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SECTIONAL ANALYSIS

1995 REVISOR'S SENATE BILL NO. 85

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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

MEMORANDUM

February 9, 1995

SUBJECT: 1995 Revisor’s Senate Bill No. 85
TO: Senator Mike Miller
Chair, Senate Rules Committee
FROM: Pamela Finley
Assistant Revisor of Statutes

Enclosed is a final for introduction for the 1995 revisor’s bill, prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

...shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of...the statute law of this state.

Legislative council approved introduction of the bill at its meeting on February 9, 1995. When the Rules Committee introduces the bill, would you please ask the Senate Secretary to print this memorandum in a supplement to the Senate Journal so that the public will be better able to evaluate the bill.

Sections that delete, repeal, or update obsolete provisions:

Sections 2, 3, 15, 16, 19, 20, 22, and 27 delete, update, or repeal provisions that have become obsolete either through other legislative action or the passage of time.

Sections that correct errors or oversights: Sections 1, 4, 5, 6, 7, 8, 9, 10, 13, 17, 23, and 25 correct errors or oversights that cannot be corrected editorially.

Sections that improve the form or substance of the law: Sections 11, 12, 14, 18, 21, 24, and 26 propose amendments to improve the form or substance of the statute law of Alaska.

SECTIONAL ANALYSIS

Section 1. AS 04.11.400(d)(1) is a good example of misuse of the word "between," in that it excludes the beginning and ending numbers. This bill section corrects the error by including the beginning and ending numbers.

Section 2. This section deletes "as defined in AS 04.21.080(b)" at the end of AS 04.11.498(b). The definition of "established village" in AS 04.21.080(b) already applies to AS 04.11.498(b), so the cross-reference is superfluous.

Section 3. According to the Division of Banking, the Federal Savings and Loan Insurance Corporation no longer exists; its duties have been assumed by the Federal Deposit Insurance Corporation. Accordingly, the reference to FSLIC is deleted from AS 06.45.060(7)(D).

Section 4. According to the Division of Occupational Licensing, the "National Council for the Certification of Acupuncturists" does not exist; there is, however, a "National Commission for the Certification of Acupuncturists." This bill section amends AS 08.06.030(a)(4) to reflect that fact. The change was requested by the Department of Law.

Sections 5 and 6. According to the Division of Occupational Licensing, the American Association of Naturopathic Physicians does not sponsor, and is not involved in, examinations for certifications. Accordingly, the reference to this organization is deleted in AS 08.45.030 and 08.45.035. This amendment was requested by the Department of Law.

Section 7. According to the Division of Occupational Licensing, the proper name for the pharmacy association is the "National Association of Boards [not Board] of Pharmacy." The designation is correct in AS 08.80.110(4), but wrong in AS 08.80.120. This bill section amends AS 08.80.120 to correct the name of the association. The amendment was requested by the Department of Law.

Sections 8 and 9. AS 09.38.015(c) and 09.38.500(1) are amended to delete "general law or home rule" before "municipality." All municipalities in the state are general law or home rule municipalities, so the phrase is redundant.

Section 10. AS 13.26.344(l), which relates to powers of attorney, refers to "conclusive or electric-shock therapy." Clearly "conclusive" should be "convulsive", and this bill section makes that change. This corrects an error in ch. 109, SLA 1988.

Sections 11 and 12. AS 16.10.294(f) and (g) relate to legal actions between the commissioner of labor and a fish processor or primary fish buyer. Note that "commissioner" in this section is defined as the commissioner of labor, AS 16.10.296(1), whereas in other parts of AS 16.10 the "commissioner" is either the commissioner of fish and game or the commissioner of commerce and economic development. See AS 16.05.940, AS 16.10.360, and 16.10.560. Therefore the provisions of AS 16.10.294(f) and (g) can apply only to AS 16.10.265 - 16.10.296 because those are the only sections in AS 16.10 that the commissioner of labor can enforce. Accordingly, the reference to "this chapter" (i.e., AS 16.10) is changed to "AS 16.10.265 - 16.10.296".

Section 13. This section adds a provision that was erroneously repealed by ch. 130, SLA 1992. Chapter 130, SLA 1992 enacted provisions governing the practice of midwifery in AS 08.65, and repealed certain provisions in AS 18.05, most of which dealt with the practice of lay midwifery. AS 18.65.060, however, provided a penalty for violations of **any** provision of AS 18.05 and regulations adopted thereunder (not just those related to lay midwifery), and therefore should not have been repealed. The remaining provisions of AS 18.05 deal with the general duties of the Department of Health and Social Services (including disease control, transportation of dead bodies, and voluntary certification of laboratories) and disclosure and confidentiality of information. This bill section reenacts the provisions of former AS 18.05.060.

