIVE RESEARCH REPORT

JANUARY 16, 2008



REPORT NUMBER 08.095

FLAGS AT STATE FACILITIES

PREPARED FOR REPRESENTATIVE ANDREA DOLL

BY DANIEL LESH, LEGISLATIVE ANALYST

You asked for an estimate of the total number of Alaska and United States flags currently on display or on hand at state facilities and the number of flags purchased annually by the state. In Table 1, we provide the information we were able to collect in the time frame allotted.

Table 1: Alaska and United States Flags at State Facilities

Department	Displayed	On Hand	Annual Purchases	Origin
Office of the Governor	2	172	215	unknown
Legislature		62	8	US
Administration	20	31	18	unknown
Commerce, Community, and Economic Development	18	84	0	US
Corrections	24	20	32	US
Education and Early Development				
Environmental Conservation	2	0	0	US
Fish and Game	2	0	0	unknown
Health and Social Services				
Labor and Workforce Development	0	10 ⁽¹⁾	0	unknown
Law	6	0	2	unknown
Military and Veteran's Affairs	N/A	0	0	unknown
Natural Resources	40	11	14	US
Public Safety		28	35	US
Revenue				
Transportation	118	52	148	US
University of Alaska				
TOTALS	232	563	472	

NOTES and SOURCES These data are estimates provided by procurement officers at each department. Flags displayed at Alaska National Guard Armories are purchased with federal funds and are noted as N/A above. We did not contact state entities that conduct their purchasing independent of executive branch departments or the Legislature, including, among others, the Alaska Railroad, the Alaska Permanent Fund Corporation, and the Alaska Housing Finance Corporation. Empty cells in this table represent a lack of response. All flags listed above are three by five feet or larger in size.

Please do not hesitate to contact us if you have questions or need additional information.

History of American Flag.

For more than 200 years, the American flag has been the symbol of our nation's strength and unity. It's been a source of pride and inspiration for millions of citizens. And the American Flag has been a prominent icon in our national history. Here are the highlights of its unique past.

On January 1, 1776, the Continental Army was reorganized in accordance with a Congressional resolution which placed American forces under George Washington's control. On that New Year's Day the Continental Army was laying siege to Boston which had been taken over by the British Army. Washington ordered the Grand Union flag hoisted above his base at Prospect Hill. It had 13 alternate red and white stripes and the British Union Jack in the upper left-hand corner (the canton).

In May of 1776, Betsy Ross reported that she sewed the first American flag.

On June 14, 1777, in order to establish an official flag for the new nation, the Continental Congress passed the first Flag Act: "Resolved, That the flag of the United States be made of thirteen stripes, alternate red and white; that the union be thirteen stars, white in a blue field, representing a new Constellation."

Between 1777 and 1960, Congress passed several acts that changed the shape, design and arrangement of the flag and allowed for additional stars and stripes to be added to reflect the admission of each new state.

- Act of January 13, 1794 - provided for 15 stripes and 15 stars after May 1795.
- Act of April 4, 1818 - provided for 13 stripes and one star for each state, to be added to the flag on the 4th of July following the admission of each new state. signed by President Monroe.
- Executive Order of President Taft dated June 24, 1912 - established proportions of the flag and provided for arrangement of the stars in six horizontal rows of eight each, a single point of each star to be upward.
- Executive Order of President Eisenhower dated January 3, 1959 - provided for the arrangement of the stars in seven rows of seven stars each, staggered horizontally and vertically.
- Executive Order of President Eisenhower dated August 21, 1959 - provided for the arrangement of the stars in nine rows of stars staggered horizontally and eleven rows of stars staggered vertically.

Today the flag consists of thirteen horizontal stripes, seven red alternating with 6 white. The stripes represent the original 13 colonies, the stars represent the 50 states of the Union. The colors of the flag are symbolic as well: Red symbolizes Hardiness and Valor, White symbolizes Purity and Innocence and Blue represents Vigilance, Perseverance and Justice.

StarTribune.com MINNEAPOLIS - ST. PAUL, MINNESOTA

New law for Old Glory

Associated Press

Last update: July 03, 2007 – 1:07 PM

At American Legion Post 65 in Rosemount, visitors can drop off worn U.S. flags knowing they'll be disposed of with the proper respect. On their way out, they can buy a new 3-by-5 flag for \$20 or a 4-by-6-footer for \$30.

Made in America, of course.

"That's our flag. It belongs here in the United States; it should be made in the United States," Air Force veteran Bob Racette said while fingering a flag in a corner of the legion hall bar.

By year's end, a new law will require every Old Glory sold in Minnesota stores to be American made. It's the latest and strongest attempt by states to stem imports of foreign-made U.S. flags.

In Arizona, schools and public colleges were required starting July 1 to outfit every classroom from junior high up with a made-in-the-USA flag. Tennessee requires all U.S. flags bought via state contract to be made here, and similar bills are moving forward in both New Jersey and Pennsylvania.

The Fourth of July is considered peak season for flag sales with millions of them lining parade routes and flying above back yard barbecues.

Most of the major domestic flag makers are privately held companies that don't release their sales figures, so it's difficult to gauge the inroads being made by foreign manufacturers.

The U.S. Census bureau estimates that \$5.3 million worth of U.S. flags were imported from other countries in 2006, mostly from China. That figure has been steady over the past few years. The big exception was in 2001 when \$51.7 million in U.S. flags were brought into the country, most on the heels of the Sept. 11 terrorist attacks.

Sandy Van Leiu, chairman of the Flag Manufacturers Association of America, said the imports are cause for concern even though U.S. companies still dominate the flag market.

"That door is going to keep opening," said Van Leiu, a sixth-generation executive at the family-owned Annin & Co., a 160-year-old business that supplies retailers like Wal-Mart. "It starts small, then it gets big. You're just opening Pandora's box."

To help consumers identify the origin of their flags, the association created a certification program two years ago that bestows a seal-of-approval logo to flags made with domestic fibers and labor.

Whether Minnesota's law violates international trade agreements — and whether anything would be done about it — is an open question.

Under World Trade Organization standards, the U.S. government can't treat foreign products less favorably than those produced within its boundaries, said Peter Morici, a business professor at the University of Maryland and the former chief economist for the U.S. International Trade Commission. How the rules apply to states is debatable, he said.

Morici said a foreign business harmed by the law would have to get its government to take action against the U.S. government. Robert Litan, a senior fellow at the Brookings Institution think tank, said while the likelihood of Minnesota's law sparking a dispute is slim the symbolic message is hard to miss.

"It's symptomatic of an anti-foreign bias moving through the country right now. It would not surprise me if other states copied it," Litan said. "It's hard to oppose politically."

When the bill was debated this spring, some legislators argued it sent the wrong message to close Minnesota's borders to foreign-produced flags.

"That flag should be made throughout the world because it is our message to the world that there is hope for freedom and justice," Republican Rep. Dan Severson said at the time.

The law's sponsor, Democratic Rep. Tom Ruukavina, said the flag deserves extra protection. To celebrate his legislative victory, he plans to hand out 1,000 miniature flags at Fourth of July parades in his district.

"The biggest honor that you can give the flag is that it be made by American workers in the United States of America," he said. "Nothing is more embarrassing to me than a plastic flag made in China. This replica of freedom we so respect should be made in this country."

The new law doesn't spell out a penalty for violators. In Minnesota, the default punishment for prohibited acts is a misdemeanor offense, carrying up to a \$1,000 fine and 90 days in jail.

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The American Legion



★ NATIONAL HEADQUARTERS ★ PO BOX 1055 ★ INDIANAPOLIS, INDIANA 46206-1055 ★
(317) 630-1200 ★ FAX (317) 630-1223 ★ WEBSITE www.legion.org ★

January 16, 2008
46

The Honorable Bob Lynn
State Capitol Room 104
Juneau, AK 99801-1182

Dear Representative Lynn:

Thank you for allowing us to offer comments on Alaska House Bill No. 269 requiring the state of Alaska to procure United States and Alaska flags manufactured in the United States and requiring state buildings and schools to display only United States flags and Alaska flags manufactured in the United States.

The American Legion has a long standing resolution encouraging our membership, the general public, and all local, state and federal agencies to purchase and display only American manufactured United States flags. The resolution also calls upon the United States Congress to enact legislation prohibiting the importation of foreign made United States flags.

On behalf of the 2.7 million members of The American Legion we appreciate your patriotic concern.

Sincerely,

JOSEPH E. CAOQUETTE
Chairman
National Americanism Commission

Cc: Peggy G. Dettori, National Vice Commander, The American Legion
Robert W. Spanogle, National Adjutant, The American Legion
James E. Pisa, Department Commander, The American Legion of Alaska
W. E. Gene Franks, Department Adjutant, The American Legion of Alaska
James L. Van Horn, NEC-man, The American Legion of Alaska
Marty Justis, Director, Americanism and Children & Youth Division
Ron Engel, Deputy Director, Americanism and Children & Youth Division

EIGHTY-EIGHTH NATIONAL CONVENTION
THE AMERICAN LEGION
SALT LAKE CITY, UTAH
AUGUST 29, 30, 31, 2006

RESOLUTION NO: 345

OPPOSE FOREIGN MANUFACTURE OF AMERICAN FLAGS

COMMITTEE: AMERICANISM

Consolidated with Res. No. 290 (MA) - 2006 National Convention

WHEREAS, The Flag of the United States is a uniquely American symbol; and

WHEREAS, The Flag Code of the United States as listed in Title 4, United States Code, Chapter I, subsection 8(j) states that: "The flag represents a living country and is itself considered a living thing"; and

WHEREAS, It has come to our attention that foreign manufacturers are making and importing United States Flags and/or merchandise which violate certain provisions of the United States Flag Code; and

WHEREAS, Resolution 191, 1982 National Convention, Chicago, Illinois resolves that The American Legion promote through its Posts and Departments the purchase of American manufactured goods; now, therefore, be it

RESOLVED, By The American Legion in National Convention assembled in Salt Lake City, Utah, August 29, 30, 31, 2006, That The American Legion encourages its membership, the general public, and all local, state and federal government agencies to purchase and display only American manufactured Flags of the United States; and, be it finally

RESOLVED, That The American Legion seek legislation through the United States Congress to prohibit the importation of foreign made Flags of the United States.



NATIONAL CONFERENCE
of STATE LEGISLATURES

The Forum for America's Ideas

7700 EAST FIRST PLACE DENVER, COLORADO 80230
303-364-7700 FAX: 303-364-7800

States Requiring American Flags to be Made in America
Statutes and 2007 Legislation
September 14, 2007

Statutes

Arizona

Ariz. Rev. Stat. Ann. §15-506

<http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/15/00506.01.htm&Title=15&DocType=ARS>

School districts and charter schools shall: Purchase United States flags that are manufactured in the United States and that are at least two feet by three feet and hardware to appropriately display the United States flag and for grades seven through twelve, purchase a legible copy of the Constitution of the United States and the Bill of Rights that is manufactured in the United States.

Ariz. Rev. Stat. Ann § 15-1445(16)

<http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/15/01445.htm&Title=15&DocType=ARS>

A district board shall . . . Beginning July 1, 2007, purchase United States flags that are manufactured in the United States and that are at least two feet by three feet and hardware to appropriately display the United States flag and purchase a legible copy of the Constitution of the United States and the Bill of Rights that is manufactured in the United States, and display the flags in each classroom in accordance with title 4 of the United States Code and display a legible copy of the Constitution of the United States and the Bill of Rights adjacent to the flag.

Ariz. Rev. Stat. Ann § 15-1626(17)

<http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/15/01626.htm&Title=15&DocType=ARS>

The board shall . . . Beginning July 1, 2007, purchase United States flags for each classroom that are manufactured in the United States and that are at least two feet by three feet and hardware to appropriately display the United States flag and purchase a legible copy of the Constitution of the United States and the Bill of Rights, and display

the flags in each classroom in accordance with title 4 of the United States Code and display a legible copy of the Constitution of the United States and the Bill of Rights adjacent to the flag.

Massachusetts

Annotated Laws of Massachusetts GL ch. 71 § 69

<http://www.mass.gov/legis/laws/mgl/71-69.htm>

This school committee shall provide for each schoolhouse under its control, which is not otherwise supplied, flags of the United States of silk or bunting not less than two feet long, such flags or bunting to be manufactured in the United States, and suitable apparatus for their display as hereinafter provided.

Tennessee

Tenn. Code Ann. § 4-1-301(d)

<http://michie.lexisnexis.com/tennessee/lpext.dll?f=templates&fn=main-h.htm&cp=>

All official flags of the United States, purchased under a state contract, shall be manufactured in the United States.

2007 Legislation

Minnesota

H.F. 122 ~~2007~~ H.F. 122, Chapter No. 135

Signed by governor 05/25/07, Chapter No. 135

(to be codified at Minn. Stat. §325E.65) Effective 01/01/08

Relates to commerce; regulates sales of American flags and related items.

No person in the business of offering goods at retail may sell or offer for sale in this state an American flag unless the flag was manufactured in the United States of America. Up to \$1,000 fine and 90 days in jail (under state law's default punishment for prohibited acts)

New Jersey

A.B. 2939

http://www.njleg.state.nj.us/2006/Bills/A3000/2939_11.PDF

S.B. 2595

http://www.njleg.state.nj.us/2006/Bills/S3000/2595_11.PDF

Requires that any United States or State of New Jersey flag purchased with state funds be manufactured in the United States.

Pennsylvania

H.B. 419

<http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2007&sessInd=0&billBody=H&billTyp=B&billNbr=0419&pn=1269>

Promotes the general welfare and stimulates the economy of the state by requiring that all government agencies purchase only flags manufactured in the United States. Relates to contract requirements for procurement of flags. Imposes a penalty.

