

**SENATE
JOURNAL SUPPLEMENT**

March 14, 1996

Thursday

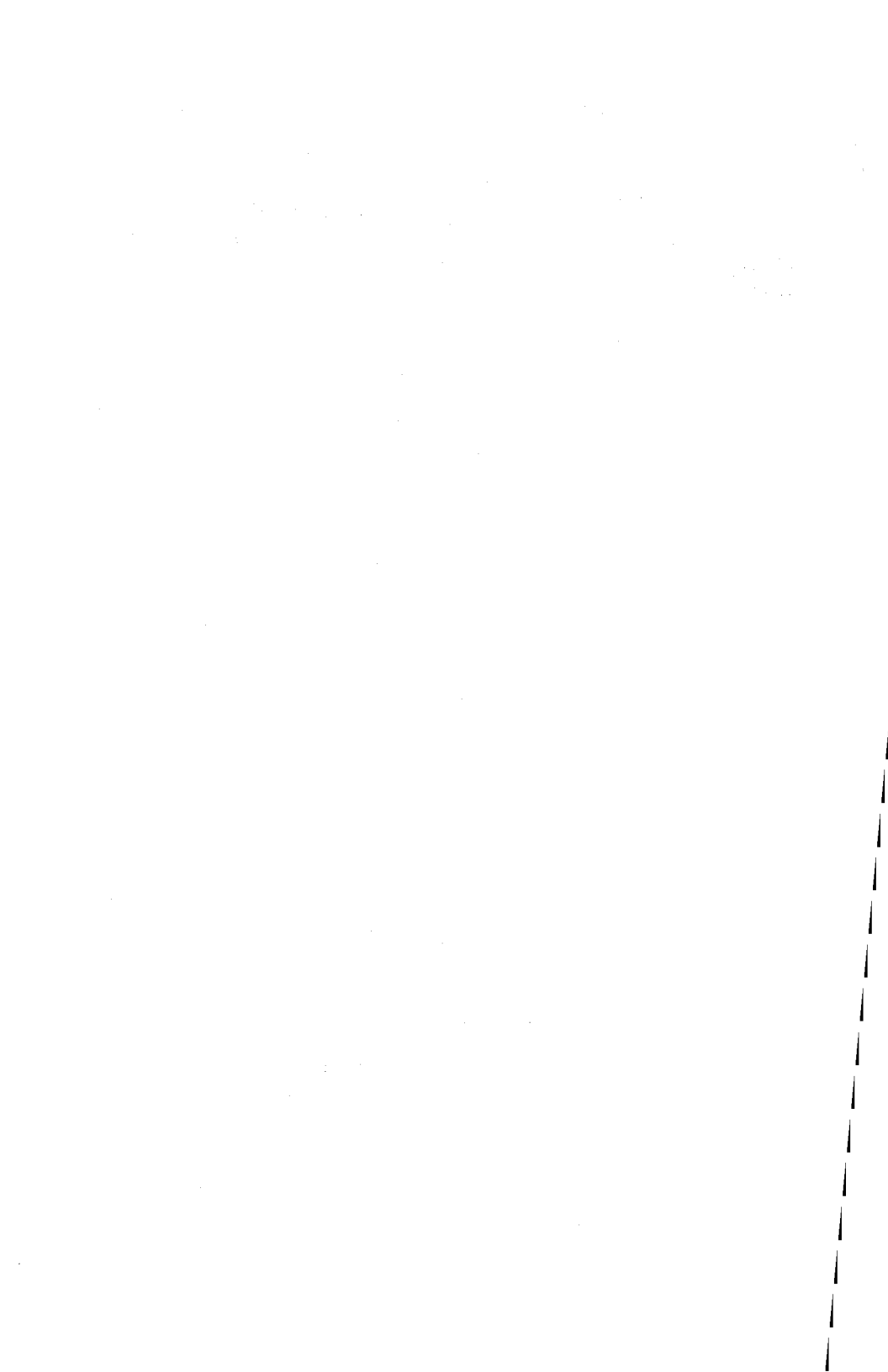
No. 11

SECTIONAL ANALYSIS

1996 REVISOR'S SENATE BILL NO. 310

March 14, 1996

Juneau, Alaska



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

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

MEMORANDUM

March 13, 1996

SUBJECT: 1996 Revisor's Senate Bill No. 310

TO: Senator Mike Miller, Chair
Senate Rules Committee

FROM: Pamela Finley
Revisor of Statutes

Enclosed is a final for the 1996 revisor's bill, as approved at the March 12, 1996 meeting of Legislative Council. I would appreciate it if the Rules Committee would introduce it as soon as possible. The bill is 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.