Section 14. This bill section adds unlawful evasion in the first degree (AS 11.56.340) to those misdemeanors that disqualify a person from receiving a concealed handgun permit, if the conviction was within the last five years. Unlawful evasion in the second degree (AS 18.56.350), which is a lesser offense, is currently listed as a disqualifying offense. The only difference between AS 11.56.340 and 11.56.350 is that AS 11.56.340 covers those who are charged with or convicted of felonies, whereas the AS 11.56.350 covers those charged with or convicted of misdemeanors. It makes no sense to disqualify a person who fails to return to official detention while charged with a misdemeanor, but not to disqualify a person who fails to return to official detention while charged with a felony. It is true that the person who violates AS 11.56.340 would be disqualified anyway if he or she were convicted of the underlying felony, and it is true that those charged with felonies are unlikely to be on furloughs, which may explain why AS 11.56.340 was omitted from the list. However, to avoid any possibility of an unequitable result, AS 11.56.340 is added to the list in AS 18.65.705(4).

Sections 15 and 16. Because the Federal Savings and Loan Insurance Corporation no longer exists, the reference to it in AS 21.21.230 and 21.21.600 (19) is changed to the Federal Deposit Insurance Corporation. See explanation for Section 3.

Section 17. AS 41.09.010, which governs exploration incentive credits, was enacted by ch. 39, SLA 1994. In a committee substitute, a "shall" in subsection (h) was changed to "may" due to an error in typing and proofing. The committee did not ask for such a change, nor did the drafter make it, but it appeared in the final anyway. This section returns the language to "shall" and bill section 28 makes the change retroactive to August 7, 1994, the effective date of sec. 1, ch. 39, SLA 1994.

Section 18. Executive Order 77 (1990) required the Alaska labor relations agency to act as the railroad labor relations agency. See AS 23.05.370(a)(6). AS 42.40.750(c) requires the railroad labor relations agency to "establish rules," rather than "adopt regulations," although the latter is the normal language used in the Alaska Statutes. "Rules" was probably used because it was closer to terminology used in federal law. Now that the relevant "rules" are to be made by a general state agency (as opposed to one limited to the railroad), the terminology should be changed to reflect that fact. Accordingly, "adopt regulations" is substituted for "establish rules."

Section 19. The section concerns the Alaska Coastal Policy Council. Because the public members serve only two years under AS 44.19.155(b), the reference to July 9, 1978 is obsolete and therefore is deleted.

Section 20. AS 44.21.501(a)(8) requires the office of equal employment opportunity to assist the division of labor relations in collective bargaining negotiations. According to the Department of Administration, the division of labor relations no longer exists. In this bill section the reference to the division is deleted. This change was requested by the Department of Law.

Section 21. AS 44.33.119 sets the purposes of the Alaska Division of Tourism. Since "visitory" does not appear in our dictionary, the reference in paragraph (6) to a "visitory experience" is changed to "the visitors' experience".

Section 22. This bill section removes an obsolete reference to the date that the first Alaska Administrative Register had to be published.

Section 23. This section adds definitions of "commissioner" and "department" for AS 46.14, which concerns air quality and was enacted in ch. 74, SLA 1993. Early drafts of that Act placed the provisions in an area of the Alaska Statutes that already defined "commissioner" as the commissioner of environmental conservation and "department" as the Department of Environmental Conservation, so additional definitions were not needed. When the provisions were renumbered as the bill made its way

through the legislature, we failed to add the appropriate definitions. This bill section corrects that error. It is made retroactive to June 26, 1993 (the effective date of most of ch. 74, SLA 1993) by bill section 29.

Section 24. This amendment concerns the definition of "community service" in a statute dealing with delinquent minors. The current reference is to work on "a project identified in AS 33.30.901." However, AS 33.30.901 merely defines terms, including the term "community service." To clarify the legislature's intent, the reference is changed to work "defined as community service under AS 33.30.901".