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
FAX (907) 455-2029
Mail Stop 3101

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

MEMORANDUM

March 3, 2008

SUBJECT: Removing penalties for failure to purchase flags manufactured in the United States (CSHB 269(STA) Work Order No. 25-1013\L)

TO: Representative Bob Lynn
Chair of the House State Affairs Committee
Attn: Nancy Manly

FROM: Dennis C. Bailey *DCB*
Legislative Counsel

The enclosed committee substitute follows your request to remove penalties that may be imposed for failure to purchase flags manufactured in the United States under the provisions of CSHB 269(STA). Please note the following issues.

I was unable to find a statutory penalty for failure to display a flag at school buildings under AS 14.03.130, which is amended by sec. 1, or AS 44.09.030, which is amended by sec. 7 of the bill.

AS 36.30.687 provides a penalty for misrepresentation and fraud in relationship to the procurement code. I did not amend that section because it is not a penalty for failure to purchase a U.S. flag. The text of the section reads as follows:

Sec. 36.30.687. Misrepresentations, fraud, and attempted fraud. (a) A person who makes or uses in support of a contract claim under this chapter, a misrepresentation, or who practices or attempts to practice a fraud, at any stage of proceedings relating to a procurement or contract claim under this chapter

(1) forfeits all claims relating to that procurement or contract; and

(2) is liable to the state for reimbursement of all sums paid on the claim, for all costs attributable to review of the claim, and for a civil penalty equal to the amount by which the claim is misrepresented.

(b) The procurement officer, commissioner or court shall make specific findings of misrepresentation, attempted fraud, or fraud before declaring a forfeiture under (a)(1) of this section.

(c) Suits to recover costs and penalties under (a)(2) of this section must be commenced within six years after the discovery of the misrepresentation, fraud, or attempted fraud.

(d) A person who in a matter relating to a procurement or a

Representative Bob Lynn

March 3, 2008

Page 2

contract claim under this chapter makes a misrepresentation to the state through a trick, scheme, or device is guilty of a class C felony.

(e) In this section, "misrepresentation" means a false or misleading statement of material fact, or conduct intended to deceive or mislead concerning material fact, whether it succeeds in deceiving or misleading.

If you would like to also amend this section, please let me know.

Section 5 is new in this version and makes a conforming amendment.

If I may be of further assistance, please advise.

DCB:lmb
08-047.lmb

Enclosure

Alaska State Legislature

Chairman
State Affairs Committee

Vice-Chairman
Economic Development, Trade & Tourism
Committee

Member
Judiciary Committee
Joint Armed Services Committee

Finance Subcommittees
Corrections
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety



A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative Bob Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" RepBobLynnBlog.com

Session:
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Juneau, AK 99801-1182

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716 W. 4th Ave., #650
Anchorage, AK 99501-2133

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Changes from Version K to Version L HB 269

Version L amends Version K to remove any unintended penalties of this bill.

1. New Section 3 was inserted to remove penalties in the Election Code that may be imposed for failure to purchase flags manufactured in the United States.
2. Page 2 Line 11 Section 4 is Version K's Section 3. Nothing changed.
3. New Section 5 was inserted to make a conforming amendment.
4. New Section 6 was inserted to remove penalties in the Procurement Code that may be imposed for failure to purchase flags manufactured in the United States.
5. Page 3 Line 18 Section 7 is Version K's Section 4. Nothing changed.
6. Page 3 Line 21 Section 8 is Version K's Section 5. Nothing changed.

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Alaska State Legislature

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6. Page 3 Line 21 Section 8 is Version K's Section 5. Nothing changed.

7/2/2007

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25-LS103L
Bailey
3/3/08

CS FOR HOUSE BILL NO. 269(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES LYNN, Fairclough, Dahlstrom

A BILL

FOR AN ACT ENTITLED

1 "An Act requiring state institutions and public schools to procure United States and
2 Alaska flags manufactured in the United States." *OK*

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

4 * **Section 1.** AS 14.03.130 is amended by adding a new subsection to read:

5 *OK* (c) The flags purchased for display as required by this section must be
6 manufactured in the United States, as that phrase is defined in AS 36.30.321.

7 * **Sec. 2.** AS 15.15.060(c) is amended to read:

8 (c) The director shall pay the cost of necessary election expenses incurred in
9 securing a place for holding the election, a suitable ballot box, and an adequate
10 *OK* number of voting booths, screens, national flags, and other supplies. The national flag
11 shall be displayed over or near the entrance of each polling place. A flag that is
12 purchased for display as required by this subsection must be manufactured in the
13 United States, as that phrase is defined in AS 36.30.321.

14 * **Sec. 3.** AS 15.56.070(a) is amended to read:

15 new *to require manufactured products*

(a) A person commits the crime of election official misconduct in the first degree if, while an election official, the person

(1) intentionally fails to perform an election duty or knowingly does an unauthorized act with the intent to affect an election or its results; in this subsection, failure to purchase a flag for display that is manufactured in the United States under AS 15.15.060(c) is not considered failure to perform an election duty;

(2) knowingly permits or makes or attempts to make a false count of election returns; or

(3) intentionally conceals, withholds, destroys, or attempts to conceal, withhold, or destroy election returns.

* Sec. 4. AS 36.30 is amended by adding a new section to article 4 to read:

Old Sec. 3 **Sec. 36.30.321. United States manufactured flags.** The state shall procure only United States flags or Alaska flags that are manufactured in the United States. A contract for the procurement of a flag by the state must specify that the flag must be manufactured in the United States. In this section, "manufactured in the United States" means the flag was assembled in facilities in the United States.

* Sec. 5. AS 36.30.640 is amended to read:

Sec. 36.30.640. Causes for debarment or suspension. The causes for debarment or suspension include

(1) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;

(2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a state contractor;

(3) conviction or civil judgment finding a violation under state or federal antitrust statutes;

(4) violation of contract provisions of a character that is regarded by the commissioner to be so serious as to justify debarment action, such as

(A) knowing failure without good cause to perform in

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accordance with the specifications or within the time limit provided in the contract; or

(B) failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for debarment;

(5) for violation of the ethical standards set out in law or regulation;

(6) for a violation of this chapter punishable under AS 36.30.930(a)(2) [AS 36.30.930(2)]; and

(7) any other cause listed in regulations of the commissioner determined to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity for a cause listed in the regulations.

* Sec. 6. AS 36.30.930 is amended by adding a new subsection to read:

(b) Notwithstanding the provisions of (a) of this section, a person who fails to procure flags manufactured only in the United States under (a) of this section may not be penalized.

* Sec. 7. AS 44.09.030 is amended by adding a new subsection to read:

old sec. 4 (d) The flags purchased for display under (b) of this section must be manufactured in the United States, as that phrase is defined in AS 36.30.321.

* Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to read: *old sec. 5*

TRANSITIONAL PROVISIONS. Notwithstanding AS 14.03.130(c), added by sec. 1 of this Act, AS 15.15.060(c), as amended by sec. 2 of this Act, and AS 44.09.030(d), added by sec. 7 of this Act, a flag that was not manufactured in the United States may be displayed under AS 14.03.130, AS 15.15.060, or AS 44.09.030 on or after the effective date of this Act if it was purchased before the effective date of this Act. AS 36.30.321, added by sec. 4 of this Act, applies to purchases of flags on or after the effective date of this Act.

Procurement Code?

Library

LEGAL SERVICES

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

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Sec. 36.30.687. Misrepresentations, fraud, and attempted fraud. (a) A person who makes or uses in support of a contract claim under this chapter, a misrepresentation, or who practices or attempts to practice a fraud, at any stage of proceedings relating to a procurement or contract claim under this chapter

(1) forfeits all claims relating to that procurement or contract; and

(2) is liable to the state for reimbursement of all sums paid on the claim, for all costs attributable to review of the claim, and for a civil penalty equal to the amount by which the claim is misrepresented.

(b) The procurement officer, commissioner or court shall make specific findings of misrepresentation, attempted fraud, or fraud before declaring a forfeiture under (a)(1) of this section.

(c) Suits to recover costs and penalties under (a)(2) of this section must be commenced within six years after the discovery of the misrepresentation, fraud, or attempted fraud.

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Representative Bob Lynn

March 3, 2008

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If I may be of further assistance, please advise.

DCB:lmb
08-047.lmb

Enclosure

HB

277

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Alaska State Legislature

Chairman
State Affairs Committee

Vice-Chairman
Economic Development, Trade & Tourism
Committee

Member
Judiciary Committee
Joint Armed Services Committee

Finance Subcommittees
Corrections
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety



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To: Legal Services

Fax #: 2029

From: Nancy Manly x2794
Alaska State Capitol, room 104
Juneau, AK 99801-1182

of Pages (including cover): 6

Phone: 907-465-4931

Fax: 907-465-4316

Re: HB 277 PERMANENT ABSENTEE VOTING

2/09/08

CS for House Bill No. 277 passed out of the House State Affairs Committee today. Please draft a final CS from 25-LS1095E. Thanks.

- 1) Waiting for a final CS
- 2) Copy Committee report
- 3) Take to Chief Clerk

25-LS1095E
Bullard
1/25/08

CS FOR HOUSE BILL NO. 277()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES BUCH, LYNN, HOLMES, CHENAULT AND GRUENBERG

A BILL
FOR AN ACT ENTITLED

1 **"An Act establishing a permanent absentee voting option for qualified voters; and**
2 **providing for an effective date."**

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

4 *** Section 1.** AS 15.07.127 is amended by adding a new subsection to read:

5 (b) The director shall maintain the list under (a) of this section so that the
6 names of persons who have the status of permanent absentee voters under
7 AS 15.20.085 may be readily identified.

8 *** Sec. 2.** AS 15.07.130(e) is amended to read:

9 (e) For purposes of (b) and (d) of this section, a voter "appears to vote" if

10 (1) the voter is present at a polling place or at an absentee voting
11 station at a time when the polling place or absentee voting station is operating, for the
12 purpose of casting a vote;

13 (2) the voter applies to the division

14 (A) to obtain an absentee ballot; or

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(B) for permanent absentee voter status under

AS 15.20.085; or

(3) in an election conducted by mail under AS 15.20.800, a voter who has not received a ballot by mail makes a timely request to the division for a ballot.

* Sec. 3. AS 5.20 is amended by adding a new section to read:

Sec. 15.20.085. Permanent absentee voting. (a) A qualified voter may apply to the director in person, by mail, or by facsimile, scanning, or other electronic transmission, as provided in AS 15.07.070, for permanent absentee voting status. The application must include the address to which absentee ballots are to be returned, the applicant's full Alaska residence address, and the applicant's signature.

(b) A person may supply to a voter a permanent absentee voting application form with a political party or group affiliation indicated only if the voter is already registered as affiliated with the political party or group indicated. Only the voter may mark the voter's choice of primary ballot on the permanent absentee voting application. A person supplying a permanent absentee voting application form may not design or mark the application in a manner that suggests choice of one ballot over another, except that ballot choices may be listed on an application as authorized by the division. The application must be made on a form prescribed or approved by the director. The voter or registration official shall submit the application directly to the division of elections. In this subsection, "directly to the division of elections" has the meaning given in AS 15.20.081(a). However, nothing in this subsection is intended to prohibit a voter from giving a completed permanent absentee voting application to a friend, relative, or associate for transfer to the United States Postal Service or a private commercial delivery service for delivery to the division.

(c) For each state primary, general, and special election, and each other election for which the state has responsibility for the conduct of the election, the director or an election supervisor shall send an absentee ballot to each voter designated as a permanent absentee voter for that election and who is otherwise qualified to vote in that election. The director or election supervisor shall send the ballot to the permanent mailing address set out on the official registration list unless the voter has notified the director or an election supervisor of a different address to which the ballot

1 should be sent. The director or an election supervisor shall send the absentee ballots

2 (1) by first class, nonforwardable mail;

3 (2) not later than the 15th day before the election; and

4 (3) with an accompanying explanation of the absentee voting
5 procedure under AS 15.20.020.

6 (d) The director shall make available a change of address form for permanent
7 absentee voters.

8 (e) Nothing in this section requires the director or an election supervisor to
9 send an absentee ballot under (c) of this section to a permanent absentee voter after the
10 director or election supervisor receives actual notice that mail sent to the voter's
11 permanent mailing address or a different address provided by a voter under this
12 section is undeliverable to the voter at the address.

13 (f) A permanent absentee voter to whom a ballot is provided under this section
14 may cast the ballot under AS 15.70.081(d) and (e).

15 (g) Ballots voted under this section shall be reviewed under procedures
16 established for the review of absentee ballots under AS 15.20.201 and 15.20.203.

17 (h) Nothing in this section limits a voter's eligibility to vote

18 (1) in person at a precinct under AS 15.15.195 or 15.15.198;

19 (2) in person before an absentee voting official under AS 15.20.061;

20 (3) early under AS 15.20.064; or

21 (4) by electronic transmission under AS 15.20.066.

22 * Sec. 4. AS 15.56.030(a) is amended to read:

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

25 (1) uses, threatens to use, or causes to be used force, coercion,
26 violence, or restraint, or inflicts, threatens to inflict, or causes to be inflicted damage,
27 harm, or loss, upon or against another person to induce or compel that person to vote
28 or refrain from voting in an election;

29 (2) knowingly pays, offers to pay, or causes to be paid money or other
30 valuable thing to a person to vote or refrain from voting in an election;

31 (3) solicits, accepts, or agrees to accept money or other valuable thing

1 with the intent to vote for or refrain from voting for a candidate at an election or for an
2 election proposition or question;

3 (4) violates AS 15.20.081(a) or 15.20.085(b) by knowingly supplying
4 or encouraging or assisting another person to supply to a voter a permanent absentee
5 voting or [AN] absentee ballot application form with a political party or group
6 affiliation indicated if the voter is not already registered as affiliated with that political
7 party or group, and the person has been previously convicted of unlawful interference
8 with voting in the second degree under AS 15.56.035(a)(5);

9 (5) knowingly designs, marks, or encourages or assists another person
10 to design or mark a permanent absentee voting or [AN] absentee ballot application
11 in a manner that suggests choice of one ballot over another as prohibited by
12 AS 15.20.081(a) or 15.20.085(b), and the person has been previously convicted of
13 unlawful interference with voting in the second degree under AS 15.56.035(a)(6); or

14 (6) knowingly submits or encourages or assists another person to
15 submit a permanent absentee voting or [AN] absentee ballot application to an
16 intermediary who could control or delay the submission of the application to the
17 division of elections or who could gather data from the application form as prohibited
18 by AS 15.20.081(a) or 15.20.085(b), and the person has been previously convicted of
19 unlawful interference with voting in the second degree under AS 15.56.035(a)(7).

