

HOUSE BILL NO. 176

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE BUNDE

Introduced: 2/10/95

Referred: Community and Regional Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to errors in surveys of land."**

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

3 *** Section 1.** AS 09.45.800 is amended to read:

4 Sec. 09.45.800. **DEFECTIVE SURVEY OR** [PREREQUISITE]
5 EARTHSLIDE CHANGING LAND BOUNDARIES. If the boundaries of land, owned
6 either by public or by private persons **(1)** have been moved by an act of God,
7 consisting of an earthslide, so that they are in a location different from that at which,
8 by solar survey, they were located before the earthslide, **or (2) are manifestly**
9 **inaccurate due to a defective survey of a subdivision and the ownership status of**
10 **the land precludes resurvey and replat without the intervention of the court,** an
11 action in rem to recognize the boundaries as they presently exist and to quiet title
12 within the boundaries in the persons judicially found entitled to title under
13 AS 09.45.800 - 09.45.880, is authorized, maintainable by the persons and with the
14 procedures in AS 09.45.800 - 09.45.880 for the handling of the **circumstances**
15 [EMERGENCIAS] dealt with in AS 09.45.800 - 09.45.880.

1 * **Sec. 2.** AS 09.45.800 is amended by adding a new subsection to read:

2 (b) Notwithstanding (a) of this section, an action may not be commenced under
3 (a)(2) of this section for a subdivision located within a municipality until the governing
4 body of the municipality in which the subdivision is located has passed a resolution
5 supporting the action.

6 * **Sec. 3.** AS 09.45.805(a) is amended to read:

7 (a) An action authorized by AS 09.45.800 - 09.45.880 may be commenced by
8 (1) a borough with the joinder of a city or cities included in the
9 borough;

10 (2) a city not included within the boundaries of a borough [,] if the
11 earthslide **or survey error** has affected land in the city, or land outside the city as to
12 which outside land the city has statutory power to approve a land map;

13 (3) a school district that has statutory power to approve a land map; or

14 (4) any other entity or person, granted permission by the court to bring
15 the action.

16 * **Sec. 4.** AS 09.45.810 is amended to read:

17 Sec. 09.45.810. **SEPARATE ACTIONS AS TO SEPARATE SLIDE OR**
18 **SURVEY AREAS.** An entity that is a permissible plaintiff under AS 09.45.805, may,
19 in its discretion, bring a separate action under AS 09.45.800 - 09.45.880 with respect
20 to each separate slide area **or defective survey** located within its boundaries, and its
21 decision regarding the desirability of the separate action, and regarding the area to be
22 dealt with in each action, is final.

23 * **Sec. 5.** AS 09.45.815 is amended to read:

24 Sec. 09.45.815. **COMPLAINT.** The complaint must substantially include

25 (1) a statement of the facts making the provisions in AS 09.45.800 -
26 09.45.880 applicable;

27 (2) a description of the entire real property sought to be affected by the
28 action;

29 (3) a specification of the estate, title, and interest owned, and in the
30 actual possession of the plaintiff or plaintiffs in described parts of the entire real
31 property sought to be affected by the action;

1 (4) a specification of the estate, title, and interest, so far as they are
2 known to the plaintiffs or either of them, and so far as they are capable of being
3 discovered by reasonably diligent search by the plaintiff or plaintiffs, in each separate
4 part of the entire real property sought to be affected by the action;

5 (5) a specification of the street areas offered by the plaintiff, or
6 plaintiffs, to be vacated in whole or in part for judicial equitable allocation to
7 landowners for the mitigation of the losses inflicted upon the landowners by the
8 **defective survey or by the** act of God consisting of the earthslide;

9 (6) a proposed replatting of the entire real property sought to be
10 affected by the action, embodying the land boundaries as fixed by the **resurvey or the**
11 act of God, except as these have been liberalized by judicially directed use of the
12 vacated lands.

