

**HOUSE JOURNAL  
SUPPLEMENT**

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**Thursday**

**No. 6**

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**SECTIONAL ANALYSIS  
FOR CSHB 410(JUD)  
2006 REVISOR'S BILL**

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**HOUSE JOURNAL SUPPLEMENT**

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

**MEMORANDUM**

February 27, 2006

**SUBJECT:** CSHB 410(JUD); 2006 Revisor's Bill

**TO:** Representative Norman Rokeberg  
Chair of the House Rules Committee

**FROM:** Pam Finley  
Revisor of Statutes

The following is a sectional analysis of CSHB 410(JUD), the 2006 revisor's bill. Please note comments about bill sections 13 and 17 concerning the intent of the House Judiciary Committee, with which I concur. 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 any portion 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 1, 11, 19, 27, 28, 29, 30, and 31 amend or repeal provisions that have become obsolete through other legislative action.

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**Sections that correct errors or oversights:** Sections 2, 3, 5, 8, 9, 10, 12, 14, 16, 20, 21, 22, 23, 24, 25, 26, 32, 36, 37, 40, 41, and 42 correct errors or oversights.

**Sections that improve the form or substance of the law:** Sections 4, 6, 7, 13, 15, 17, 18, 33, 34, 35, 38 and 39 propose amendments to improve the form or substance of the statutory law of Alaska.

### **SECTIONAL ANALYSIS**

**Bill section 1** substitutes "United States Postal Service" for "United States Post Office" in the definition of "send" in AS 04.11.499(2). "United States Postal Service" is the correct term for the mail service, as opposed to a building. This amendment was requested by the Department of Law.

**Bill sections 2 and 3** substitute the correct name of the Alaska Rules of Civil Procedure in AS 09.45.825 and 09.45.830.

**Bill section 4** adds the article "the" and "an" to the first sentence of AS 09.55.536 to make it more readable.

**Bill section 5** amends AS 09.65.161 to change "public health significance" to "public health importance". Section 5, ch. 54, SLA 2005, a Governor's bill, amended AS 18.05.040(a)(1) to substitute "disease or other condition of public health importance" for "diseases of public health significance." See also AS 18.15.355, added by sec. 8, ch. 54, SLA 2005. Unfortunately, ch. 54, SLA 2005 did not amend AS 09.65.161, which confers immunity on those reporting the health care data required to be reported "for conditions or diseases of public health significance." This bill section amends AS 09.65.161 so that the language in that statute matches the language used in ch. 54, SLA 2005 and current AS 18.05.

**Bill sections 6 and 7** amend AS 11.46.130(a)(6) and 11.46.220(c)(1)(C), respectively, to improve the language. A person is convicted of an offense under a statute, not convicted of the statute.

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Bill sections 8 - 10 substitute "performance designation" for "achievement designation" in AS 14.03.123 (c), (d), and (e). The term "performance designation" is used in AS 14.03.123(a) and (b) and 14.03.120 and according to the Department of Education and Early Development is the preferred term.

Bill section 11 removes a reference to Bureau of Indian Affairs schools from the definition of "public schools" in AS 14.60.010 because there are no longer BIA schools in Alaska. However, at the Department of Education and Early Development's request and to preserve the authority of the Department and regional school boards, a reference to BIA schools is retained in AS 14.07.030(2), AS 14.08.101(2), and AS 14.14.110(a).

Bill section 12 amends AS 15.07.137 to insert "identification" between "voter" and "numbers". "Voter identification number" is the term that is used in AS 15.07.195(a)(4) and AS 15.60.010(18).

Bill section 13 amends AS 15.10.105(a) to create the division of elections in statute. The current language of AS 15.10.105 gives the power to control and supervise the division of elections to the lieutenant governor, but does not formally create the division. This amendment does so. The House Judiciary Committee noted, and I concur, that the creation of a division in statute is unusual for a revisor's bill and is done here only because of the clear assumption throughout the relevant body of existing law that the division already exists. This bill section should not be used as precedent for the creation of a division in statute in other circumstances.

Bill section 14 amends AS 15.20.072(c) to insert "identification" between "voter" and "number". See explanation for bill section 12.