20 * Sec. 5. AS 15.56.035(a) is amended to read:

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

23 (1) has an official ballot in possession outside of the voting room
24 unless the person is an election official or other person authorized by law or local
25 ordinance, or by the director or chief municipal elections official in a local election;

26 (2) makes, or knowingly has in possession, a counterfeit of an official
27 election ballot;

28 (3) knowingly solicits or encourages, directly or indirectly, a registered
29 voter who is no longer qualified to vote under AS 15.05.010, to vote in an election;

30 (4) as a registration official

31 (A) knowingly refuses to register a person who is entitled to

1 register under AS 15.07.030; or

2 (B) accepts a fee from an applicant applying for registration;

3 (5) violates AS 15.20.081(a) or 15.20.085(b) by knowingly supplying
4 or encouraging or assisting another person to supply to a voter a permanent absentee
5 voting or [AN] absentee ballot application form with a political party or group
6 affiliation indicated if the voter is not already registered as affiliated with that political
7 party or group;

8 (6) knowingly designs, marks, or encourages or assists another person
9 to design or mark a permanent absentee voting or [AN] absentee ballot application
10 in a manner that suggests choice of one ballot over another as prohibited by
11 AS 15.20.081(a) or 15.20.085(b); or

12 (7) knowingly submits or encourages or assists another person to
13 submit a permanent absentee voting or [AN] absentee ballot application to an
14 intermediary who could control or delay the submission of the application to the
15 division of elections or who could gather data from the application form as prohibited
16 by AS 15.20.081(a) or 15.20.085(b).

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

19 TRANSITIONAL PROVISIONS: REGULATIONS. The director of elections may
20 proceed to adopt or amend regulations as necessary to implement the changes made by this
21 Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
22 before the effective date of the law implemented by the regulations.

23 * Sec. 7. Section 6 of this Act takes effect immediately under AS 01.10.070(c).

24 * Sec. 8. Except as provided in sec. 7 of this Act, this Act takes effect January 1, 2009.

ALASKA STATE LEGISLATURE

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REPRESENTATIVE BOB BUCH

Representative_Bob_Buch@legis.state.ak.us

HB 277

An Act establishing a permanent absentee voting option for qualified voters

HB 277 will streamline the absentee voting process for Alaskans by giving voters the option to register for permanent absentee voting status for state elections. Once a voter is on the permanent absentee voter roll, they won't have to fill out an absentee request form for each election cycle. Instead, an absentee ballot will be automatically sent to them by the Division of Elections.

HB 277 does not change anyone's voting rights. Voters can still request a one-time absentee ballot, just as they can now. Voters can still vote at their regular voting places if they so choose. HB 277 makes voting more convenient for voters. It also streamlines the administrative process for the Division of Elections.

HB 277 does not change any of the security or evaluation procedures that are already in place in Alaska statutes for handling absentee ballots; all of the provisions currently in place for absentee ballots would apply to permanent absentee ballots. HB 277 includes a provision for removal from the permanent absentee roll if the Division of Elections receives notice that mail sent to the voter's address is undeliverable.

HB 277 does not apply to local elections. It only applies only to primary, general and special elections, and any election for which the state has the responsibility for the conduct of the election.

HB 277 has an effective date of January 1, 2009 due to the implementation of a new voter registration system in May of 2009. The new system will be able to handle permanent absentee voting, according to the director of the Division of Elections.

Thank you for your consideration.

ALASKA STATE LEGISLATURE

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REPRESENTATIVE BOB BUCH

Representative_Bob_Buch@legis.state.ak.us

Sectional Analysis of HB 277

Section 1

Amends AS 15.07.127 by adding a new subsection (b) that requires the Director of the Division of Elections to make readily identifiable on the Master Register those people who have the status of permanent absentee voter.

Section 2

Amends AS 15.07.130 (e) by adding (B) which states that a voter who applies to the Division of Elections for a permanent absentee voter status qualifies as a voter who "appears to vote" under (b) and (d) of this section.

Section 3

Amends AS 15.20 by adding a new section (15.20.085) that:

- (a) enables Alaskan voters to apply to the Division of Elections for permanent absentee voting status;
- (b) allows a person to provide a voter with a permanent absentee voting application form with a political party or group affiliation only if that voter is already registered with the political party or group indicated. This paragraph also sets forth requirements that only the voter may mark the application form, indicate their choice of primary ballot and submit the application to the Division of Elections on a form prescribed by the Director of the Division of Elections;
- (c) requires the Division of Elections to send an absentee ballot to each voter designated as a permanent absentee voter for each state primary, general and special election and any other election for which the state has the responsibility for conducting the election;
- (d) requires the Director of the Division of Elections to make change of address forms available for permanent absentee voters;
- (e) allows the Director of the Division of Elections to not send an absentee ballot if the Division has received notice that mail sent to AN address is undeliverable;

(f) allows a permanent absent voter to cast the ballot under AS 15.20.081(d), which lists persons who are authorized to witness the casting of a ballot, and AS 15.20.081(e), which lists the dates by which the ballot must be cast and the means by which it must be returned to the Division of Elections;

(g) requires that ballots voted under this section be reviewed under the procedures that are established for the review of absentee ballots in AS 15.20.201 and AS 15.20.203;

(h) establishes that nothing in this section prohibits a person from voting early, or in person at a precinct, or in person before an absentee voting official, or by electronic submission as provided by AS 15.15.195, AS 15.15.198, AS 15.20.061, AS 15.20.064 and AS 15.20.066.

Section 4

Amends AS 15.56.030(a) by making the provisions that govern the unlawful interference with voting in the first degree apply to permanent absentee voting.

Section 5

Amends AS 15.56.035(a) by making the provisions that govern the unlawful interference with voting in the second degree apply to permanent absentee voting.

Section 6

Authorizes the Director of the Division of Elections to adopt regulations to implement the changes made in this act.

Section 7

Provides for an immediate effective date for section 6, which will allow the Division of Elections to adopt regulations to implement the changes made in this act.

Section 8

Provides for a January 1, 2009 effective date for all other provisions of this act.

PO Box 9998
Palmer AK 99645-9998



To Whom It May Concern:

The Alaska Chapter of the National Association of Postmasters, of which I am the President, thoroughly supports the effort to establish Permanent Absentee Vote by Mail. We see this as a service to our customers and an aid for people who have trouble reaching polling places to vote.

We feel that this effort will also result in greater participation in the election process and be a benefit to the community.

Sincerely

Dan Carper
Postmaster
Palmer, AK 99645-9998

A handwritten signature in cursive script that reads "Dan Carper".

P.O. BOX 9998
PALMER, AK 99645-9998

The logo for the American Postal Workers Union (APWU) is located in the top left corner. It consists of the letters 'APWU' in a bold, sans-serif font, slanted upwards to the right. A diagonal line runs from the top left to the bottom right, passing behind the letters.

American Postal Workers Union, AFL-CIO

Midnight Sun Area Local 2756, PO Box 190486, Anchorage, Alaska 99519-0486

January 18, 2008

Representative Bob Buch
Alaska State Legislature
716 West 4th Avenue
Anchorage, Alaska 99501

Dear Bob,

The American Postal Workers Union supports HB 277; we see this bill as a way to simplify the voter process and we believe that a greater return in votes cast would result.

Currently Alaskans can apply for an absentee ballot which is valid for one year. HB 277 would allow voters to receive an absentee ballot in perpetuity or until the voter fails to vote in one election cycle, at which point the voter would revert back to the original voter roll.

Permanent absentee vote by mail increases voter turn out and results in more citizens having a stake in their government, provides greater procedural integrity, favors neither of the major political parties, saves taxpayer money, and enhances the democratic process.

Receiving a ballot in the mail two weeks before an election reminds voters an election is imminent. Vote by mail allows voters to study and research candidates and issues and vote at their convenience instead of within the voting booth.

In Alaska weather conditions may cause voters to miss an election, with vote by mail voters will still be able to cast their votes.

With the transient nature of the state, permanent absentee vote by mail would be beneficial. Alaska has fishermen, miners, slope workers, shift workers and construction workers that would have a better opportunity to cast votes as a result of HB277. HB 277 would also be of benefit to the disabled, seniors and working families who face challenges in casting their vote at the polls.

A University of Oregon study shows that demographically young people aged 26-38 voted 44% more often, homemakers vote 51% more often, disabled and unable to work vote 48% more often, and across all demographics voters vote 29% more often.

In 2004, 40% of New Mexico voters used vote by mail, in 2006, nearly 90% of Washington State voters used vote by mail. Oregon passed vote by mail in 1998 with 69% for the initiative and by 2003 had an approval rate of 81%.

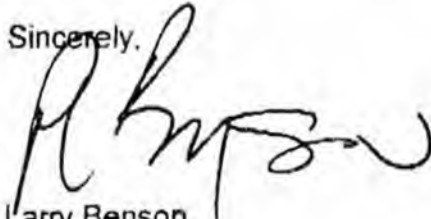
Voting by mail provides a paper trail for each vote cast unlike electronic voting machines which are susceptible to computer hackers and have no such safeguards. Vote by mail provides for accurate cleansing of registration rolls. When the ballot is returned because the voter has moved, their registration can be updated and a new ballot can be mailed to the new address.

County clerks in Oregon report that vote by mail elections cost about 30% less than traditional polling place elections

The sanctity of the ballot is paramount to the process. The United States Postal Service has been delivering vital documents for over two hundred years. The US Postal Service workforce is background checked; drug screened, and held to the US government code of conduct and ethics laws. Additionally the US Postal Service has internal enforcement agencies that work closely with the Federal Bureau of Investigations to protect the public from mail fraud. The US Postal Service is currently the only delivery service to handle absentee ballots and would like to continue as such.

For the above reasons the American Postal Workers Union supports HB 277.

Sincerely,



Larry Benson
President



Project Vote is the leading technical assistance and direct service provider to the voter engagement and civic participation community. Since its founding in 1982, Project Vote has provided professional training, management, evaluation and technical services on a broad continuum of key issues related to voter engagement and voter participation activities in low-income and minority communities.

YOUR BALLOT'S IN THE MAIL: VOTE BY MAIL AND ABSENTEE VOTING

Convenience voting, defined as access to voting at a time and place of the voter's choosing, has grown exponentially in the United States within the last two decades. A majority of states now permit "no-fault" or "no excuse" absentee voting, early in person voting, and vote-by-mail (VBM). This report will discuss the advantages and disadvantages of convenience voting in the form of no excuse absentee voting, permanent no excuse absentee voting, and VBM, all of which use the United States Postal Service as a central component. It will also discuss the concerns of proponents and opponents of mail balloting. Finally, it will suggest methods intended to address concerns about mail-in balloting expressed by legislators, administrators, election advocates, and scholars. Early in person voting, which may or may not include use of the mails as a component, is beyond the scope of this report.

As inevitably occurs with any significant change in a fundamental institution, the rapid expansion of voting outside the precinct polling place has been controversial. Proponents maintain that no excuse absentee and VBM systems increase turnout and may even expand political participation in previously under-represented demographic groups. Other supporters point out that convenience voting permits voters to study the ballot and issues more closely and make more informed choices. Opponents decry the greater opportunity for election fraud that may exist in a mail ballot system, fraudulent activities such as vote buying, coercion or undue influence on voters by family or political operatives, and, not least of all, the interception of ballots. Others raise valid concerns about the reliability of mail service in large urban areas.

Many opponents complain that mail-in balloting comes at the cost of losing the communal, civic aspect of voting at a neighborhood polling place. As Norman J. Ornstein of the American Enterprise Institute framed the argument: "[Voting] should be a meaningful experience, where citizens congregate with their neighbors and affirm their joint commitment to society... Reducing the vote to the equivalent of filling out a Publisher's Clearinghouse lottery cheapens the experience." On the other hand, proponents point out that mail-in balloting can be seen "kitchen table voting" which opens opportunities for political discourse among family and friends. The argument that mail-in balloting is detrimental to civic involvement, one researcher contends, "ignores the rich "togetherness" that can be achieved by voting at home," and fails to recognize "that there are positive benefits from the increased deliberative environment of vote by mail."²

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Vote by Mail and Absentee Voting

Issues in Election Administration: Policy Brief Number 12

07.09.07

Regardless of the relative merits of the arguments for and against mail-in balloting, as far as the voting public is concerned, the train has left the station. Convenience, as history demonstrates, trumps tradition. Still, it may be wise to slow the train down and carefully consider where this particular train may take us. While voters have generally approved of mail-in balloting, states that have adopted some form of mail balloting have encountered significant problems unique to mail-in systems. In addition, the hoped for increase in voter turnout and expanded political participation by under-represented groups has not materialized.

Oregon voters overwhelmingly voice approval of the state's all VBM system. In California, which provides no excuse absentee voting and VBM elections, 46.9 percent of ballots cast in the 2006 Congressional election were absentee ballots.³ In Washington, 89 percent of voters voted by mail in the 2006 general election. Of Washington's 39 counties, 35 vote entirely by mail as of this writing. Of the four counties that maintain poll sites, 77 percent of the ballots in the 2006 General Election were cast by absentee voters.⁴

These usage and approval statistics do not in themselves demonstrate, however, that absentee and by mail voting are without significant problems. All that they reveal is that given the opportunity, a great many voters prefer the ease of mailing in or dropping off their ballot at their convenience to voting at a specified place and time. If, as the high level of voter approval suggests, mail-in balloting in some form is here to stay, the critical question then becomes not whether states should sanction mail-in balloting, (more than half already do) but how can states conduct mail-in ballot elections to ensure ballot integrity and unhindered access for voters, particularly urban, minority, and lower-income populations.⁵ Another crucial question is whether states with more dense, heterogeneous populations should follow Oregon's lead and adopt all VBM systems as opposed to hybrid vote-by-mail systems in which both VBM and traditional place voting are available.