To assist the reader in understanding the bill, I have summarized the contents by listing sections that have similar purposes or effects.

Sections that delete, repeal, or update obsolete provisions:
Sections 2, 29 - 31, 33, 39 - 41, 49, and 53 delete, update, or repeal provisions that have become obsolete either through other legislative action or the passage of time.

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Sections that correct errors or oversights: Sections 1, 3 - 6, 8 - 27, 34 - 35, 37 - 38, 42 - 45, 47 - 48, and 50 - 52, correct errors or oversights that cannot be corrected editorially.

Sections that improve the form or substance of the law: Sections 7, 28, 32, 36, and 46 propose amendments to improve the form or substance of the statute law of Alaska.

SECTIONAL ANALYSIS

Section 1. Chapter 101, SLA 1995 amended AS 04.11.480(a) to increase from 30 days to 60 days the time in which a local governing body can protest the renewal, relocation, or transfer of a liquor license. AS 04.11.510(a) contains a cross-reference to the protest period. Section 1 changes the reference from the former 30-day period to the time allowed for protest under AS 04.11.480. This amendment was requested by the Department of Law.

Section 2. Chapter 103, SLA 1994 added AS 08.01.088, which contains a reference to AS 47.24.110. However, ch. 129, SLA 1994 repealed AS 47.24.110 and essentially moved the provisions of AS 47.24.110 to AS 47.24.010. Since AS 47.24.010 is already mentioned in AS 08.01.088, this bill section just removes the referenced to repealed AS 47.24.110.

Sections 3 and 4. Chapter 130, SLA 1994 allowed the Department of Administration, as well as the Department of Health and Social Services, to license certain assisted living facilities. AS 47.33.410(a)-(c). One of the elements of sexual assault in the first and second degrees against a mentally incapable person involves licensure of a facility or program by the Department of Health and Social Services. AS 11.41.410 and 11.41.420. To avoid having the commission of a sexual assault depend on whether a particular facility is licensed by the Department of Administration or the Department of Health and Social Services, AS 11.41.410 and 11.41.420 should have been amended to include a reference to licensure by the Department of Administration under AS 47.33. Bill sections 3 and 4 do this.

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Sections 5 and 6. Chapter 2, SLA 1991 added AS 11.46.482(a)(5) to make joyriding in a marked police or emergency vehicle a class C felony, even if there was no damage to the vehicle equaling or exceeding \$500 as required under AS 11.46.482(a)(4). At that time, two references to AS 11.46.482(a)(4) should have been expanded to include AS 11.46.482(a)(5) so that both the class C felonies for joyriding under AS 11.46.482(a)(4) and (5) were treated equally. One of those cross references is in AS 11.46.484(c), which increases the penalty for joyriding if the defendant was convicted of joyriding under AS 11.46.482(a)(4) or 11.46.484(a)(2) in the preceding seven years. The other cross-reference is in AS 11.46.486(a), which makes it a class B misdemeanor to ride in a vehicle knowing it has been taken in violation of AS 11.46.482(a)(4) or 11.46.484(a)(2). Bill sections 5 and 6 add a reference to AS 11.46.482(a)(5) to both AS 11.46.484(c) and 11.46.486(a). Bill section 54 clarifies that the reference to prior convictions in AS 11.46.484(c), as amended by sec. 5, includes convictions occurring on or before the effective date of this Act.

