

DRAFT DISCUSSION PAPER

August 1, 2008

There have been a number of suggestions to change Chugach's Elections Process, including strengthening the Nominating Committee process. An initial discussion of those suggestions follows. Topics for discussion are in italics.

Strengthen the Nominating Committee

A. Introduction

Chugach's Nominating Committee and its process was established by the members in the Association's Bylaws. The duties and responsibilities of the Nominating Committee and the qualifications of its members are contained in Article IV, Directors, Section 4, Nominations, and Article XV, Standing and Ad Hoc Committees, Section 5, Membership, of the Bylaws. Therefore, changes to the Committee's duties and Committee member's qualifications should be made through amendments to the bylaws.

1. *Prohibit Dual Committee Memberships*

The Board could propose a bylaw amendment that would prohibit a member of the Nominating Committee from serving on another Standing or Ad Hoc Committee. This Amendment would be to Article IV, Section 4 and also to Article XV. Generally, the reason that a member has served on more than one committee is because of the lack of members applying to serve on committees and the need to fill them at least to meet the minimum requirements under the Bylaws. A Bylaws change to standing and ad hoc committees would inadvertently also prohibit a member of the Renewable Energy Committee from serving on an Annual Meeting Committee.

B. *Review the Qualifications of Nominating Committee Members*

Article XV, Standing and Ad Hoc Committees, Section 5, Membership currently prohibits Standing and Ad Hoc Committee members, including Nominating Committee members, from being, amongst other things, a Chugach employee; a Chugach Board member; an employee of a union local currently acting as a bargaining agent for Association employees (which would be IBEW Local 1547 and HERE); and a supplier, contractor, consultant or other entity which does business with the Association in excess of \$50,000.

Include written recommendations on and ranking of candidates by category and overall by Nominating Committee members in the election brochure:

1. While the use of written recommendations based on qualifications is appropriate, the proposed “categories” of questions and the rankings present problems. For example, what type or lack of “education” would make a candidate highly qualified, qualified or unqualified? A particular educational level? A particular focus of study? Why would the lack of education make a candidate unqualified? Similarly, what type of “board experience” would make someone qualified to be a Chugach Board member? “Overall experience” in what? “Knowledge of what ‘business and industry?’” What type of “professional experience”?
2. Would these questions be asked in the Application or during the interview process? Presently, similar questions are asked of all candidates meeting with the Nominating Committee in the Application. Also, during the interview process, the Nominating Committee prepares a set of questions that it asks all potential candidates it interviews. Is it suggested that a standard set of questions be prepared in advance to ask all candidates, including Petition Candidates? It is difficult to compare written with oral answers to questions, if the answers of Petition Candidates to these questions are to be ranked. Should Petition Candidates be afforded the same opportunity to fill out a question and answer form? Perhaps the numeric ranking/score should only apply to candidates that are involved in the Nominating Committee process.
3. Would the ranking be the overall ranking for each category by a majority of the Committee? Would the Committee member’s respective rankings be made public? If so, would they be included in the Election Brochure, along with the Answers, but no rankings, for the Petition Candidates?
4. An alternative would be to give the Committee page 18 (attached) from the GVEA Board Nominating Process June 12, 2008 Review and Recommendations for the 2009 Election Cycle and Beyond prepared by Karen L. Cedzo. The Chugach Nominating Committee could use it in developing questions for candidates and then assign a numerical score to the importance of the criteria and the candidate’s response/qualifications in light of that criteria.
5. If questions will also be asked of the Petition Candidates, the date for the filing of Petitions should be changed to provide more time for this process. Article IV, Directors, Section 4, Nominations, should therefore be revised accordingly. Presently, the Nominating Committee selects candidates no later than 70 days before the annual meeting, while the deadlines to petition to become a candidate is 60 days prior to the election. Further, at present, under the Bylaws,

candidate statements are only prepared by candidates that have been nominated by the Nominating Committee or by petition.

Another option is to **eliminate the Nominating Committee completely** and all candidates who want to run can do so by Petition.

C. *Candidate Questions*

GVEA has a good orientation statement (2 pages long) which explains the duties, obligations, and potential time commitments for potential Board Candidates. **See** attached Report. As discussed above, Chugach could expand its Board Candidate Applications to include this information, and/or include such information separately as part of the Application Packet for both candidates going through the Nominating Committee process as well as Petition Candidates. It could also be incorporated into Board Candidate Questions which would be on the Applications submitted to the Nominating Committee.