Definitions

For the purposes of this discussion, convenience voting excludes traditional absentee voting in which a voter must be unable to get to the polls on election day because of disability, age or absence in order to be eligible to vote absentee. The categories of voting addressed include: (1) no-excuse absentee voting, in which a voter may request an absentee ballot without stating a reason, (2) permanent no-excuse absentee voting, in which a voter can request to be placed permanently on the absentee list without stating a reason, and (3) VBM systems in which mail ballots replace precinct polling places.

The distinction between no-fault absentee voting (especially no excuse permanent absentee voting) and VBM systems is often blurred, as both use the mail to send and receive ballots. In fact, several states have adopted legislation changing their terminology from absentee voting to more descriptive terms. In Kansas, for example, absentee ballots are now referred to as an "advance" ballots. To distinguish the two concepts, the term VBM as used in this report applies to elections in which all voters in a given jurisdiction receive mail-in ballots without requesting them and cast their votes by mailing or dropping off their ballots.⁶

The first section of the report covers the history of absentee voting, instances of absentee voting fraud and one state's legislative response to the need to increase ballot security. In the second section we will explore the Oregon experience with a statewide all vote-by-mail elections as well as hybrid vote-by-mail election systems which combine tradition with VBM elections, such as those in Washington, Colorado and California. In the last section we will examine the studies on the effect of VBM on voter turnout and expanding the composition of the electorate. We will conclude with a report on the pending legislation to adopt or modify absentee voting and VBM laws.

History of Absentee Balloting

Absentee ballots have a long and controversial history in the United States. As early as the 1700's land owners were permitted to vote by absentee ballot if their homes would be vulnerable to attack by Native Americans in their absence. Nevertheless, absentee balloting was rare before 1860. Only Oregon, interestingly, made it possible in 1857 for all men who were temporarily away from their homes to vote.⁷

During the Civil War, 19 of the 25 Union states and 7 of the 11 Confederate states passed laws permitting soldiers to vote by absentee ballot. This was done by having the soldiers deposit ballots into a box on a specified day in front of officers who were then responsible for sending the ballots to the soldiers' home precincts election authorities in the proper jurisdictions.⁸ Opponents of absentee voting at the time voiced the same primary concern that is raised today, the seemingly greater opportunity for fraud when votes are cast away from the control of a polling place.

After the Civil War ended, many of the military absentee practices were discontinued. In World War I, three million men were inducted into service, adding to the pressure to extend absentee balloting to military personnel. From 1914 to 1917 states with absentee voting laws grew from three to twenty-four of the then 48 states. These events helped to sever the ties between voting and physical presence. The concept of an intent to return to a particular location became, along with physical presence, a determinate of residence for purposes of voting.

The war and the increasing mobility of the United States work force compelled states to address the need for absentee balloting in certain situations. States grappled with absentee balloting provisions for students, persons in custodial confinement such as almshouses and sanatoriums, and people whose work required them to be away from home on Election Day. By 1918, nearly all states had a form of absentee balloting for men in the military. At the end of World War II, more than 20 states permitted absentee balloting for work-related reasons and a few allowed voters who would be absent for any reason to vote by absentee ballot. By 1924, all but three states had enacted some form of absentee balloting.⁹

Currently, all states permit absentee balloting. Of the 50 states and the District of Columbia, 29 states permit no-excuse absentee balloting on request.¹⁰ Of these 29 states, eight permit voters to request permanent absentee ballot status, which means that they are placed on a list to receive absentee ballots automatically without having to request them in subsequent elections.¹¹

Election Fraud and Absentee Voting

Although there are many media reports on voter fraud, primarily based upon anecdotal evidence, little scientific or systematic research of the issue has been done.¹² Recent reports indicate that recurrent claims that voter fraud is a pervasive problem are not supported by the evidence.¹³ When fraud is found, however, absentee balloting is often implicated. Generally speaking, instances of absentee fraud arise most often in local county or community elections.

Absentee ballot fraud takes four general forms, (1) forging signatures or signing fictitious names; (2) coercing or influencing a vote; (3) vote buying; and (4) misappropriating absentee ballots. Absentee ballot fraud by members of both major political parties has been substantiated in several high-profile civil and criminal cases.

A 1997 Miami mayoral election was overturned by a Florida appeals court in a highly publicized case upon a finding that absentee ballots cast for Republican incumbent Xavier Suarez were tainted by fraud. The court installed Democratic candidate Joe Carollo as the winner of the mayoral race after throwing out all 4,740 absentee votes.¹⁴ As a result of the investigation, twenty-one Miami residents were accused of acting as false witnesses to absentee ballots.



A former Miami City Commissioner was later charged with covering up fraudulent absentee votes cast in that election by a Miami police officer and his wife, a former city hall secretary. In a similar case, a state judge nullified the results of a 1993 mayoral election in Hialeah and ordered a new vote. In response, Florida's legislature passed a law that prohibits providing or receiving payment for collecting absentee ballots in 1998.

In a blatant instance of vote buying, Democratic and Republican supporters of candidates in a Dodge County, Georgia sheriff's race were found guilty of paying voters for their absentee ballot votes, each bidding against the other and operating from tables on opposite ends of the courthouse hall.¹⁵ In a more recent case, two defendants in Tallahatchie County, Mississippi were convicted of absentee ballot fraud for providing money and beer to voters to get them to vote by absentee ballot.¹⁶

In a controversial 2005 Benton Harbor, Michigan, case, an African American community leader, Reverend Edward Pinkney, was accused of fraud for unlawfully possessing absentee ballots and attempting to influence absentee voters with payments in a recall election against a city commissioner. The recall was overturned and the commissioner reinstated. Reverend Pinkney's attorneys argued against Michigan's absentee fraud statute, which makes it a felony to possess absentee ballots regardless of intent. After a first trial ended in a hung jury, Reverend Pinkney was convicted by an all-white jury on March 21, 2007. This case illustrates the need, discussed below, for carefully drafted legislation on improper possession of absentee ballots cast by other voters.

Problems in Administration of Absentee Ballots

The 2004 Washington gubernatorial election stands as a case in which the administration and counting of absentee ballots played a large role. The election was the closest governor's race in United States history. After a mail-in recount, the margin between the two candidates was just forty-two votes. The subsequent hand recount requested by the state Democratic Party gave Democratic candidate Christine Gregoire the lead with 129 more votes than Republican Dino Rossi.¹⁷

Election contest litigation ensued which was ultimately resolved on June 6, 2005 when the case was dismissed. Plaintiffs in the case, *Borders v. King County*, pointed to absentee ballots as one source of the problems.¹⁸ There were discrepancies between the number of voters who were credited as having voted by absentee ballot and the number of absentee ballots counted. Before absentee ballots were sent out, the counties verified that the voters were registered and assigned a ballot identification number. When the ballots were returned this number was to be matched to the voters registration number and the voter "credited" with having voted.

The court in *Borders* found that the fact that voters received the absentee ballots was sufficient evidence that they were registered, the extra step of crediting the votes was not necessary to prove the fact of registration. The counties' failure to carry out the crediting procedure with some of the ballots was evidence of poor administration, but not malfeasance, on the part of officials.¹⁹

The Washington legislature took steps to improve absentee ballot administration, along with other aspects of election administration, with the passage of the Clarifying and Standardizing Various Election Procedures Act, Senate Bill 5743, 2005. The bill enacted the following safeguards for absentee ballots:

- Absentee ballots are to be distinguishable from other ballots;
- Measures preventing election staff from inserting absentee and provisional ballots into mechanical voting machines are to be instituted;

- Election officials must begin processing absentee ballots on receipt;
- Timely audits of votes, including absentee votes, are required, one upon certification and one 30 days later.²⁰

VBM Elections Take Hold in Western States and Beyond

In VBM elections, all voters in the jurisdiction receive their ballots through the mail and must return them by mail or by dropping them off at a specified location. California conducted a VBM election for the first time in 1977. Oregon's statewide VBM system, which completely eliminates the use of polling places, is the result of nearly twenty years of testing and gradual expansion of VBM elections in the state.²¹ The process began in 1981 and 1983 with tests of local VBM elections. The legislature then passed a 1993 law that permitted the optional use of VBM for local and special elections. In the same year, the first statewide special VBM election was held. Forty-four percent of voters returned their mail ballots. In 1995, the majority Republican legislature passed a bill that provided for VBM elections in all primaries and general elections. The Democratic governor vetoed the bill on the grounds that VBM needed further study before it should be adopted statewide.

After the resignation of Senator Bob Packwood in 1995 due to a personal scandal, special elections, primary and general, were needed to elect a successor. Because they were special elections, the Secretary of State, a Democrat and a supporter of VBM, was able to exercise the option to use the VBM system. In 1996, Oregon's presidential primary was conducted entirely as a VBM election. In 1997, two statewide special elections were held in by VBM. With these elections as tests of statewide VBM elections, in 1998 Oregon voters passed an initiative providing for all primary and general elections to be conducted by VBM in 1998.²²

Oregon citizens overwhelmingly approve of their VBM system. A survey was conducted five years after the initial implementation of the 1998 VBM law to determine if public opinion on VBM remained high and also to figure the levels of participation among Oregon voters. The survey indicated that about 81 percent of voters preferred VBM. In addition, Oregon's all-mail voting system (no polling place costs) was found to lower election costs. All mail elections cost a third to one half of the cost of polling place elections.²³

VBM has also taken root in other states, primarily, but no longer exclusively, Western states. North Dakota permits the boards of county commissioners to conduct mail ballot elections in primaries. Technically, the system is not an all VBM election because the state law requires voters to make an application for a mail ballot.²⁴ VBM elections have also been conducted in Alaska, California, Colorado, Kansas, Minnesota, Missouri, Montana,²⁵ Nebraska, Nevada, New Mexico, North Dakota, Utah, and Washington.

In Colorado, VBM elections may be conducted at the option of local jurisdictions, although they cannot be used for partisan candidate elections and elections held in conjunction with, or on the same day as, a primary or congressional vacancy election.²⁶ Moving South and North, VBM elections have been held in North Carolina, Florida, and New York. In general, early tests of VBM elections are made in special elections or at the option of local jurisdictions within the states. For example, in California, a state law permits county registrars to designate precincts with less than 250 registered voters as VBM precincts.²⁷ In the state of Washington almost all counties have chosen to adopt all VBM elections, although there is debate within the state on whether to adopt VBM statewide.

The following table provides an overview the adoption of mail-in balloting on a state-by-state basis.

Traditional Absentee		No Fault Absentee		Permanent No Fault Absentee	Vote by Mail + Precinct	All Vote by Mail
Alabama	Mississippi	Alaska	Nevada	Arizona	Minnesota	Oregon
Connecticut	Missouri	Arizona	New Jersey	California	Missouri	
Delaware	New Hampshire	Arkansas	New Mexico	Colorado	New Jersey	
District of Columbia	New York	California	North Carolina	Maine	Colorado	
Illinois	Pennsylvania	Colorado	North Dakota	Montana	Georgia	
Indiana	Rhode Island	Florida	Ohio	Oregon (VBM)	Hawaii	
Kentucky	South Carolina	Georgia	Oklahoma	Utah	Kansas	
Louisiana	Tennessee	Hawaii	Oregon (VBM)	Washington	New Mexico	
Massachusetts	Texas	Idaho	South Dakota		North Dakota	
Michigan	Virginia	Iowa	Utah		California	
Minnesota	West Virginia	Kansas	Vermont		Montana	
		Maine	Washington		Washington	
		Maryland	Wisconsin		W, yoming	
		Montana	Wyoming		Arizona	
		Nebraska			Florida	

Advantages and Disadvantages of VBM Systems

Supporters of VBM systems point to savings in costs, greater counting accuracy, and voter satisfaction. Advocates also believe that VBM will increase overall voter turnout. The greater reliability of VBM systems and Oregon's reports of the absence of fraud in the state's all VBM elections are also touted as reasons to consider adopting VBM. Finally, some supporters believe that making voting easier may reduce socio-economic disparities in voter participation.

The lowering of costs, at least in elections that completely eliminate polling places and the resulting costs of staff and location has been clearly demonstrated in Oregon¹⁸ and Washington. It remains to be seen if the cost benefits maintain in hybrid vote-by-mail systems in which the state incurs costs associated with operating polling places. As to voter fraud, studies have supported election officials' claims that Oregon's VBM system has been free of fraud.¹⁹ Oregon, however, has been generally free of election fraud throughout its history. Empirical studies have also confirmed reports that early voting in general, including early-in-person, VBM and absentee balloting, results in a more accurate count.²⁰

This is not to say that VBM does not present an idiosyncratic set of administrative difficulties that can lead to disenfranchisement of voters. Chief among them is the need to rely heavily on the reliability of the United States Postal Service (USPS).

Financial issues and reductions in force have challenged USPS operations. The USPS 2006 Comprehensive Statement on Postal Operations reports that on-time delivery of first class mail has improved since 2000. Despite that improvement, the table below²¹ reveals a 2006 failure rate that cannot be tolerated in delivery of election ballots. In addition, the agency's performance goals for 2007 are to meet the essentially same unacceptable levels of on-time delivery.