Bill section 15 defines "division" as the division of elections for purposes of the Alaska Election Code. The term "division" is used frequently throughout AS 15, but is not defined. See also explanation for bill section 13.

Bill section 16 amends AS 21.89.080(b) by substituting a reference to AS 09.80, the Uniform Electronic Transactions Act, for a reference to

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AS 09.25.500 - 09.25.520, which covered electronic transactions and was repealed by the same bill that enacted AS 09.80 (ch. 110, SLA 2004). The error occurred because AS 21.89.080(b) was also enacted in 2004.

Bill section 17 adds a section creating the division of workers' compensation and providing that the commissioner shall appoint the director. Chapter 10, FSSLA 2005 defined and referred to both the division and director of workers' compensation, but did not establish the division or the position of director in statute. The Department of Law agreed that a statute establishing the division and position of director would be a good idea. (Chapter 10, FSSLA 2005 was a governor's bill.) The language used in bill section 16 is based on AS 21.06.010 and 21.06.020 (division of insurance) and AS 38.05.005 - 38.05.015 (division of lands). The House Judiciary Committee noted, and I concur, that the creation of a division in statute is unusual for a revisor's bill and is done here only because of the clear assumption throughout the relevant body of existing law that the division already exists. This bill section should not be used as precedent for the creation of a division in statute in other circumstances.

Bill section 18 gives a short title ---The Legislative Ethics Act--- to AS 24.60. This would make it easier to refer to that chapter in bill titles and discussions.

Bill section 19 amends AS 26.23.040(e)(12) to substitute "49 U.S.C. 5116(a)(2)(B)" for "49 U.S.C. Appx. 1815(a)(3)." AS 26.23.040(e)(12) was added by sec. 3, ch. 32, SLA 1994. When ch. 32, SLA 1994 was drafted, 49 U.S.C. Appx. 1815(a)(3) required a state receiving a planning grant under that section to make available at least 75 percent of the grant to local emergency planning committees. However, later in 1994, Congress repealed 49 U.S.C. Appx. 1815 and transferred its provisions to 49 U.S.C. 5116. See P. L. 103-272. And, even later in 1994, sec. 7(c) of P.L. 103-429 added what is now 49 U.S.C. 5116(a)(3). Despite the existence of 49 U.S.C. 5116(a)(3), 49 U.S.C. 5116(a)(2)(B) corresponds to the language of former 49 U.S.C. Appx. 1815(a)(3), which is why that substitution is made in this bill section.

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Bill sections 20 and 21 amend AS 28.10.181(p) and (q) to substitute "person in the Department of Military and Veterans' Affairs in charge of veterans' affairs" for "director of division of veterans affairs." There is no division of veterans affairs. There currently is an office of veterans' affairs, but it is created administratively rather than in statute and therefore could disappear at any time. The suggested language would cover any administrative unit of the DMVA.

Bill section 22 amends AS 29.05.200(b) to substitute the office of management and budget for the Department of Administration as the entity that the Department of Commerce, Community, and Economic Development is to notify about the amount that should be budgeted for municipal organization grants. This change was requested by the OMB.

Bill sections 23 and 24 amend AS 32.11.220 and 32.11.230, respectively, to substitute "does not specify the allocation" for "does not specify". The reference to "allocation" is to the requirement that appears in the preceding sentence of the respective sections. This makes the sentence more readable. (The Uniform Act used the phrase "does not so provide".)

Bill section 25 amends AS 32.11.300 by substituting "interests" for "interest". This conforms the section to the language of the Uniform Act.

Bill section 26 adds "AS 32.06" and "former" before "AS 32.05" in the definition of "qualifying entity" as used in AS 36.30.170(e). This change should have been made in ch. 115, SLA 2000, which repealed AS 32.05, the old Uniform Partnership Act, and enacted AS 32.06, the current Uniform Partnership Act.

Bill sections 27 - 31 amend AS 37.05.530(a), (c), (d), (e), and (g) to reflect that the provisions of 42 U.S.C. 6508 were transferred so that the relevant provisions now appear at 42 U.S.C. 6506a. The provision governing receipts is at 6506a(l). See section 347(a)(2), P.L. 109-58.