Section 25. Chapter 113, SLA 1994 modified provisions relating to records of minors. AS 47.10.090 (which formerly covered both court and agency records) was rewritten to apply only to court records and AS 47.10.093 (which covers only agency records and includes some provisions that were formerly in AS 47.10.090(a)) was enacted. Unfortunately, ch. 113, SLA 1994 did not amend AS 47.10.097(b), which exempted fingerprint records of minors from the requirement (formerly found in AS 47.10.090(a)) that agency records pertaining to the minor be kept confidential. Since the confidentiality of agency records is now covered by AS 47.10.093(a), rather than AS 47.10.090(a), a conforming amendment to AS 47.10.097(b) is necessary. Bill section 30 makes the amendment retroactive to September 1, 1994, the effective date of ch. 113, SLA 1994.

Section 26. As currently written, AS 47.10.490(2) defines "out-of-home care provider" as follows:

(2) "out-of-home care provider" means an agency or a person, other than the child's legal parents, with whom the child is currently placed and who is in the custody of the state under AS 47.10.080(b)(3), (c)(1), or (c)(3), 47.10.142, or 47.10.230(c), including a foster parent, a relative other than a parent, a person who has petitioned for adoption of the child, or a residential child care facility;

This could be interpreted to require that the person or agency (instead of the child) be in the custody of the state. The Department of Law therefore suggested that it be rewritten. Bill sec. 24 rewrites the definition to clarify that it is the child who must be in the custody of the state, and also to bring the "means and includes" aspect of the definition in line with standard style.

Section 27. This section repeals various provisions; a copy of the statutes to be repealed is attached. The reasons for the proposed repeals are as follows:

AS 18.07.111(12) defines a term ("secretary") that is not used in the chapter.

AS 24.20.075 establishes the Alaska Code Revision Commission, which expired on June 30, 1993 under AS 44.66.010(a)(8). Since the Commission's wind-down year expired on June 30, 1994, I have included AS 24.20.075 and AS 44.66.010(a)(8) in the repealer.

AS 44.33.122 established the Tourism Coordinating Committee and AS 44.33.124 sets its membership. Under AS 44.66.010(a)(16), it expired on June 30, 1993. Since the Committee's wind-down year ended on June 30, 1994, I have included AS 44.33.122, 44.33.124, and AS 44.66.010(a)(16) in the repealer.

AS 44.66.010(a)(12) is the sunset provision for the Alaska Women's Commission. Executive Order 84 (1993) repealed the Alaska Women's Commission. Therefore, the reference in AS 44.66.010(a)(12) is obsolete.

AS 47.30.500(4) defines "poverty area," a term that is no longer used in the article for which it is defined.

Section 28. Section 28 makes the amendment to AS 41.09.010(h), discussed under sec.17. above, retroactive to August 7, 1994, the effective date of that provision.

Section 29. Section 29 makes the enactment of AS 46.14.990 (26) and (27), discussed under sec. 23 above, retroactive to June 26, 1993, the effective date of most of AS 46.14.

Section 30. Section 30 makes the amendment to AS 47.10.097(b), discussed under sec. 25 above, retroactive to September 1, 1994, the effective date of ch. 113, SLA 1994.

Section 31. This section gives the bill an immediate effective date.

Please let me know if you have any questions or comments about the above.

PF:klb

Enclosure

TEXT OF STATUTES REPEALED**AS 18.07.111(12):**

(12) "secretary" means the secretary of the United States Department of Health and Human Services.

AS 24.20.075:**Sec. 24.20.075. ALASKA CODE REVISION COMMISSION.**

(a) The Alaska Code Revision Commission is established as a permanent commission of the legislature.

(b) The commission consists of two legislators, one from each house, appointed by the presiding officer; three public members who are not employees of the state government, appointed by the legislative council; a designee of the governor, who is an attorney employed by the executive branch of the state government; a designee of the chief justice of the supreme court; and a designee of the Alaska Bar Association appointed by the board of governors of the association. Legislative members serve at the pleasure of the presiding officer; the designee of the governor and the designee of the chief justice serve at the pleasure of the governor and chief justice, respectively; the public members and the designee of the board of governors serve terms of six years each, beginning July 1 and ending on June 30 six years later. Members may be reappointed or redesignated. A vacancy in the membership of the commission occurring other than by expiration of term shall be filled in the same manner as the original appointment but, with regard to the legislative members, the public members, and the board of governors' designee, for the unexpired term only. The term of a member continues until the member's successor is appointed. Members who are not state employees or legislators are entitled to receive the standard per diem and travel allowance provided for members of independent boards and commissions. Legislative members are entitled to receive the regular legislative per diem and travel allowance for days spent on commission business, and members who are state employees are entitled to receive the regular state employees per diem and travel allowance for days spent on commission business. The commission selects its chairman and vice-chairman. The director of legal services for the Legislative Affairs Agency, or the designee of the director, serves as executive secretary for the commission.