Section 7. Chapters 80 and 81, SLA 1995 both amended AS 12.25.030(b), the section covering warrantless arrests for certain enumerated offenses. Chapter 80 added a reference to AS 04.16.050 (minor consuming alcohol) or an ordinance with similar elements, while chapter 81 added a reference to AS 04.16.050 (but not similar ordinances) and provided that persons under 18 who are arrested for violating AS 04.16.050 shall be released to the minor's parent, guardian, or legal custodian unless there is lawful reason for further detention. Bill section 7 combines chapters 80 and 81 and makes the release provisions applicable to ordinances similar to AS 04.16.050.

Sections 8 - 10. In chapter 92, SLA 1983, the legislature added presumptive terms for first felony offenders who knowingly directed assaultive conduct at identified peace and correctional officers and emergency personnel. AS 12.55.125(d)(3) and (e)(3). However, the legislature failed to cross-reference these new presumptive terms in AS 12.55.125(g) (prohibiting suspension of imprisonment or sentence or other reduction of imprisonment), AS 12.55.155(a) (making presumptive terms subject to aggravating and mitigating factors), and

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AS 12.55.165(a) (concerning referral to three-judge court.) In Edwin v. State, 762 P.2d 499 (Alaska 1988), the Alaska Court of Appeals decided that the failure to amend these three statutes was inadvertent, and that those statutes should be read as if they contained references to the presumptive terms in AS 12.55.125(d)(3) and (e)(3). The situation was complicated by the addition of AS 12.55.125(e)(4), concerning certain felonies related to guide-outfitting, by ch. 37, SLA 1989. This addition was also not referenced in AS 12.55.125(g), 12.55.155(a), or 12.55.165(a). To further complicate matters, the 1990 revisor's bill, ch. 168, SLA 1990, amended AS 12.55.165(a) to reference subsections (d) and (e) of AS 12.55.125. While this is the normal style, because the lead-in language in both AS 12.55.125(d) and (e), refers to crimes that are not subject to presumptive sentencing (*i.e.*, first felony offenses), the references ought to be to the specific paragraphs rather than the subsections. Because SCS CSHB 127 (JUD), which repeals AS 12.55.125(d)(3) and (e)(3), has recently passed both houses, this revision omits any reference to those paragraphs. However, bill sections 8 and 9 amend AS 12.55.125(g) and 12.55.155(a) to extend the reasoning of Edwin to include AS 12.55.125(e)(4). Bill section 10 amends AS 12.55.165(a) to change "(d)" to "(d)(1) and (d)(2)", "and to change "(e)" to "(e)(1), (e)(2), and (e)(4)."

Section 11. This bill section amends AS 12.75.100, concerning the remedy of a person in custody because of civil process, to substitute "matter of substance required by law" for "matter or substance required by law." This section derives from sec. 66-26-16, A.C.L.A. 1949, and there appears as "matter of substance." In the 1962 codification, sec. 12.10, ch. 34, SLA 1962, "matter or substance" appears, but since "substance required by law" makes no sense in this context, it appears the 1962 codification contained a typographical error. This bill section reinstates the 1949 language.

Section 12. This bill section amends the statutory power of attorney form, AS 13.26.332, to substitute "acknowledged before me" for "subscribed and sworn to or affirmed before me." This law was derived from a uniform act which uses an acknowledgment, and an acknowledgment (rather than "subscribed and sworn to or affirmed") is proper because the person executing the power of attorney is not

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swearing to or affirming anything. The purpose of an acknowledgment is to verify that the person actually signed it for the purposes stated in it. See AS 09.63.090. This change was suggested by a private practitioner who said that he was forced to use both an acknowledgment (because it was correct) and "subscribed and sworn to" (because the statute required it.)

Section 13. AS 15.13.110(f), added by sec. 2, ch. 59, SLA 1995, requires the filing of campaign disclosure reports by a person who has filed a nominating petition to become a candidate "at the general election." However, AS 15.25.190, as amended by sec. 15, ch. 58, SLA 1995, requires a person nominated by petition to run at the primary election. To reconcile chs. 58 and 59, SLA 1995, this bill section amends AS 15.13.110(f)(2) by substituting "primary election" for "general election." The amendment was requested by the Alaska Public Offices Commission, Department of Administration.