Timely delivery is just one of the concerns raised by reliance on the mail for delivery of ballots. Misdelivery of mail is also a significant problem. A recent report by the Hawaii League of Women Voters echoes concerns over the reliability of postal service. The report points to the experience in Clark County, Nevada, where 10% of the ballots were undeliverable in a

VBM primary for the Republican Party. A letter from the Clark County Registrar of Voters to a Nevada official describes the problems encountered by administrators:

"There were no indications of fraudulent voting. However, ballots were delivered all

First class mail on-time delivery rates

Overnight First-Class Mail On-Time (External First-Class Measurement System)	95%
2-Day First-Class Mail On-Time (External First-Class Measurement System)	91%
3-Day First-Class Mail On-Time (External First-Class Measurement System)	90%

over the County to former residents who did not fill out a change of address with the post office when they vacated their address of record: new residents automatically received the old residents' ballots. In addition, most of the people voting early and in the office on Election Day did so because they never received their ballots in the mail. Many of these voters' addresses were correct: the post office simply failed to properly deliver the ballot.

To whom were these ballots delivered? In numerous instances, some members of a household received their ballots while other members did not."³²

U.S. Postal Service officials relate that Chicago has the worst mail delivery of any major U.S. city. Most problems involve late or incorrectly delivered mail. One Chicagoan complained of receiving mail belonging to suburban residents. An elected official was outraged by the fact an alderman report that he sent in January did not reach citizens until February.³³

Even in less densely populated Oregon urban areas, delivery problems plague election administrators. Six percent of Multnomah County's VBM ballots were undeliverable in the 2004 Presidential election. In Benton County, over 7 percent of ballots were undeliverable.³⁴

Additionally, there are unique problems associated with the misdelivery of mail in large multi-unit residential buildings, which are commonly found in urban areas and on college campuses.

The USPS report and anecdotal experience from urban areas provide evidence in support of the concerns cited by individuals and groups that express caution about rushing to adopt all VBM systems. Concerns about the reliability of the mail service and about the use of VBM elections in an increasingly mobile society must be addressed as part of any careful assessment of the feasibility of using the VBM format in any jurisdiction.

The interaction of VBM elections with existing state laws is another important factor to consider when drafting legislation adopting VBM systems. Denver, Colorado provides a case in point in which existing state law and VBM combine to limit access to the polls. Denver officials will not be mailing ballots to approximately 117,000 voters in a May 2007 VBM election because the voters have been placed on an "inactive" list. According to state law,³⁵ if a voter does not vote in just one general election her status is changed to "inactive." In order to receive a mail ballot, inactive voters have to respond to a notice postcard confirming their residence or go to the county clerk's office to vote in person. Denver Secretary of State Mike Coffman supports the law and cautions against changing it, maintaining that the law is necessary to keep voter registration lists up to date.³⁶

Effect of VBM and Absentee Voting on Voter Turnout and Participation

When VBM was introduced in Oregon and other states, there was an expectation that it would significantly increase voter turnout and expand political participation by under-represented groups. Political scientists have studied the effects of mail-in ballot reforms with a primary focus on overall voter turnout and participation by under-represented groups. The following is a brief summary of some of the key studies, their methodologies and conclusions.

Priscilla L. Southwell, "Five Years Later: A Re-assessment of Oregon's Vote by Mail Electoral Process," Department of Political Science, University of Oregon, 2003.

This 2003 study is based on interviews of Oregon voters five years after the state began using an all VBM election system. Its function was to determine if voter opinion of VBM remained high and to assess the effect of VBM on voter turnout. The methodology used was to review data from the 2003 Oregon Annual Social Indicators Survey, which consisted of a random-digit-dialing survey of 1037 individuals in Oregon. Respondents were asked about their preferences in relation to VBM and about their voting behavior.³⁷

The study found that while 81% of the respondents preferred VBM elections, the majority (66.6%) reported that their voting frequency had not increased since VBM was implemented. A majority of all subcategories preferred VBM over precinct elections. Certain subgroups of the population, including women, the disabled, retirees and younger voters reported that they voted more often as a result of VBM, but the differences had a weak statistical significance. About 4 percent said they actually voted less often. The study concluded that neither political party "had much to lose or gain" from VBM.

Paul Gronke, Eva Galanes-Rosebaum, and Peter Miller, "Early Voting and Turnout," Early Voting Information Center (EVIC) at Reed College, 2007

This study reviewed existing research on the effect of early voting measure on voter turnout and presents the results of their own research model. The authors examined early-in person voting, no-excuse absentee balloting, and VBM elections.

Their review of earlier literature on the subject concluded that the general consensus was that early voting methods increased turnout to a modest degree. Results varied from 10 percent in an Oregon study³⁸ to Professor Gronke's earlier research finding that VBM increased turnout by 4.7 percent in Oregon in presidential elections only.

Although the literature concluded that VBM had a positive effect on turnout, there was a consensus among social scientists that this was not achieved by recruiting new voters, but by retaining already active voters.

The consensus of the findings also supported assertions that VBM reduced costs and resulted in a more accurate count. Oregon, for example, saved an estimated 17% of the costs of elections by adopting a statewide VBM system.

The authors caution that earlier studies were based on limited historical data and were limited to Western states that differed geographically and demographically from their Midwest and Northeastern counterparts. Oregon, the leader in adopting VBM, was the primary subject of studies, followed by other Western states including Washington and California. The study notes that higher numbers of early voters are generally found in rural populations and among those voters that have long commutes. That finding tallies with another study on geographical effects on voter turnout, which concluded that suburban voters were impacted by distance.³⁹ Earlier reports, of necessity, do not consider political and administrative differences between elections since they were limited to a relatively few number of VBM elections in relatively few jurisdictions.

The methodology used in this study differed from earlier studies in that the authors estimated a model of early voting and turnout from 1980 to 2004. Starting with a turnout model and a data set produced in ballot initiative studies in 2001 and 2005, they added a series of variables based on early voting categories. The results supported previous studies finding that VBM increased turnout, but demonstrated that the increase in turnout was not only less than previously reported but that it was only shown in presidential elections in Oregon.

Despite the negligible increase in voter turnout, the authors note that the number of early voters is increasing annually. They also conclude that it "is no longer a question of whether early voting is a smart reform; the question now is what sort of early voting to allow and how to adjust to its impact."

Thad Kousser, University of California, San Diego; Megan Mullin, Temple University, Will Vote-by-Mail Elections Increase Participation? Evidence from California Counties, Project Sponsored by the John Randolph Haynes and Dora Haynes Foundation, 2007.

The above study's findings that VBM increased turnout to some degree are based primarily on reports of the Oregon experience. The reports contrast with a 2007 California study. In this study, the authors were able to take advantage of a California law that permits county registrars to designate any precinct with less than 250 voters as a mandatory VBM precinct. All precincts in the state's two smallest counties contained fewer than 250 voters and all were designated as VBM precincts. The study matched pairs of precincts, one VBM and one traditional, according to demographics and compared turnout in each matched pair; then averaged those differences across the number of treated precincts. This report differs from previous studies in that it was not based on self-reports or upon comparison of elections in precincts with different demographics or political elements. The demographics and the election characteristics were the same for each matched pair.

The goal of the study was to determine the effect of VBM on turnout compared to the matched polling place precincts. The authors concluded that VBM not only failed to increase turnout, it had a small negative effect. There was a statistically significant 2.6 percent reduction in the turnout for VBM precincts compared with similar polling place precincts in the 2000 general election and a 2.87 percent decrease in the 2002 general election.

Priscilla L. Southwell; Justin Burchett: "Does changing the rules change the players? The effect of all-mail elections on the composition of the electorate?" *Social Science Quarterly*, 2000, vol. 81, no. 3, pp. 837-845

Turning from the issue of overall turnout in VBM elections to their effect on the composition of the electorate we find fewer studies. This 2000 Oregon study examined the issue using the 1996 special election to replace Senator Bob Packwood after he resigned under a cloud of scandal. The authors conclude that this method of voting may increase turnout by retaining likely voters. They found that VBM voters in Oregon differed only slightly from voters who went to the polls in previous elections—they were older, more urban, and less partisan. VBM voters were as informed and educated as polling place voters. Additionally, VBM voters were demographically similar to registered non-voters but were better educated and politically informed. The conclusion was that in some manner, VBM elections provided a method of converting peripheral voters into core voters even in low-stimulus contests.⁴¹

Adam J. Berinsky, *The Perverse Consequences of Electoral Reform in the United States*. *American Politics Research*, Vol. 33 No. 4, July 2005 471-491

This study ventures beyond a finding that VBM does nothing to expand political participation and posits the theory that reforms designed to make it easier to vote may actually increase existing socio-economic and demographic bias. The author bases his premise on results of studies showing that voting levels under early voting systems, including VBM and liberal absentee voting, are only effective at retaining habitual voters, not at recruiting new voters. Voters that moved in and out of the electorate, it was posited, were more likely to vote, i.e. stay in the electorate, if opportunities to vote were made more convenient, but registered non-voters were not more likely to begin voting. The author argues that, as a result, reforms that make voting easier simply magnify the existing socioeconomic bias.



The methodologies used by the studies cited to support this theory were varied, including cross-sectional designs, exit polls, validated voting records, and telephone surveys. They all concluded that voters who take advantage of early voting methods tend to be more politically involved, better educated and better paid than those who did not. Thus, the writer concludes, "voting reforms do not correct the biases in the electorate, and in some cases, reforms may even worsen these biases."

It is important to note in reading this study that none of the research cited gave direct empirical evidence that early voting reform had in fact changed the composition of electorate as a whole.

While research studies are effective in clarifying the effect of VBM on turnout and participation, they have not yet been able to control for all relevant factors, such as the demographics of the population under study, the level of interest in a particular election, the relative effectiveness of political campaigns on voter turnout and other factors. The data on VBM and no-fault absentee voting to date has been significantly limited as to time and place. Until more comprehensive data is available, it can not definitively be said that voter turnout may change under mail ballot election systems or that the reforms will exacerbate biases in the composition of the electorate.

One way in which VBM and other forms of early voting may ultimately increase turnout and expand the electorate is through the use of early Get-Out-the-Vote campaigns directed at voters who have received mail ballots. An experienced campaign consultant advises that "reaching people who vote by mail should be a more urgent concern than reaching people who vote early in person."⁴¹

By obtaining lists of voters who have received mail-in ballots, political campaigns have more time and a greater opportunity to interest, inform and persuade voters to cast their ballots. At least one study has indicated that get out the vote campaigns targeted at early voters do have a positive effect on turnout. As one researcher concluded, "...scholars have ignored the important role of partisan campaign mobilization in linking early voting reform to overall turnout levels. That is, we find that early voting is associated with greater turnout when party elites use early voting as part of their campaign strategy."

Recommendations

Jurisdictions that have adopted VBM and absentee balloting by mail have employed various methods to ensure that each ballot gets to the right voter, that they are cast by that voter and that they are returned and accurately counted. For example, one extremely important element of protecting against voter fraud in mail-in elections is comparing signatures on the ballot with the voters' signatures on file. Other recommended steps to improve absentee ballot and VBM include:

1. Include a space for the voter's signature; and compare the voter's signature with the signature on file;
2. Use distinguishable absentee or mail ballots, by using a different through color or through other means;
3. Permit election officials to begin tabulating votes as soon as ballots are received to avoid delay in the election canvass;
4. Ensure that mail ballots can not be forwarded;⁴²
5. Regulate "electioneering" in the presence of people who have mail ballots on their person;⁴³

6. Establish close working relationships with the United States Postal Service and university or school administrations to co-ordinate efforts and efficiently provide for accurate and timely delivery of mail;⁴⁴
7. Regulate who may take custody of a completed mail ballot;
8. Impose significant sanctions for misappropriation of a ballot, falsifying a signature or a voter's choice on a ballot, or failing to deliver a ballot lawfully entrusted to an agent;
9. Regulate delivery of mail-in or absentee ballots by partisan organizations. While it is important not to restrict family members and agents from returning a limited number of ballots, control of large numbers of completed ballots by third parties can lead to vote buying and misappropriation of ballots in local elections;
10. Require a minimum of two reconciliation audits;
11. Provide public access to lists of voters who have returned their ballots to facilitate Get-Out-the-Vote efforts.

Conclusion

The results of VBM and no-fault absentee election reforms have been mixed, but public acceptance of the changes is high. In view of voter enthusiasm for the reforms, it is likely the trend toward mail-in voting as an option will continue. We have seen that the effects of these reforms on turnout, however, have been minimal at best and the desired effect of expanding the composition of the electorate has not been realized. While the administrative costs are lowered significantly in all VBM elections, the cost reductions in hybrid elections are less significant. Lastly, the problems with mail delivery are likely to continue for absentee voters and VBM voters alike.

Jurisdictions contemplating the adoption of VBM in particular must approach the decision with caution. The system should not be adopted simply in an attempt to increase voter turn-out or expand political participation. It would be prudent for states to appoint a study commission consisting of election administrators, the state's chief election official, and community organizations before making a decision to adopt VBM elections. Initial trials of VBM are best implemented in small, local elections before they are attempted on a larger scale.

In short, go slow on VBM and mail-in balloting reforms. While convenient, they may create more problems than they are intended to resolve.

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- ²⁶ Colorado Code sec. 1-75-104.
- ²⁷ California Elections Code sec. 3005.
- ²⁸ Southwell, *Supra* n. 23.
- ²⁹ Gronke, *Supra*, Gronke, n. 5.
- ³⁰ *Id.*
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REPRESENTATIVE BOB BUCH

Representative_Bob_Buch@legis.state.ak.us

Date: January 22, 2008

To: Representative Bob Lynn, Chair
House State Affairs Committee

From: Representative Bob Buch
Alaska State Legislature

Re: HB 277 "An Act establishing a permanent absentee voting option for qualified voters."

Dear Rep. Lynn:

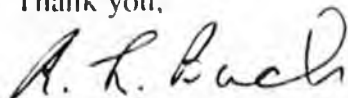
I respectfully request that House Bill 277, which would establish a permanent absentee voting option for Alaskan voters be scheduled for a hearing in the House State Affairs Committee. This bill is co-sponsored by Representatives Lynn, Chenault, Holmes and Gruenberg.

Attached you will find a copy of the bill, sponsor statement, sectional, and letters of support from the Alaska Chapter of Alaska Postmasters, American postal Workers Union, and

Please feel free to contact me, or my staff Deborah Brevoort (x3467), with any questions you might have.