13 * **Sec. 6.** AS 09.45.835(b) is amended to read:

14 (b) An answer must

15 (1) specifically set out the particulars in which the claimant's estate,
16 right, title, or interest in or to, or lien upon all or any part of the property is different
17 from, or greater than, the interest of the claimant as it is described in the complaint;

18 (2) be confined to rights based on events occurring at the time of, or
19 since the time of the

20 **(A)** act of God, consisting of the earthslide; **or**

21 **(B) defective survey.**

22 * **Sec. 7.** AS 09.45.835(c) is amended to read:

23 (c) To whatever extent, if at all, the answering party has rights against anyone
24 whatsoever, based upon facts or events that occurred before the **defective survey or**
25 **the** earthslide, the claims shall remain unaffected by the action brought under
26 AS 09.45.800 - 09.45.880 and shall be assertable subsequent to the conclusion of the
27 action at any time and in any manner permitted by law, notwithstanding the judgment
28 granted in this action, recognizing, however, the finality of this judgment as to the
29 consequences, with respect to land boundaries, of the **resurvey or the** earthslide.

30 * **Sec. 8.** AS 09.45.845 is amended to read:

31 Sec. 09.45.845. VACATING OF STREETS IN WHOLE OR IN PART. The

1 vacating of streets in whole or in part by the voluntary action of a municipality, for
2 the purpose of making it possible for the court to mitigate the hardships suffered by
3 individuals because of the change in land boundaries caused by the act of God,
4 consisting of an earthslide, **or the defective survey**, can be accomplished by the offer
5 of the municipality expressed in the complaint followed by the court's approval of it
6 in the action authorized in AS 09.45.800 - 09.45.880, without other formalities. This
7 provision is a special [EMERGENCY] substitute for the provisions contained in
8 AS 29.40.120 - 29.40.160.

9 * **Sec. 9.** AS 09.45.855 is amended to read:

10 Sec. 09.45.855. SCOPE OF JUDGMENT. The judgment shall

11 (1) determine the land boundaries of each parcel of land located within
12 the entire area of real property sought to be affected by the action, whether owned
13 publicly or privately after judicial equitable allocation of lands voluntarily vacated by
14 a municipality under AS 09.45.845;

15 (2) determine the person or persons having estates, rights, titles,
16 interests, and claims in and to each parcel, whether legal or equitable, present or
17 future, vested or contingent, or whether they consist of mortgages or liens of any
18 description;

19 (3) approve and direct the proper filing of a new plat map covering the
20 entire area of real property sought to be affected by the action, as a substitute for the
21 plat maps previously filed, but

22 (A) rendered inaccurate by the act of God consisting of an
23 earthslide; **or**

24 (B) **discovered to be inaccurate due to a defective survey;**

25 (4) **to the extent reasonably practicable, attempt to minimize**
26 **disruption to lines or boundaries of parcels or lots that are not found to be**
27 **materially incorrect.**

28 * **Sec. 10.** AS 09.45.860 is amended to read:

29 Sec. 09.45.860. STANDARDS FOR JUDGMENT. In reaching the conclusions
30 called for by AS 09.45.855, the court shall give effect to the changes in land
31 boundaries caused by the earthslide **or reflected in the resurvey**, mitigated, however,

1 so far as can equitably be done, by allocating to contiguous lots parts of the land
2 released by a municipality by its voluntary vacation of areas formerly constituting
3 public ways, which vacatings of streets shall be approved in this judgment.

4 * **Sec. 11.** AS 09.45.865 is amended by adding a new subsection to read:

5 (b) If a judgment is entered under AS 09.45.855 because of a defective survey,
6 a parcel or lot affected by that judgment may not, solely by reason of the judgment or
7 its effect, become ineligible for a use or development for which it was eligible before
8 the entry of judgment.

9 * **Sec. 12.** AS 09.45 is amended by adding a new section to read:

10 Sec. 09.45.872. ASSESSMENT OF COST OF RESURVEY. The court shall
11 assess the cost of a resurvey under AS 09.45.800 - 09.45.880 for a defective survey
12 to the owners of the parcels or lots within the subdivision. This section does not affect
13 the right of the owner of a parcel or lot to recover damages for the defective survey
14 or limit the liability of the person who performed the defective survey.

15 * **Sec. 13.** AS 09.45 is amended by adding a new section to read:

16 Sec. 09.45.878. DEFINITION. In AS 09.45.800 - 09.45.880, "defective survey"
17 means a survey that cannot be reconciled with the plat of the property, does not
18 conform with the physical location of the property boundaries, and is manifestly
19 defective for a subdivision.

20 * **Sec. 14.** AS 09.45.880 is amended to read:

21 Sec. 09.45.880. SHORT TITLE. AS 09.45.800 - 09.45.880 may be cited as
22 the Earthslide and Defective Survey Relief Act.