Sections 14 and 15. These sections add references to tags in general, and the anadromous salmon tag in particular, to AS 16.05.110 (composition of fish and game fund) and AS 16.05.130(a) (limitations on expenditure of money from sport fishing, hunting, and trapping fees). This should have been done when tags were added to the statutes.

Sections 16 - 23. These sections add a reference to "permits" to AS 16.05.340(a) (fees), 16.05.350 (expiration of licenses, permits, and tags), 16.05.380 (appointment of agents), and 16.05.390 (fees and compensation of agents). This should have been done when the Chitina personal use salmon dip net fishing permit (16.05.340(a)(22)) was added in ch. 211, SLA 1990. In addition, section 17 adds to AS 16.05.350 an expiration date for triennial licenses. This should have been done when the triennial aquatic farming license (AS 16.05.340(a)(14)), was added in ch. 211, SLA 1990.

Sections 24 - 26. These sections add a reference to the possession of other documents required by law to AS 16.05.405(c), (e), and (f), which relate to taking fish and game by proxy. These other documents include such things as waterfowl and salmon tags, although the amendments are drafted broadly to include all documents

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required by law so that documents required by regulation or future legislation would also be included. These bill sections correct errors in past legislation which added tags and other required documents.

Section 27. Under AS 16.05.407(b) and 16.05.408(b), nonresidents and nonresident aliens who falsify information on a required affidavit are guilty of perjury. In general, AS 16.05.420(b) makes an applicant who provides false information on an application for a license, tag, or permit guilty of unsworn falsification. AS 16.05.420(b) recognizes AS 16.05.408(b) as an exception to the general provision, but does not reference AS 16.05.407(b). This section corrects that error by inserting in AS 16.05.420(b) a reference to AS 16.05.407(b).

Section 28. This section amends AS 16.10.010 (concerning interference with salmon spawning streams and waters) by rearranging it. AS 16.10.010 is derived from sec. 39-2-31, A.C.L.A. 1949, which consisted of one long sentence (the general substance of current paragraphs 1 - 3, up to the last semicolon) and a second sentence setting out the requirements for the application (currently the material following the last semicolon in paragraph (3).) In the 1962 codification, paragraph designations were added, with the requirements for the application being a sentence in paragraph (3). While the 1962 codification did break up an unwieldy sentence, it left the description of the affected waters in paragraph (1) only and the requirement for an application in paragraph (3) only. In the 1992 editorial revision of AS 16, the revisor attempted to fix part of the problem editorially by adding "described in (1) of this section" after "waters" in both paragraphs (2) and (3). While this editorial change did correct part of the error in the 1962 codification, it did not clearly make the permit requirement applicable to paragraphs (1) and (2). Accordingly, this bill section moves the permit requirement to the beginning of the section, retains the editorial change of "waters described in (1)," and designates as subsection (b) the material currently following the last semicolon. This seems the clearest way of correcting technical errors in the 1962 codification.

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Sections 29 and 30. These bill sections change "authority" to "corporation" in AS 18.55.230 and 18.55.580(b). This should have been done when, in ch. 4, FSSLA 1992, the Alaska Housing Finance Corporation assumed the duties of the Alaska State Housing Authority.

Section 31. Chapter 4, FSSLA 1992 repealed certain provisions of AS 44.47 that provided for owner-occupied housing loans. However, AS 18.56.096 (concerning limitations on loans) still contains a reference to AS 44.47. To make it clear that the reference is to the former provisions, "former provisions of" is inserted before "AS 44.47."

Section 32. This bill section substitutes "commissioner's reserve valuation methods" for "commissioner's reserves valuation methods" in AS 21.18.110(b)(1) in order to parallel the language in AS 21.18.110(b)(2). The amendment was requested by the Department of Law.

Section 33. This bill section amends AS 21.36.095 (concerning insurance coverage of children), by substituting a reference to current federal law (42.U.S.C. 1396g-1) for a reference to a repealed federal law (42 U.S.C. 1396g). 42 U.S.C. 1396g-1 does contain a reference to a "service benefit plan" and was, according to the Department of Health and Social Services, the correct citation. This corrects an error in ch. 102, SLA 1994.