Thank you for your consideration.

Thank you,


Representative Bob Buch
Alaska State Legislature
House District 27

Alaska State Legislature

While in Session
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Juneau, AK 99801
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Fax: (907) 465-2040



While in Anchorage
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Representative Bob Buch

Representative_Bob_Buch@legisl.state.ak.us

HB 277 - Permanent Absentee Voting

HB 277 will enable Alaskan voters to register for permanent absentee voting by mail. The intent of this bill is to address the shortcomings of the current absentee ballot process for frequent absentee voters. Once a voter is on the permanent absentee voter roll, they don't have to acquire an absentee request form for each election cycle, wonder if the Division of Elections received it in a timely manner or hope all their data was correctly entered into a computer. Instead, an absentee ballot will be automatically sent for every election operated by the Division of Elections.

The only provision for automatic removal from the permanent absentee roll is if the Division of Elections receives returned mail from the ballot mailing address. Under current law, voters who fail to vote and have no contact with the Division of Elections in four consecutive calendar years will be purged entirely from the voter roll after a verification procedure.

HB 277 does not change anyone's voting rights. Voters can still request a one-time absentee ballot, just as they can now. Voters can still vote at their regular voting places, so long as they do not vote multiple times. And, Absentee ballots requested under the provisions of this bill are evaluated under the same standards as current absentee ballots.

HB 277 does not affect local elections not operated by the Division of Elections. It would be the option of local governments to adopt permanent absentee voting. If they chose to do so, the list of voters who have signed up with the State for permanent absentee voting will be available to them.

Thank you for your consideration.

ALASKA STATE LEGISLATURE

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REPRESENTATIVE BOB BUCH

Representative_Bob_Buch@legis.state.ak.us

Sectional Analysis of HB 277

Section 1

Amends AS 15.07.127 by adding a new subsection (b) that requires the Director of the Division of Elections to make readily identifiable on the Master Register those people who have the status of permanent absentee voter.

Section 2

Amends AS 15.07.130 (e) by adding (B) which states that a voter who applies to the Division of Elections for a permanent absentee voter status qualifies as a voter who "appears to vote" under (b) and (d) of this section.

Section 3

Amends AS 15.20 by adding a new section (15.20.085) that:

- (a) enables Alaskan voters to apply to the Division of Elections for permanent absentee voting status;
- (b) allows a person to provide a voter with a permanent absentee voting application form with a political party or group affiliation only if that voter is already registered with the political party or group indicated. This paragraph also sets forth requirements that only the voter may mark the application form, indicate their choice of primary ballot and submit the application to the Division of Elections on a form prescribed by the Director of the Division of Elections;
- (c) requires the Division of Elections to send an absentee ballot to each voter designated as a permanent absentee voter for each state primary, general and special election and any other election for which the state has the responsibility for conducting the election;
- (d) requires the Director of the Division of Elections to make change of address forms available for permanent absentee voters;
- (e) allows the Director of the Division of Elections to not send an absentee ballot if the Division has received notice that mail sent to AN address is undeliverable;

(f) allows a permanent absent voter to cast the ballot under AS 15.20.081(d), which lists persons who are authorized to witness the casting of a ballot, and AS 15.20.081(e), which lists the dates by which the ballot must be cast and the means by which it must be returned to the Division of Elections;

(g) requires that ballots voted under this section be reviewed under the procedures that are established for the review of absentee ballots in AS 15.20.201 and AS 15.20.203;

(h) establishes that nothing in this section prohibits a person from voting early, or in person at a precinct, or in person before an absentee voting official, or by electronic submission as provided by AS 15.15.195, AS 15.15.198, AS 15.20.061, AS 15.20.064 and AS 15.20.066..

Section 4

Amends AS 15.56.030(a) by making the provisions that govern the unlawful interference with voting in the first degree apply to permanent absentee voting.

Section 5

Amends AS 15.56.035(a) by making the provisions that govern the unlawful interference with voting in the second degree apply to permanent absentee voting.

TRANSITIONAL PROVISIONS: REGULATIONS

Authorizes the Director of the Division of Elections to adopt regulations to implement the changes made in this act.

ALASKA STATE LEGISLATURE

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REPRESENTATIVE BOB BUCH

Representative_Bob_Buch@legis.state.ak.us

Date: February 14, 2008

To: Representative John Coghill
Member, House State Affairs Committee

From: Representative Bob Buch

Re: CS HB 277 Permanent Absentee Voting

Dear Rep. Coghill:

I wanted to get back to you with the answers to the questions you posed at the House State Affairs Committee hearing on HB 277, my bill to create a permanent absentee voting option in Alaska.

You were interested in knowing how many absentee ballots get returned to the Division of Elections. Gail Fenumiai, Director of the Division of Elections researched this question, and gave me the following information:

In 2004, the division mailed 58,725 ballots (special advance, federal only and official ballot) to voters. Of that number, 36,152 returned voted ballots and 1,111 were returned undeliverable.

In 2006, the division mailed 28,112 ballots (special advance, federal only and official ballot) to voters. Of that number, 17,409 returned voted ballots and 3,721 were returned undeliverable.

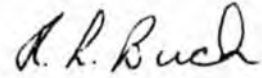
You also expressed a concern about whether or not permanent absentee voting increased the possibility of fraud.

This very question has been the subject of several studies that were undertaken in Oregon where permanent absentee voting has been implemented. These studies found that there was no evidence of fraud in permanent absentee balloting for state elections. The studies noted that in those rare instances when fraud did occur, it took place in local, county or municipal elections where the election procedures, adopted by local ordinance, were not as rigorous as those procedures in place at the state level.

Finally, in addition to finding no evidence of fraud in state-conducted elections these studies found that absentee voting actually resulted in a more accurate count.

I hope that this addresses your concerns. If you need additional information, don't hesitate to contact me.

Thank you,

A handwritten signature in cursive script that reads "A. L. Buch".

Representative Bob Buch
Alaska State Legislature
House District 27

cc: Members of the House State Affairs Committee
Representative Bob Lynn, Chair
Representative Bob Roses, Vice-Chair
Representative Andrea Doll
Representative Craig Johnson
Representative Kyle Johansen
Representative Max Gruenberg
Gail Fenumiai, Director, Division of Elections

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REPRESENTATIVE BOB BUCH

Representative_Bob_Buch@legis.state.ak.us

Date: February 14, 2008

To: Representative Craig Johnson
Member, House State Affairs Committee

From: Representative Bob Buch

Re: CS HB 277 Permanent Absentee Voting

Dear Rep. Johnson:

I wanted to get back to you with the answers to the questions you posed at the House State Affairs Committee hearing on HB 277, my bill to create a permanent absentee voting option in Alaska.

First, you were interested in obtaining information about the voter registration list maintenance process, and the statistics for voter registration purges over the last few years. Gail Fenumiai, Director of the Division of Elections researched this question, and gave me the following information:

List Maintenance Information

In 2004, the division sent 45,388 purge notices and 23,814 were inactivated. Those voters still remaining in inactive purge status from 2004 will be deleted at the end of March 2008.

In 2005, the division sent 52,615 purge notices and 17,795 were inactivated

In 2006, the division sent 28,674 purge notices and 14,486 were inactivated

In 2007, the division sent 9,929 purge notices and 5,089 were inactivated

In 2008, the division sent 36,872 purge notices, inactivation is scheduled for early March 2008.

This is how the list maintenance process works:

1. Voters are flagged that meet one of the following conditions:
 - a. whose mail from the division has been returned in the two years prior to examination of the statewide list
 - b. who has not contacted the division in the two years prior to examination of the statewide list
 - c. who have not voted or appeared to vote in the two general elections prior to examination of the statewide list
2. The division mails the first notice to all voters identified in step 1.

3. Voters whose first notice is returned as undeliverable are flagged and a second notice is sent by forwardable mail which states that their registration will be inactivated unless they respond to the notice no later than 45 days after the date it was sent.
4. Those voters who do not respond within that 45 days are then inactivated.
5. Voters remain on the inactive list until after the second general election that occurs after the registration becomes inactive if the voter does not contact the division or vote or appear to vote.

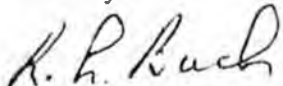
The voters who apply to become a permanent absentee voter will be subject to the same voter registration list maintenance procedures as any other voter.

You also expressed a concern about making permanent absentee voting an option at the municipal level. There are two things to consider about this proposal. First, municipal elections are outside the jurisdiction of the state Division of Elections; in order for permanent absentee voting to take place at the municipal level, it would have to be adopted through local ordinances in each municipality. Second, studies that took place in Oregon, where permanent absentee balloting has been in effect for a number of years, found that when fraud did occur, it took place in local, county or municipal elections, but not in elections conducted at the state level. The reason for this is that election procedures, adopted by local ordinance, tended to not be as rigorous as those procedures in place in state statute.

Finally, I discussed your concerns about voter confusion with the Division of Elections. The Director has assured me that they will place a large, bold notice on the application form to inform voters that this only applies to state, and not to municipal elections in order to eliminate voter confusion.

I hope that this addresses your concerns. If you need additional information, don't hesitate to contact me.

Thank you,



Representative Bob Buch
Alaska State Legislature
House District 27

cc: Members of the House State Affairs Committee
Representative Bob Lynn, Chair
Representative Bob Roses, Vice-Chair
Representative Andrea Doll
Representative John Coghill
Representative Kyle Johansen
Representative Max Gruenberg
Gail Fenumai, Director, Division of Elections

HB

281

HB 281

Several points for House Judiciary Committee to consider:

Take a look at an oversight committee or process for reviewing the work of the Alaska Public Offices Commission and the Select Committee on Legislative Ethics.

Determine whether AS 15.56.130 should be repealed, amended or left alone as part of this bill.

Alaska State Legislature

Chairman
State Affairs Committee

Vice-Chairman
Economic Development, Trade & Tourism
Committee

Member
Judiciary Committee
Joint Armed Services Committee

Finance Subcommittees
Corrections
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety



A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

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"Bob Lynn's Alaska Blog" RepBobLynnBlog.com

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To: Legal Services

Fax #: 2029

From: Nancy Manly x2794
Alaska State Capitol, room 104
Juneau, AK 99801-1182

of Pages (including cover): 1

Phone: 907-465-4931
Fax: 907-465-4316

Re: CSHB 281 - CAMPAIGN FINANCE COMPLAINTS

1/19/08

Amendments to CSHB 281 - 25-LS1115M

Amendment #1 (Coghill)

Page 4 Line 9 and 10 after the word *service* ~~delete~~ or because a legislator left the legislature
Page 4 Line 10 after the word *employee* ~~delete~~ or legislator

Amendment #2 (Doll) Withdrawn

Conceptual Amendment #3 (Doll)

Replace the word "person" with the term "registered voter" where it applies to the filing of a complaint in the applicable sections of CSHB 281 (STA) 25-LS1115M. Here are the areas we identified but you be the final judge:

Page 2 Line 18
Page 3 Line 13
Page 3 Line 23
Page 4 Line 15
Page 4 Line 25
Page 5 Line 4

*
* TRANSACTION REPORT *
* JAN-19-2008 03:08 AM *
* FOR: REP LYNN 4654316 *

* SEND *

* DATE START RECEIVER PAGES TIME NOTE *

* JAN-19 03:08 AM 2029 1 30" OK *

LEGAL SERVICES

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

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

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

MEMORANDUM

January 18, 2008

SUBJECT: CSHB 281(STA) - Drafting issues

TO: Representative Bob Lynn
Chair of the House State Affairs Committee
Attn: Mike Sica

FROM: Alpheus Bullard *AB*
Legislative Counsel

This memorandum accompanies the State Affairs Committee Substitute for House Bill 281 you requested.

The substitute you requested contained a provision amending AS 24.60.170(a). The amendment requires the committee to consider a complaint alleging a violation of AS 24.60 if the alleged violation occurred within five years before the date the complaint is filed. AS 24.60.170(n) requires that the committee dismiss a complaint filed against a person employed by the legislative branch if the person terminates legislative service. Members of the legislature may also not be in office when the complaint is filed.

You have asked that I add the sentence "*[t]he time limitations of this subsection do not bar proceedings against a person who intentionally prevents discovery of a violation of this chapter*" (from AS 24.60.170(a) to AS 15.13.380(b)). As noted above, AS 24.60.170(a) governs complaints filed with the Select Committee on Legislative Ethics while AS 15.13.380(b) speaks to administrative complaints filed with the Alaska Public Offices Commission. I have added the sentence, but please be aware that it is unclear what the legal effect of its addition to AS 15.13.380(b) might be. The history of AS 24.60.170(a) is silent as to any previous interpretation and the sentence does not invoke any legal standard of proof, creating the possibility that any person who filed incorrectly could be held to have "*intentionally prevent[ed] discovery of a violation of th[e] chapter.*" Such an interpretation would operate to dispense with the statute of limitations for the filing of administrative complaints altogether. You might consider amending the sentence to read "*[t]he time limitations of this subsection do not bar proceedings against a person who the commission finds willfully prevents discovery of a violation of this chapter, such a finding by the commissioner must be based on clear and convincing evidence.*"

Representative Bob Lynn
January 18, 2008
Page 2

The provisions of the substitute you requested would have become retrospectively applicable to alleged violations and records required to be retained. In this draft the applicability of these provisions is not retroactive.

Your draft serves to increase the statute of limitations for the filing of administrative complaints with the Alaska Public Offices Commission. Please be aware that these extended statutes of limitation for the filing of complaints alleging violations of AS 15.13 do not serve to amend the existing law pertaining to criminal prosecution of related election law violations. AS 15.56.130 provides:

A prosecution for an offense described in AS 15.05 - AS 15.60 (Alaska Election Code) may not be maintained unless it is begun within *one year* after the date of the election in connection with which the offense is alleged to have been committed (emphasis added).

If you would like this provision amended in a subsequent draft, or if you have any questions, please do not hesitate to contact me.