Bill section 32 amends the definition of "former member" in AS 39.35.680 to delete a reference to an employee who is eligible for

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a refund under AS 39.35.200(b). In sec. 24, ch. 92, SLA 2004, the first sentence of AS 39.35.200(b)---which provided for a refund to an employee with less than five years of credited service and less than \$1,000 in the account---was deleted. AS 39.35.200(b) no longer provides for a refund.

Bill sections 33 and 34 amend AS 39.50.200(a) and (b) to move the members of the board of trustees, the executive director, and the investment officers of the Alaska Permanent Fund Corporation from the definition of "state commission or board" in subsection (b) to the definition of "public official" in subsection (a). AS 37.13.110 provides that the members of the board, executive director, and investment officers are subject to AS 39.50. The amendments proposed by bill sections 33 and 34 would place these positions in the correct part of the definitions for AS 39.50. The Permanent Fund Corporation agreed that these amendments were appropriate.

Bill section 35 adds a short title for AS 39.52. This chapter is commonly referred to as the Alaska Executive Branch Ethics Act, but the short title does not exist in law.

Bill section 36 amends AS 42.45.010(b)(2) to make subparagraphs (B) and (C) consistent with the paragraph's lead-in language. In sec. 1, ch. 36, SLA 2004, "or for bulk fuel, waste energy, energy conservation, energy efficiency, or alternative energy facilities or equipment" was added to the lead-in language of AS 42.45.010(b)(2). However, the same language was not added to subparagraphs (B) and (C). The Department of Law agrees that the same language should have been added to the subparagraphs. (Chapter 36, SLA 2004 was a Governor's bill.)

Bill section 37 amends AS 43.55.013(g) by adding "rate" after "monthly production" in the first sentence. The term used throughout this section (and specifically in the second sentence of AS 43.55.013(g)) is "monthly production rate." It is my understanding that "monthly production rate" means the rate of production per month. This corrects an error in ch. 116, SLA 1981.

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Bill section 38 adds definitions of "qualified regional seafood development association" and "seafood development region"---terms that are used but not defined in AS 43.76.350 - 43.76.399. The meanings of the terms were clear in ch. 53, SLA 2005, which enacted both AS 43.76.350 - 43.76.399 and AS 44.33.065, but a definition is needed now that the provisions are in different parts of the statutes.

Bill section 39 amends AS 44.33.502 to substitute a reference to the first, second, third, and fourth judicial districts for a reference to the Southeastern, Southcentral, Central, and Northwestern Senatorial Districts, which no longer exist. The judicial districts are roughly equivalent to the old Senatorial Districts. Although the Native Art Competitions have not been held for many years due to lack of funding, if they were reinstated, it would be a good idea to have the regions be easily identifiable.

Bill section 40 modifies AS 46.40.210(1)---the definition of "area which merits special attention" for the purposes of the coastal management program---by substituting "the department's" for "council". Chapter 24, SLA 2003, which was a Governor's bill, repealed the Alaska Coastal Policy Council and transferred responsibility for the development and implementation of the Alaska coastal management program to the Department of Natural Resources. The Department of Law has asked that "department" be substituted for "council" in this definition to reflect that transfer of responsibility and this amendment is consistent with the department's power under AS 46.40.040(a)(1)(F).

Bill section 41 amends sec. 26, ch. 28, SLA 2000, which will repeal and reenact AS 12.25.190(c) when the boating provisions of AS 05.25 are repealed (which is currently scheduled for July 1, 2010, at the latest). AS 12.25.190(c) exempts certain violations from the requirement that the offender promise to appear in court. Under the amendment proposed by this revisor's bill section, a reference to AS 05.45.100 (skiing violations), added to AS 12.25.190(c) by ch. 64, SLA 2004, would be retained even when the reference to AS 05.25.090(b) is deleted. Under sec. 1, ch. 28, SLA 2000, intervening amendments to laws repealed and reenacted under ch. 28, SLA 2000 are not to be retained. It is, however, difficult to understand

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why a reference to skiing violations under AS 05.45.100 should be deleted from AS 12.25.190(c) just because a reference to boating provisions is being deleted. Accordingly, sec. 26, ch. 28, SLA 2000 is amended so that the reference to skiing provisions will be retained.