Proposed Bylaw Amendments

In addition to the bylaw amendments that would be required by certain of the proposals discussed above, the following proposed bylaw amendments have been suggested with regard to the Chugach Board:

A. *Expand Board from 7 members to 9*

This would require **an amendment to Article IV, Directors, Section 1, General Powers of Chugach's Bylaws, which states that there will be 7 directors**. The Alaska cooperative statute, A.S. 10.25.145, provides that a cooperative board shall have no less than five directors, and that the number of directors, their qualifications (other than those prescribed by statute, the manner of holding meetings, and the election of successor directors, shall be prescribed in the cooperative's bylaws. **It will also require an amendment to Chugach's Articles of Incorporation, which state that the Board will have 7 members. While amendments to Chugach's Bylaws requires a majority approval of the members voting, an amendment to Chugach's Articles of Incorporation requires, under A.S. 10.25.210, two-thirds approval of the members voting.**

B. *Director Seat Designations*

There is a proposal to require that three of the Board seats be filled by a Professional Engineer, a CPA, and an attorney. This would require a bylaw amendment and would be more easily accomplished if size of the Board is increased from 7 to 9. An alternative would be to only provide for one of those seats to be designated for a particular type of qualification. While it is the prerogative of the members to determine the minimum qualifications for service as a director, and the members can adopt more (but not less) stringent qualifications than those that are statutorily required, requiring

directors to have certain professional qualifications is problematical. As stated above, Chugach's current Bylaws meet the statutory requirements regarding directors, and none of the suggested professional qualifications requirements for board seats would run afoul of these statutory requirements. However, Chugach's Directors are not appointed, but are rather elected "at large" by all of Chugach's members. The highest vote recipients are elected to each open seat. It is highly possible that no engineer, CPA or lawyer would apply to be a Board Candidate, be nominated by the Nominating Committee or run by petition for these specific seats or be among the highest vote-getters in an election. Also, it is often difficult to get individuals to run for the Board and this could make it even more difficult. Another approach would be to provide as minimum qualifications that the Board member be or have experience in either accounting, law, engineering, or economics, or owning or operating a business of a certain size, and have prior experience serving on the board of a corporation with assets and revenues of a certain amount. However, given that the Board members are chosen from applicants or Petition Candidates, it is highly possible that no one with these requirements would apply or run as a Petition Candidate but might otherwise be well qualified for other reasons. Further, even if a candidate had these qualifications, they may for any number of reasons not otherwise be a good candidate. These requirements could result in a candidate having to be elected because he or she met these requirements, but that cannot occur.

C. ***Board Member Qualifications – Directors 1) cannot have a criminal record; 2) have been in bankruptcy; 3) must be a member in good standing, i.e., no disconnects, write-offs or late payments.***

The first issue is **1) whether these are circumstances that would automatically disqualify someone from being eligible to run for the Board; that 2) would disqualify someone from remaining on the Board if one or more of these circumstances occurred; or 3) matters which only need to be disclosed on the Application and/or in the Election Brochure, Candidate Statement, or other Document** which goes to the members. Also, Chugach should not be responsible for verifying the validity of the declarations or the qualifications of candidates except for those requiring the candidate to be a member and reside in the service territory for the prescribed certain length of time as provided in the Bylaws.

1. ***No Criminal Record***

This criteria presents a number of issues. For what period of time, i.e., the past five years? What types of criminal offenses? Felonies, misdemeanors? All felonies or misdemeanors? Would it be more reasonable to limit is to a felony conviction in the past five or 10 years that involved felonies or crimes involving theft, dishonesty, or crimes of "moral turpitude."

2. ***No bankruptcy***

Is this a legitimate reason for making someone ineligible to serve on the Chugach Board? Bankruptcy takes a number of forms and can occur for many reasons.

3. ***Member in good standing, i.e., no disconnects, write-offs or late payments.***

A member can be in good standing even if the member has had disconnects, write-offs or late payments. Late payments, and even disconnects, can occur for a number of reasons. For example, if a member does not have an automatic bank account deduction to pay his or her bill and is unable for emergency reasons to pay the bill, i.e., no access to checking account and does not pay by credit card, especially now that the use of credit cards has changed, detained for reasons beyond his or her control out of the US.

D. ***Regulate Campaign spending by/for Board Candidates***

If the Board wants to attempt to regulate spending on behalf of Board Candidates, there are essentially two ways to do that:

1. ***Amend State Law to make electric and telephone cooperative elections subject to State APOC requirements.***

The advantage to this is that there is already an independent state agency charged with doing these functions for state elections. However, in order to accomplish this, Chugach would need to get the cooperation and support of the other telephone and electric cooperatives. If it is perceived that this is an issue that is essentially pertinent only to Chugach, it is unlikely that Chugach would get that support and such an effort would not likely be successful in Juneau.