Sections 34 and 35. These bill sections substitute "director of the division of insurance" for "insurance commissioner" in two workers' compensation statutes, AS 23.30.025(a) and 23.30.030(7). The definition of "insurance commissioner" in AS 23.30.265(18) is repealed in bill section 53. The sections being amended were enacted in ch. 193, SLA 1959. The position of director of the division of insurance was not created until ch. 120, SLA 1966. The amendments made by these bill sections should have been made in ch. 120, SLA 1966. The amendments were requested by the Department of Law.

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Section 36. This bill section amends AS 29.06.040(c) (relating to procedures for annexation and detachment of territory by municipalities) by substituting "must include" for "include". This is more consistent with the requirement of the first sentence of the subsection that the Local Boundary Commission establish the procedures.

Section 37. This bill section amends AS 33.16.230, which allows a prisoner or parolee to waive a right to a hearing provided under several enumerated laws. One of those laws---AS 33.16.120---does not give the prisoner or parolee a right to a hearing, but instead sets out the rights of crime victims. However, AS 33.16.130(b), which is not enumerated in AS 33.16.230, does give a prisoner the right to a hearing. Since it appears the reference to AS 33.16.120 should have been to AS 33.16.130, that change is made in this bill section.

Section 38. This bill section amends AS 33.30.028(a) (relating to payment for medical care of prisoners) to change a spanned reference. Currently, liability for costs of medical care is the responsibility of the prisoner and the Department of Health and Social Services if the prisoner is eligible for assistance under AS 47.07 (medical assistance for needy persons) or AS 47.25.120 - 47.25.310. AS 47.25.120 - 47.25.300 is the article covering general relief assistance, but AS 47.25.310 is the first section of the article governing aid to families with dependent children. Since a prisoner would not be in a situation where the prisoner is eligible for AFDC, the correct spanned reference should be AS 47.25.120 - 47.25.300. This bill section makes that change. The amendment was requested by the Department of Law.

Sections 39 - 41. These bill sections amend AS 34.35.190, 34.35.410(a), and 34.35.440(c) to allow the recorder to index certain liens on a computer-readable medium instead of a book. According to the Department of Law, the recorder has been keeping the index for personal property liens covered by these statutes on a computer since the early 1970s. These bill sections provide the statutory authority for that practice. The amendments were requested by the Department of Law.

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Section 42. Sections 67 and 68, ch. 21, SLA 1995 deleted the requirement that the oil and gas leasing program be submitted to the legislature. AS 38.05.180(b) and (e). However, a reference to the submission in AS 38.05.180(d) was left in statute. This bill section removes that reference.

Section 43. Chapter 131, SLA 1994 changed the name of the Older Alaskans Commission to the Alaska Commission on Aging. AS 44.21.200. This bill section changes the name of the Commission in AS 39.25.120(c)(9)(J).

Sections 44 and 45. These bill sections amend AS 39.27.012 and 39.27.020(c) to give the correct title for the director of the division of personnel.

Section 46. This bill section rewords AS 41.21.960(d) (relating to forfeiture of bail and seized items) to parallel the sentence structure in AS 16.05.165(d). This makes the sentence clearer and avoids the question of whether the verb should be plural or singular.

Sections 47 and 48. These bill sections substitute "adjutant general of the Department of Military and Veterans' Affairs" for "commissioner of military and veterans' affairs" in AS 46.04.080(a) and AS 46.09.030. The principal executive officer of the Department of Military and Veterans' Affairs is called the adjutant general, not the commissioner. AS 44.35.010.

Section 49. This bill section amends AS 46.35.070(e) (relating to environmental procedures coordination) to remove a dated reference. The reference was originally intended to preserve existing law, but is no longer necessary.

Sections 50 and 51. In ch. 113, SLA 1994, the confidentiality provisions for court and agency records concerning juveniles (formerly found in AS 47.10.090) were modified so that provisions relating to court records remained in AS 47.10.090 and provisions relating to

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agency records were put in a new section, AS 47.10.093. Bill sections 50 and 51 amend AS 47.10.092(a) (relating to allowed disclosures to certain public officials) and AS 47.10.460(a) (relating to review panels) to include appropriate references to AS 47.10.093.