TLAB:med
08-021.med

Enclosure

(n) The committee shall dismiss a complaint against a person employed by the legislative branch of government if the person terminates legislative service. The committee may in its discretion dismiss a complaint against a former member of the legislature whether the complaint was filed before or after the former member departed from the legislature.

CSHB 281(STA)

Relevant Statutes

Campaign Finance Complaints

Sec. 15.14.040(f) Contributions, expenditures, and supplying of services to be reported.

Sec. 15.13.380(b) Violations; limitations on actions.

Sec. 24.60.170(a) Proceedings before the committee; limitations. Recommendation to add to Sec. 15.13.380(b)

Sec. 24.45.111(a) Preservation of records.

Sec. 24.45.131 Examination of statements, reports.

Sec. 24.60.170 Proceedings before the committee. Limitations.

Sec. 39.50.100 Enforcement by private citizens.

Additional relevant statutes

Sec. 15.56.130 Time limitation.

Sec. 24.60.170(n) Proceedings before the committee; limitations.

Sec. 24.45.141 Civil penalty; Late registration, filing or required statements or reports.

25-LS1115
Bullard
1/18/08

CS FOR HOUSE BILL NO. 281(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION
BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES LYNN AND GATTO

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the Alaska Public Offices Commission; relating to the Select
2 Committee on Legislative Ethics; relating to public officials' financial disclosure;
3 relating to certain records required to be kept by businesses, persons, or groups that
4 provide certain services, facilities, or supplies to a candidate or group involved in a state
5 election; relating to records of the reports required of candidates, groups, nongroup
6 entities, or persons under AS 15.13; relating to records required to be kept by certain
7 lobbyists and persons who employ, retain, or contract for the services of lobbyists; and
8 providing for an effective date."

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

10 * Section 1. AS 15.13.040(f) is amended to read:

11 (f) All [DURING EACH YEAR IN WHICH AN ELECTION OCCURS,
12 ALL] businesses, persons, or groups that furnish any of the following services,

1 facilities, or supplies to a candidate or group shall maintain a record of each
2 transaction for a period of six years from the date of the election: newspapers,
3 radio, television, advertising, advertising agency services, accounting, billboards,
4 printing, secretarial, public opinion polls, or research and professional campaign
5 consultation or management, media production or preparation, or computer services.
6 Records of provision of services, facilities, or supplies shall be available for inspection
7 by the commission.

8 * Sec. 2. AS 15.13 is amended by adding a new section to read:

9 **Sec. 15.13.111. Preservation of records.** (a) Each candidate, group, nongroup
10 entity, or person required to report under this chapter shall preserve all records
11 necessary to substantiate information required to be reported under this chapter for a
12 period of six years from the date of the election for which the information was
13 required to be reported.

14 (b) Information preserved under (a) of this section must be made available for
15 inspection by the commission.

16 * Sec. 3. AS 15.13.380(b) is amended to read:

17 (b) A member of the commission, the commission's executive director, or a
18 person who believes a violation of this chapter or a regulation adopted under this
19 chapter has occurred or is occurring may file an administrative complaint with the
20 commission within five years [ONE YEAR] after the date of the alleged violation. If a
21 member of the commission has filed the complaint, that member may not participate
22 as a commissioner in any proceeding of the commission with respect to the complaint.
23 The commission may consider a complaint on an expedited basis or a regular basis.
24 The time limitations of this subsection do not bar proceedings against a person
25 who intentionally prevents discovery of a violation of this chapter.

26 * Sec. 4. AS 24.45.111(a) is amended to read:

27 (a) A person required to register or report as a lobbyist or as a person who
28 employs, retains, or contracts for the services of a lobbyist shall preserve all
29 accounts, bills, receipts, books, papers, and documents necessary to substantiate the
30 reports required to be made and filed under this chapter for a period of at least six
31 years [ONE YEAR] from the date of the filing of the report containing these items.

1 These accounts, bills, receipts, books, papers, and other documents shall be made
 2 available for inspection by the commission, or members of its staff, at any time. If a
 3 lobbyist is required under the terms of the lobbyist's employment contract to turn any
 4 records over to the employer, responsibility for the preservation of these records under
 5 this section rests with the employer.

6 * Sec. 5. AS 24.45.131(a) is amended to read:

7 (a) The commission or its staff shall examine each statement or report filed
 8 under this chapter within 10 days after the date it is filed. A person required to file a
 9 statement or report under this chapter shall be notified immediately if

10 (1) it appears that the person has failed to file a statement or report as
 11 required by law or that the statement or report filed does not conform to the
 12 requirements of this chapter; or

13 (2) a written complaint is filed with the commission by any person
 14 [QUALIFIED VOTER] alleging that a statement or report filed with the commission
 15 does not conform to the requirements of this chapter, or to the truth, or that a person
 16 subject to the provisions of this chapter has failed to file a statement or report in the
 17 manner prescribed by this chapter.

registered voter

18 * Sec. 6. AS 24.45.131 is amended by adding a new subsection to read:

19 (d) If a member of the commission or a member of its staff files a complaint,
 20 that member of the commission or member of its staff may not participate in any
 21 proceeding of the commission relating to the complaint.

22 * Sec. 7. AS 24.45 is amended by adding a new section to read:

23 **Sec. 24.45.135. Administrative complaints.** (a) A person, including a
 24 member of the commission or the commission's executive director, may file a written
 25 complaint alleging that a violation of AS 24.45.121 - 24.45.171 has occurred or is
 26 occurring.

27 (b) Complaints filed under (a) of this section must be filed within five years
 28 after the date of the alleged violation.

29 * Sec. 8. AS 24.60.170(a) is amended to read:

30 (a) The committee shall consider a complaint alleging a violation of this
 31 chapter if the alleged violation occurred within five [TWO] years before the date that

Algebra with 1000

1000 problems

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1000 problems

1 the complaint is filed with the committee [AND, WHEN THE SUBJECT OF THE
 2 COMPLAINT IS A FORMER MEMBER OF THE LEGISLATURE, THE
 3 COMPLAINT IS FILED WITHIN ONE YEAR AFTER THE SUBJECT'S
 4 DEPARTURE FROM THE LEGISLATURE]. The committee may not consider a
 5 complaint filed against all members of the legislature, against all members of one
 6 house of the legislature, or against a person employed by the legislative branch of
 7 government after the person has terminated legislative service. However, the
 8 committee may reinstitute proceedings concerning a complaint that was closed
 9 because a former employee terminated legislative service ^{amend #1 - 02/11/11} or ~~because a legislator left~~
 10 ~~the legislature~~ ^{part of amend #1} if the former employee ~~or legislator~~ resumes legislative service,
 11 whether as an employee or a legislator, within five [TWO] years after the alleged
 12 violation. The time limitations of this subsection do not bar proceedings against a
 13 person who intentionally prevents discovery of a violation of this chapter.

14 * Sec. 9. AS 24.60 is amended by adding a new section to read.

15 **Sec. 24.60.255. Administrative complaints.** (a) A person, including a
 16 member of the Alaska Public Offices Commission or the commission's executive
 17 director, may file a written complaint alleging a violation of AS 24.60.200 - 24.60.260
 18 has occurred or is occurring.

19 (b) Complaints filed under (a) of this section must be filed within five years
 20 after the date of the alleged violation.

21 (c) If a member of the Alaska Public Offices Commission or a member of its
 22 staff files a complaint, that member of the commission or member of its staff may not
 23 participate in any proceeding of the commission relating to the complaint.

24 * Sec. 10. AS 39.50 is amended by adding a new section to read:

25 **Sec. 39.50.055. Administrative complaints.** (a) A person, including a
 26 member of the Alaska Public Offices Commission or the commission's executive
 27 director, may file a written complaint alleging a violation of this chapter has occurred
 28 or is occurring.

29 (b) Complaints filed under (a) of this section must be filed within five years
 30 after the date of the alleged violation.

31 (c) If a member of the Alaska Public Offices Commission or a member of its

1 staff files a complaint, that member of the commission or member of its staff may not
2 participate in any proceeding of the commission relating to the complaint.

3 * **Sec. 11.** AS 39.50.100 is amended to read:

4 **Sec. 39.50.100. Enforcement by private citizens.** Any person [A
5 QUALIFIED ALASKA VOTER] may bring a civil action to enforce any of the
6 sections of this chapter.

7 * **Sec. 12.** AS 39.50.100 is amended by adding a new subsection to read:

8 (b) An action brought under (a) of this section must be brought within five
9 years after the date of the alleged violation.

10 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 **APPLICABILITY.** (a) AS 15.13.040(f), as amended by sec. 1 of this Act, applies to
13 records of transactions made on or after the effective date of sec. 1 of this Act.

14 (b) AS 15.13.380(b), as amended by sec. 3 of this Act, applies to administrative
15 complaints alleging violations of AS 15.13 or the regulations adopted under that chapter that
16 occurred

17 (1) within one year before the effective date of sec. 3 of this Act; or

18 (2) on or after the effective date of sec. 3 of this Act.

19 (c) AS 15.13.111, added by sec. 2 of this Act, applies to records for elections on or
20 after the effective date of sec. 2 of this Act.

21 (d) AS 24.45.111(a), as amended by sec. 4 of this Act, applies to reports required to
22 be made and filed on or after the effective date of sec. 4 of this Act.

23 (e) AS 24.45.135, added by sec. 7 of this Act, applies to complaints alleging
24 violations of AS 24.45.121 - 24.45.171 that occur on or after the effective date of sec. 7 of this
25 Act.

26 (f) AS 24.60.170(a), as amended by sec. 8 of this Act, applies to complaints alleging
27 violations of AS 24.60 that occurred

28 (1) within two years before the effective date of sec. 8 of this Act; or

29 (2) on or after the effective date of sec. 8 of this Act.

30 (g) AS 24.60.255, added by sec. 9 of this Act, applies to complaints alleging
31 violations of AS 24.60.200 - 24.60.260 that occur on or after the effective date of sec. 9 of this

1 Act.

2 (h) AS 39.50.055, added by sec. 10 of this Act, applies to complaints alleging a
3 violation of AS 39.50 on or after the effective date of sec. 10 of this Act.

4 (i) AS 39.50.100, as amended by secs. 11 and 12 of this Act, applies to actions
5 alleging violations of AS 39.50 that occur on or after the effective date of secs. 11 and 12 of
6 this Act.

7 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 TRANSITION: REGULATIONS. The Alaska Public Offices Commission may
10 immediately adopt regulations as are necessary to implement the changes made by this Act.
11 The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before
12 January 1, 2009.

13 * **Sec. 15.** Section 14 of this Act takes effect immediately under AS 01.10.070(c).

14 * **Sec. 16.** Except as provided in sec. 15 of this Act, this Act takes effect January 1, 2009.

Alaska State Legislature

Chairman
State Affairs Committee

Vice-Chairman
Economic Development, Trade & Tourism
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Joint Armed Services Committee

Finance Subcommittees
Corrections
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety



A Communication From
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HB 281 Sponsor Statement

"An Act extending the statute of limitations for the filing of complaints with the Alaska Public Offices Commission involving state election campaigns."

House Bill 281 strengthens oversight of the state's campaign finance laws by empowering the Alaska Public Offices Commission to conduct more thorough investigations of alleged violations over a longer period of time. It extends the statute of limitations for reviewing complaints from one year to five years.

This measure reverses legislation passed in 2003, which rolled back the time limit for investigations from four years to one year. The current one-year limit puts APOC under unreasonable and unrealistic time constraints in its role as an important government watchdog. HB 281 helps unleash APOC to once again act in a deliberate and proactive manner. It allows APOC enough time to "dig deeper" in its investigations, as the public demands and deserves.

This bill is an important follow-up to the recent efforts to shore up the Foundation of Trust between Alaskans and their government, which took a big step forward last year when the governor and the legislature passed a landmark ethics bill.

HB 281 continues the process of restoring public faith in state government by allowing APOC to fulfill one of its missions: "To encourage public confidence in their elected and appointed officials by administering Alaska's disclosure statutes."

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 281
 () Publish Date: _____

Identifier (file name): HB281-DOA-APOC-1-11-08
 Title: "An Act extending the statute of limitations"

Dept. Affectod: Administration
 RDU: AK Public Offices Commission
 Component: AK Public Offices Commission

Sponsor: Lynn and Gatto
 Requester: House State Affairs

Component Number: 70

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	156.0	0.0	156.0	156.0	156.0	156.0	156.0	156.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	14.5	0.0	14.5	14.5	14.5	14.5	14.5	14.5
Supplies	0.7	0.0	0.7	0.7	0.7	0.7	0.7	0.7
Equipment	3.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	174.3	0.0	171.2	171.2	171.2	171.2	171.2	171.2

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	174.3	0.0	174.3	156.0	156.0	156.0	156.0	156.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	174.3	0.0	156.0	156.0	156.0	156.0	156.0	156.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time	2.0	0.0	2.0	2.0	2.0	2.0	2.0	2.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

This bill will expand the statute of limitations for filing complaints under the campaign disclosure law.

We are requesting funding for an additional investigator position, a paralegal position, and associated costs that will be dedicated to auditing and enforcement. Investigations into allegations of violations that occurred years ago are more complex. It is more difficult to establish facts and find and question witnesses.