(c) The commission shall

(1) examine the statutes of the state and judicial decisions to discover defects and anachronisms in the law;

(2) review and consider proposed changes in the law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, the Alaska Judicial Council, the Alaska Legislative Council, the supreme court, the state or local bar associations, principal departments, agencies, boards, and commissions of the executive or judicial branch, and committees of the legislative branch;

(3) receive and consider suggestions from the Alaska bench and bar, public officials, organizations, and individuals as to areas of law needing review and remedy;

(4) recommend changes in law needed to eliminate antiquated and inadequate rules of law and to bring the law into harmony with current needs and conditions.

(d) The commission may

(1) hold public hearings and other meetings as necessary throughout the state and shall determine an appropriate quorum for conducting business;

(2) establish one or more subcommissions to assist it in the performance of its duties.

(e) The staff of the Legislative Affairs Agency serves as staff for the commission. Subject to appropriation for the purpose, the commission may request the agency to contract with other agencies or persons for the performance of necessary services.

(f) The commission shall submit its reports and recommendations, and draft legislation as to revision of law, to the legislative council and shall distribute them to the governor, members of the legislature, and the chief justice of the supreme court. Each draft of legislation submitted by the commission shall be accompanied by a sectional analysis. The commission shall prepare the sectional analysis using language that is understandable to a layman.

(g) All branches of state government shall provide information and documents requested by the commission necessary to the accomplishment of its work.

(h) The commission shall make a formal request to the legislative council for funds it considers necessary for the per diem, travel, and contractual expenses of the commission. Funds appropriated to the commission are to be disbursed and accounted for under procedures required by the Legislative Affairs Agency. The commission chairman shall approve all expenditure documents.

AS 44.33.122:

Sec. 44.33.122. ESTABLISHMENT OF TOURISM COORDINATING COMMITTEE.

(a) The Tourism Coordinating Committee is established in the Department of Commerce and Economic Development.

(b) The committee is established to advise the division of tourism and to coordinate the activities of state agencies that affect tourism.

(c) The committee shall

(1) provide a forum to develop interagency goals for visitor attraction and services that are consistent with the public interest and that will provide increased economic benefits to the various regions of the state;

(2) conduct analyses of problems facing development of tourism in the state and develop solutions to those problems by exploring successful models for the development of travel and recreation in other tourism-focused states and nations;

(3) develop, review, and recommend to the governor and commissioners budget requests for tourism development in the various programs of the agencies of the state; and

(4) coordinate the operating programs of state agencies to enhance tourism development efforts.

(d) The committee may hold formal or informal meetings concerned with the responsibilities assigned under this section and with other associated responsibilities. The committee may appoint subcommittees and may consider topics at meetings with less than the entire membership of the committee present (§ 7 ch 78 SLA 1988).

AS 44.33.124:

Sec. 44.33.124. MEMBERSHIP OF THE TOURISM COORDINATING COMMITTEE.

The governor shall appoint the members of the Tourism Coordinating Committee. Members may be appointed from the operational level of state agencies and may include representatives from the following:

(1) Office of the Governor (office of management and budget, international trade);

(2) Department of Commerce and Economic Development (tourism, business development);

(3) Department of Community and Regional Affairs;

(4) Department of Education (state museums);

(5) Department of Environmental Conservation;

(6) Department of Fish and Game (sport fish, habitat, fisheries rehabilitation, enhancement, and development);

(7) Department of Labor;

(8) Department of Natural Resources (parks, forestry, land and water, and historic preservation);

(9) Department of Revenue (taxation and revenue considerations);

(10) Department of Transportation and Public Facilities (airports, ferry system, highways);

- (11) University of Alaska (Center for International Business, School of Management);
- (12) Alaska Railroad.

AS 44.66.010(a)(8), (12), and (16):

(a) Boards and commissions listed in this subsection expire on the date set out after each: . . .

(8) Alaska Code Revision Commission (AS 24.20.075) - June 30, 1993; . . .

(12) Alaska Women's Commission - June 30, 1993; . . .

(16) Tourism Coordinating Committee (AS 44.33.122) - June 30, 1993;
. . . .

AS 47.30.500(4):

(4) "poverty area" means a district in which 15 per cent or more of the population, based on the 1970 census data, falls under 125 per cent of the Community Services Administration poverty guidelines.

PF:klb