2. ***Amend Chugach's Bylaws to make Chugach responsible for this activity, i.e. an "internal APOC."***

MEA's Bylaws have provisions for candidate disclosure of campaign contributions. This has resulted, however, in a significant amount of controversy, litigation, and threatened litigation. If the Chugach Board does want to attempt to regulate campaign finance for its annual elections, it should consider hiring a special Board consultant to perform this function during the election process. The alternative would put the CEO and his staff in a position adversarial to potential or subsequently seated directors. It would require staff to assume responsibility for staffing and policing this effort.

The threshold issue, however, is: what happens if a successful candidate does not comply with the Chugach campaign disclosure

requirements/restrictions? Is the candidate 1) automatically disqualified? 2) Does the Association need to seek removal of the candidate? Presently, Board members can only be removed by the members, as provided in Chugach's Bylaws. 3) If the Board member is automatically disqualified or removal is sought by the Association, such disqualification would be disqualifying/removing a candidate that was elected by the members, thereby going against the will of the members who elected the candidate.

The candidates could be required to **disclose** who is providing them with funding for their campaign. However, this would not encompass those groups or individuals which are funding advertising or other campaign activities that the candidate neither supports, solicits or knows about. **Again, what happens if the candidate(s) doesn't comply?**

- E. *Clarify who pays for an election recount and under what circumstances***
Article V, Section 9(f) provides: "If the recount indicates that the candidate requesting the recount has lost the election by more than 1 percent of the total votes cast, then the cost of the recount shall be borne by the candidate. If the recount indicates that the candidate requesting the recount has either won a seat or lost by a margin of 1 percent or less, then the cost of the recount shall be borne by the Association." An issue was raised over the meaning of this provision when a candidate for the 2008 election requested and obtained a recount of the votes of the 2008 election.

Ken Jacobus' letter of May 5, 2008, states an exception that Chugach will pay the cost of the recount, because he notes that Mr. Kalenka lost to Rebecca Logan by 177 votes out of 45,330 "total votes cast" for all Director Candidates – a margin of less than 1%. This view focuses on the first sentence quoted from the Bylaws above and the assumption that "total votes cast" means the aggregate votes for all candidates.

The two sentences of Section 9(f) must be read together, however, and the second sentence clarifies that the question is whether "the candidate requesting the recount has either won a seat or lost by a margin of 1 percent or less" Chugach does not have cumulative voting. The most votes that any candidate can receive is the number of valid ballots cast. The margin by which a candidate wins or loses must be measured against the "total votes cast" for one seat, which is the number of valid ballots cast. The total ballots cast in the 2008 election were 15,424. The most votes that any one candidate could have received were 15,424. Since Mr. Kalenka lost to Ms. Logan by 175 votes on the recount, he lost by more than 1 percent of total votes for one seat (1% = 154 votes).

It doesn't make any sense to measure the margin of one candidate's loss against the total votes cast for all three open seats, in the manner that Mr. Jacobus suggests. Election laws typically require a candidate requesting a recount to post a bond and pay for the recount based on the margin of loss for that particular office. For example, Alaska Statute 15.20.450 provides that the State shall bear the cost of the recount "if the difference between the number of votes cast was 20 or less or was less than .5 percent of the total number of votes cast for the two candidates for the contested office."

The Bylaw should be revised to clarify that the 1 percent is "of the total **ballots** cast" so that this provision is not misconstrued in the future. At the time this provision was originally drafted, Chugach spoke with both the state and the Municipality of Anchorage, and 1 percent was determined to be a reasonable threshold of change which triggered the recount to be paid for by the candidate seeking the recount.

F. Review the need for Board Liasons to Member Committees

In recent years, the Board has appointed a liason to Standing and Ad Hoc Committees, which are Member Committees, including the Election and Bylaws Committees and the Renewal Resources Committee. The original purpose of the liason, which was to the Bylaws Committee, was to provide it with information on the Board's reasons for a particular bylaw proposal affecting director compensation. Concerns have been expressed about Board liaisons having become actively involved in Member Committee discussions and decision making. Board members are, under the bylaws, not allowed to be Committee members. Revisions could be made to Board Policies, for example Board Policy 105, Functions of the Board of Directors, to clarify the role of Board liaisons to Standing and Ad Hoc Member Committees.

Attachment