Prepared by: Brooke Miles
 Division: Alaska Public Offices Commission
 Approved by: Kevin Brooks, Deputy Commissioner
Department of Administration

Phone: 907-334-1726
 Date/Time: 1/11/2008 3:05 p.m
 Date: 1/11/2008

Table 1: Selected States' Statutes of Limitations for Filing Complaints Related to Campaign Finance Violations

State	Citation	Time Limit for Filing Complaint
Alaska	AS § 15.13.380	One year from the date of the violation.
Colorado	CRS § 16-5-401	Three years from the date of the election in which the violation took place.
Florida	FS § 105.25	Two years from the date of the violation.
Georgia	OCCA § 21-5-13	Within three years of a violation involving any person elected to serve for a term of two years; within five years of a alleged violation involving any person elected to serve for a term of four or more years.
Minnesota	MS § 211B.32	Within one year of the violation, except that if the act or failure to act involves fraud, concealment, or misrepresentation that could not be discovered during that one-year period, the complaint may be filed with the office within one year after the violation was discovered.
Ohio	ORC § 3517.157	Within two years of the violation, except that if the act or failure to act involves fraud, concealment, or misrepresentation and was not discovered during that two-year period, a complaint may be filed within one year after discovery of such act or failure to act.
Texas	Texas Ethics Comm. Rule § 12.5	Violation must have occurred within three years of the date the complaint is filed or the date the commission votes to initiate a preliminary review of a matter.
Washington	RCWA § 42.17.410	Five years from the date of the violation occurred.
<p>Notes: With the exception of Texas, the states listed are those with statutory time limitations for filing complaints that we were readily able to locate. We located the rules of the Texas Ethics Commission through a statutory reference. We believe this table is best interpreted as a sample of states' positions on the topic.</p> <p>Sources: Lexis online database of state statutes; Texas Ethics Commission website. http://www.ethics.state.tx.us/legal/rules.htm</p>		

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

HB 281 Relevant Statutes

Sec. 15.13.380. Violations; limitations on actions.

(a) Promptly after the final date for filing statements and reports under this chapter, the commission shall notify all persons who have become delinquent in filing them, including contributors who failed to file a statement in accordance with AS 15.13.040, and shall make available a list of those delinquent filers for public inspection. The commission shall also report to the attorney general the names of all candidates in an election whose campaign treasurers have failed to file the reports required by this chapter.

(b) A member of the commission, the commission's executive director, or a person who believes a violation of this chapter or a regulation adopted under this chapter has occurred or is occurring may file an administrative complaint with the commission within one year after the date of the alleged violation. If a member of the commission has filed the complaint, that member may not participate as a commissioner in any proceeding of the commission with respect to the complaint. The commission may consider a complaint on an expedited basis or a regular basis.



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Campaign law violations past APOC's scope

FBI investigations show state agency needs more authority, legislators say

An FBI investigation into corruption in the Alaska Legislature has turned up numerous instances of violations of the state's campaign finance laws that will not be prosecuted.

Those implicated, including former VECO Corp. owner Bill Allen, won't even be investigated, said Brooke Miles, executive director of the Alaska Public Offices Commission.

The Alaska Legislature shortened the statute of limitations for pursuing such campaign finance violations to one year, according to Miles.

"The bundling of campaign donations, the giving of illegal campaign contributions ... all those things are beyond our scope because of the statute of limitations," Miles said.

Miles said she plans to seek more authority for the commission to go back and prosecute violations.

"By the time I read them (in the federal indictment) they were already beyond the statute of limitations," she said.

One allegation made in court filings so far was that contributions were made to one person to be passed on to another to mislead APOC about where the money was coming from. Another was that VECO reimbursed a top executive's campaign donations made at Allen's behest.

Former House Minority Leader Ethan Berkowitz, D-Anchorage, an outspoken critic of the ethical standards of the Legislature, said he didn't know how the statute of limitations was shortened, but said there were efforts at about that time to weaken oversight of campaign finance laws.

"I know there were efforts around then to gut APOC," he said.

Miles said when the commission meets in Anchorage on Thursday and Friday, she'll request a longer time to go after violations.

"I intend to recommend the commission seek to revise that statutory language to four years," she said.

She said she would only ask for four years because memories faltered and obtaining documents becomes more difficult as time passes.

House Rules Committee Chairman Rep. John Coghill, R-North Pole, was one of the leaders in ethics reform in the Legislature last year. He said he's be open to that request, after what the public has learned from the FBI investigation.

"I think we should be able to give a good rational answer about why it is so short," Coghill said of the statute of limitations.

He said it initially appeared to him that the minimum time period should be a two-year election cycle, and perhaps longer.

Berkowitz said he'll support a longer statute of limitations, but APOC may need more done to it than that.

"I think there needs to be an audit of APOC's functions," he said. "I think we need to see if they have the statutory authority and the resources to do their job."

Coghill said the ongoing corruption trials indicate that enforcement of campaign finance rules in the state need to be more proactive, but said the commission could do that.

"Brooke (Miles) has said 'give me the tools and I'll be proactive,'" Coghill said.

Gov. Sarah Palin included money for an APOC investigator in her first budget as governor, and the Legislature approved the expenditure.

Miles recently announced that former Alaska journalist Jeff Berliner had been hired to fill that job.

Berkowitz said that was not enough.

"I know people are touting the fact that they've added an investigator, but all they've done is put an investigator back in after they took it out," he said.

• Contact Pat Forgey at 523-2250 or patrick.forgey@juneauempire.com.

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APOC investigating VECO



by Steve MacDonald
Monday, Sept. 24, 2007

ANCHORAGE, Alaska -- The Alaska Public Offices Commission, the agency that enforces state campaign finance laws, says it will investigate a claim by the former owner of VECO Corp. that it bought dozens of public opinion polls for political candidates.

APOC says it will investigate a claim by the former owner of VECO Corp. that it bought dozens of public opinion polls for political candidates. (KTUU-TV)

VECO apparently paid for the polls but never reported the transactions on campaign disclosure forms, a violation of state regulations.



During the Pete Kott bribery trial, former VECO owner Bill Allen claimed his company bought a public opinion poll for Kott's re-election campaign.

That revelation prompted a question from political watchdog Ray Metcalfe as to how many other candidates received the gift of a free poll.

APOC Director Brooke Miles said it's the commission's goal to investigate the facts surrounding the allegations. (Scott Jensen/KTUU-TV)

"I think that our goal is to establish as many facts as we can regarding the polls that have been alleged that VECO undertook on behalf of candidates," APOC Director Brooke Miles said.



This morning, the Alaska Public Offices Commission held an emergency meeting.

It has decided to investigate whether any other candidates got the same kind of help from VECO or any other company.

But the commission's investigation will have its limits.

The claim prompted a question from political watchdog Ray Metcalfe as to how many other candidates received the gift of a free poll. (KTUU-TV)

"We can't go back further than a year for the purpose of imposing a civil penalty, but for the purpose of determining what may have gone wrong with this whole polling information issue, I think we are free to go back further than that if we wish," Miles said.



Jeff Berliner is APOC's new investigator, hired by the Palin Administration. (Scott Jensen/KTUU-TV)

That's because in 2003 the Legislature, at the urging of then Gov. Frank Murkowski, reduced the statute of limitations for how far back APOC could go when investigating a campaign violation. It was slashed from four years to one.

During his time in office, Murkowski made APOC a prime target for cutbacks.

He got rid of the agency's lone investigator, along with a paralegal and another staffer, but that now has begun to change.



Assistant Attorney General Dave Jones says stricter regulations for candidates will make contributions more transparent. (Scott Jensen/KTUU-TV)

Jeff Berliner is APOC's new investigator, hired by the Palin Administration.

"Everybody is suspicious now. Alaska is even in the national spotlight and there is a climate of distrust and I hope we can turn that around," Berliner said.

And that will take time, but the Palin Administration believes beefing up APOC and the new ethics regulations put into place this summer will help.

Assistant Attorney General Dave Jones says stricter regulations for candidates will make contributions more transparent.

"I think the electronic filing requirement will help members of the public identify when there are potential problems and bring those to the attention of the APOC and perhaps push for some additional investigations," Jones said.

It's an agency that now has some teeth behind the regulations it's supposed to enforce.

He says he's "delighted to hear that APOC is investigating," but is questioning the statute of limitations.

Metcalf wants to know if the statute of limitations begins when a violation is committed or when it's discovered.

He believes the clock starts ticking when a violation is uncovered.

Contact Steve MacDonald at stevem@ktuu.com



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OPINION

Anchorage Daily News (AK) - September 25, 2007

Author: Staff

Only 1 year? Short limit on campaign law cases lets violators off easily

The Veco corruption scandal has revealed a stunning loophole in Alaska's political integrity laws. Candidates, corporations and others who violate state campaign laws apparently get a free pass if they can hide their offenses for a year and a day.

That's because the state's campaign watchdog agency is saddled with an almost microscopic **statute of limitations** -- just one year from the illegal act.

Even if the illegal act is detected within a year, the Alaska Public Offices Commission can pursue only civil fines. It's unclear whether the state can pursue criminal penalties against a corporation that makes illegal donations or a candidate who accepts them. **APOC** executive director Brooke Miles says she has asked the state attorney general's office if there are any criminal law enforcement options.

With Veco's illegal donations, **APOC**'s short **statute of limitations** has been a non-issue. Veco and its executives will avoid civil penalties for the firm's illegal contributions, but its two top lobbyists will go to prison for bribery. Several **of** the legislators who benefited from Veco's illegal contributions face trial or investigation for similar influence-peddling offenses. Veco itself is dead, sold to a firm that couldn't wait to dispose **of** the tarnished name.

But what about other lawmakers and candidates who got Veco's illegal campaign help? The company routinely did polling about its favored candidates. If Veco shared poll results directly with a campaign, it was an illegal corporate contribution. As long as the candidates took the illegal aid more than a year ago, though, they're home free as far as the Alaska Public Offices Commission is concerned.

And what if the illegal corporate donor is, unlike Veco, still in business? Without any criminal penalties, **APOC**'s one-year **statute of limitations** leaves enormous room to flout the ban on corporate campaign contributions.

Campaign law violations used to have a four-year **statute of limitations** -- until the Republican-dominated Legislature and Frank Murkowski

combined forces on a concerted effort to loosen state campaign financing rules.

The Veco scandal shows that Alaska's campaign laws need more backbone. Restoring the original **statute of limitations** is one obvious and urgent fix. Ensuring the state can impose criminal penalties for large-scale or widespread campaign law violations is another.

When the Legislature convenes next year, tightening up campaign law enforcement should be an early order **of** business.

BOTTOM LINE: Here's a loophole that needs closing, fast.



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VECO polling assistance comes under scrutiny

Statute of limitations may preclude violations from being pursued

The Alaska Public Offices Commission decided Monday to investigate whether VECO Corp. may have violated campaign finance rules by providing poll results to favored candidates without reporting the cost of the poll.

Such contributions could be either illegal corporate contributions or reporting violations on the part of candidates.

The practice is one of the ways the formerly powerful player in Alaska politics asserted its influence in the state, according to a federal indictment. VECO, an oil field services company, is now part of Colorado-based CH2M-Hill.

It's questionable whether APOC can pursue penalties due to the commission's one-year statute of limitations on such investigations, but the investigation may be valuable anyway, said one commissioner, Elizabeth Hickerson.

"I am less concerned about the statute of limitations as I am about getting at the facts," said Hickerson, an attorney and a Democratic commission member from Anchorage.

The commission's authority over campaign finance violations goes back for only one year from the dates of violations. Sen. Bill Wielechowski, D-Anchorage, said he intends to introduce legislation extending that to four years.

Hickerson said an investigation may highlight the need for a longer statute of limitations for the Legislature.

A little more than a year ago, FBI agents revealed to top VECO executives that they were under investigation as part of a widespread probe into influence buying in Alaska politics.

Any violation that could be pursued would have to have occurred after the FBI investigation was revealed.

"I don't think we have a violation within one year before us," said Roger Holl,

commission chairman and a public member of the commission from Anchorage. He also is an attorney.

The allegation that VECO has paid for polls used by numerous candidates over the years was made by former VECO executive Rick Smith in testimony during the federal bribery trial of former Rep. Pete Kott, R-Eagle River, in Anchorage.

Among the federal charges against Kott is that a poll VECO provided for his campaign constituted a bribe.

Former state legislator and APOC critic Ray Metcalfe had earlier urged the commission to investigate all 60 legislators, but had not filed a formal complaint as of the commission's special Monday morning meeting.

Commission members weren't clear on whether Metcalfe wanted unsuccessful candidates to be investigated as well.

Department of Law attorney Margaret Paton-Walsh called Metcalfe's accusations "incredibly vague and general."

The commission, however, decided to investigate the matter on its own.

Sen. Kim Elton, D-Juneau, said he could say that VECO never provided him with any poll results.

"That's probably not a surprise to anyone," he said.

Elton was pushing for a higher oil tax rate than that which VECO executives sought.

One of the first steps taken in the investigation may be to simply call up Smith and see if he'll say who VECO provided the polling data to, commissioners said. Others cautioned that he may not be able to talk, because of the ongoing federal investigation.

Smith has already pleaded guilty, and Hickerson said his testimony against his own interests should be considered reliable.

"If his testimony is correct, and I have no reason to doubt it, there were violations," Hickerson said.

• Contact Pat Forgey at 523-2250 or patrick.forgey@juneauempire.com.
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Sectional Analysis for CSHB 281(STA) **Campaign Finance Complaints**

- Section 1** Amends AS 15.13.040(f), establishing in code a retention period of six years for records of transactions listed in this section.
- Section 2** Adds a new section, Sec. 15.13.042, mandating each candidate, group, nongroup entity, or person required to report under this chapter to preserve all necessary records for six years.
- Section 3** Amends AS 15.13.380(b), increasing the time period allowed for filing a complaint for an alleged campaign finance violation from one year to five years. It also eliminates the time limitations of this subsection on proceedings against a person who "intentionally prevents discovery" of a violation of this chapter.
- Section 4** Amends AS 24.45.111(a), requiring that "an employer, retainer, or contractor of a lobbyist," in addition to a lobbyist, retain records required under this section. It also increases the retention period from one year to six years.
- Section 5** Amends AS 24.45.131, allowing any "person," not just a "qualified voter," to file a complaint with the commission.
- Section 6** Adds a new section, AS 24.45.131(d), prohibiting commission members and staff who file complaints from participating in any commission proceeding related to the complaint.
- Section 7** Adds a new section, AS 24.45.135, allowing "a person," as well as a commission member or staffer, to file a complaint alleging a violation of AS 24.45.121-24.45.171 has occurred or is occurring. The complaint must be filed within five years after the date of the alleged violation.