Bill section 42 repeals several sections. The reasons for the repeals are set out below, and the text of the provisions is attached at the end of this memo.

AS 14.08.031(d) requires BIA schools to be included in a regional educational attendance area boundary. There are no longer BIA schools in Alaska. See explanation for bill section 11.

AS 14.20.215(8) defines "unconditional discharge," a term that is no longer used in AS 14.20.010 - 14.20.215. It was used in former provisions of AS 14.20.020(f) and 14.20.030(b), and the definition should have been repealed when those provisions were rewritten in secs. 17 and 18, ch. 81, SLA 1998.

AS 18.56.590 requires an annual report about the housing assistance loan fund. The fund was repealed by ch. 134, SLA 2004. Because ch. 134, SLA 2004 was a Governor's bill, I asked the Department of Law whether they would prefer to have AS 18.56.590 repealed or amended to refer to the housing assistance loan "program." The Department of Law requested repeal of AS 18.56.590 as consistent with ch. 134, SLA 2004.

AS 44.99.009 establishes the Governor as the prime sponsor for purposes of the federal Comprehensive Employment and Training Act of 1973. However, CETA was repealed in 1982 when the Job Training Partnership Act was enacted. Accordingly, AS 44.99.009 is no longer needed.

AS 47.12.240(g) should have been repealed in ch. 95, SLA 2004. The former provisions of AS 47.12.240(c)(3) allowed a minor to be incarcerated in a correctional facility if the incarceration constituted a protective custody detention of the minor authorized by AS 47.37.170(b). This provision was deleted and what was formerly (c)(4) was renumbered as (c)(3) in sec. 1, ch. 95, SLA 2004.

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However, ch. 95, SLA 2004 did not repeal or amend the provisions of AS 47.12.240(g), which provides that the provisions of AS 47.37.170(i) apply to a minor incarcerated in a correctional facility when authorized by (c)(3) of that section. Because ch. 95, SLA 2004 was a Governor's bill, I brought this to the attention of the Department of Law, which agreed that AS 47.12.240(g) should be repealed.

Bill section 43 gives the bill an immediate effective date.

Please give me a call if you have any questions about the above.

### TEXT OF REPEALED PROVISIONS

AS 14.08.031(d): U.S. Bureau of Indian Affairs schools shall be included in a regional educational attendance area boundary.

AS 14.20.215(8):

(8) "unconditional discharge" has the meaning given in AS 12.55.185.

AS 18.56.590: Annual report.

To further ensure effective budgetary decision making by the legislature, the corporation shall prepare a complete accounting of the housing assistance loan fund and notify the legislature each year by January 10 that the accounting is available. The accounting must consist of an audit by an independent outside auditor for that year. The accounting must include a full description of all mortgage loan interest and principal repayments and program receipts for purposes of programs under AS 18.56.400 - 18.56.600, including mortgage loan commitment fees, received by or accrued to the corporation during the preceding fiscal year, and all income earned on assets held by the corporation for purposes of programs under AS 18.56.400 - 18.56.600 during that period.

AS 44.99.009: Governor as prime sponsor.

(a) The governor is authorized to participate as a prime sponsor in the Comprehensive Employment and Training Act of 1973 (P.L. 93-

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203) as amended. The governor may delegate the functions as a prime sponsor to such other state agency as, in the exercise of discretion, the governor sees fit.

(b) The governor, or the state agency to which the governor has delegated the functions, may adopt regulations necessary to carry out the functions as a prime sponsor.

(c) The governor shall submit as part of the annual budget submission to the legislature a complete program budget for state participation in the Comprehensive Employment and Training Act of 1973 (P.L. 93-203) as amended.

AS 47.12.240(g): The provisions of AS 47.37.170(i) apply to a minor incarcerated in a correctional facility when authorized by (c)(3) of this section.

**Please report corrections to the Chief Clerk's office.**