Section 52. Chapter 98, SLA 1995 added AS 47.10.265, relating to youth courts. In early drafts of the bill, the youth court provisions were placed in AS 18.05, which defined "commissioner" as the commissioner of health and social services. When the provision was moved to AS 47.10 by a floor amendment, the definition of "commissioner" was lost because AS 47.10 does not contain a definition for "commissioner," although it does define "department" as the Department of Health and Social Services. This bill section defines "commissioner" as the commissioner of health and social services for all of AS 47.10, which will cover not only the youth court provisions, but other sections of AS 47.10 as well. Currently, in AS 47.10 "commissioner" refers to either a specifically named commissioner or to the commissioner of health and social services. See AS 47.10.080(d), 47.10.092(a), and 47.10.400(a). Adding a general definition of "commissioner" for the chapter will make it easier to draft in this chapter in the future.

Section 53. This section repeals obsolete or duplicative provisions. The text of these provisions is attached.

AS 12.36.090(3): Defines "peace officer," a term that no longer appears in AS 12.36.

AS 19.22.030(1)

AS 19.25.160(1)

AS 19.27.110(2)

AS 19.30.241(3)

AS 19.30.320(2)

AS 19.40.290(1): Define "department" as the Department of Transportation and Public Facilities. These definitions duplicate AS 19.45.001, which applies to AS 19.05 - 19.40 and contains the same definition of "department."

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AS 19.30.241(1): Defines "commissioner" as the commissioner of transportation and public facilities. This duplicates AS 19.45.001, which applies to AS 19.05 - 19.40 and contains the same definition of "commissioner."

AS 23.30.265(18): Defines "insurance commissioner." Because bill sections 34 and 35 substitute "director of the division of insurance" for "insurance commissioner" in all provisions of AS 23.30 that use the term "insurance commissioner," this definition is no longer necessary.

AS 30.13.140. Provides that regional resource development authorities are not subject to the Alaska Transportation Commission. The Alaska Transportation Commission (former AS 42.07) was repealed by 1983 Initiative Proposal No. 2, effective February 28, 1985.

AS 46.03.900(3). Defines "atomic radiation," a term that no longer appears in AS 46.03. The term should have been repealed in ch. 172, SLA 1978.

Section 54. This bill section clarifies that the prior convictions referred to in AS 11.46.484(c), as amended by sec. 5, include those occurring on or before the effective date of this Act.

Section 55. This bill section preserves legislation passed this session that takes effect before or at the same time as the revisor's bill and that irreconcilably conflicts with the revisor's bill. (Conflicting legislation that takes effect after the revisor's bill will override the revisor's bill under normal rules.)

Section 56. Gives the bill an immediate effective date.

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

PF:klb

Attachment

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TEXT OF STATUTES REPEALED

AS 12.36.090(3):

(3) "peace officer" means a public servant vested by law with a duty to maintain public order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders.

AS 19.22.030(1):

(1) "department" means the Department of Transportation and Public Facilities;

AS 19.25.160(1):

(1) "department" means the Department of Transportation and Public Facilities;

AS 19.27.110(2):

(2) "department" means the Department of Transportation and Public Facilities;

AS 19.30.241(1) and (3):

(1) "commissioner" means the commissioner of transportation and public facilities;

(3) "department" means the Department of Transportation and Public Facilities;

AS 19.30.320(2):

(2) "department" means the Department of Transportation and Public Facilities;

AS 19.40.290(1):

(1) "department" means the Department of Transportation and Public Facilities;

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AS 23.30.265(18):

(18) "insurance commissioner" refers to the person who heads the insurance division or section of the Department of Commerce and Economic Development and is charged with the administration of the state insurance laws;

AS 30.13.140:

Sec. 30.13.140. NOT SUBJECT TO TRANSPORTATION COMMISSION JURISDICTION. An authority is not subject to the jurisdiction of the Alaska Transportation Commission.

AS 46.03.900(3):

(3) "atomic radiation" means all ionizing radiation;

PF:klb