

SENATE BILL NO. 355

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Introduced: 3/10/94  
Referred: CRA, RES

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

1 [EMERGENCIES] dealt with in AS 09.45.800 - 09.45.880 [THIS CHAPTER].

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

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

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

8 (a) An action authorized by AS 09.45.800 - 09.45.880 may be commenced by

9 (1) a borough with the joinder of a city or cities included in the  
10 borough;

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

14 (3) a school district that [WHICH] has statutory power to approve a  
15 land map; or

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

18 \* Sec. 4. AS 09.45.810 is amended to read:

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

25 \* Sec. 5. AS 09.45.815 is amended to read:

26 Sec. 09.45.815. COMPLAINT. The complaint must [SHALL] substantially  
27 include

28 (1) a statement of the facts making the provisions in AS 09.45.800 -  
29 09.45.880 applicable;

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

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

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

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

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

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

17 (b) An answer must

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

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

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

24 (B) defective survey.

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

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

1 to the consequences, with respect to land boundaries, of the resurvey or the earthslide.

2 \* Sec. 8. AS 09.45.845 is amended to read:

3 Sec. 09.45.845. VACATING OF STREETS IN WHOLE OR IN PART. The  
4 vacating of streets in whole or in part by the voluntary action of a municipality, for  
5 the purpose of making it possible for the court to mitigate the hardships suffered by  
6 individuals because of the change in land boundaries caused by the act of God,  
7 consisting of an earthslide, or the defective survey, can be accomplished by the offer  
8 of the municipality expressed in the complaint followed by the court's approval of it  
9 in the action authorized in AS 09.45.800 - 09.45.880, without other formalities. This  
10 provision is a special [EMERGENCY] substitute for the provisions contained in  
11 AS 29.40.120 - 29.40.160.

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

13 Sec. 09.45.855. SCOPE OF JUDGMENT. The judgment [SHALL]

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

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

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

25 (A) rendered inaccurate by the act of God consisting of an  
26 earthslide; or

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

28 (4) may not, except as provided in AS 09.45.845 or with the consent  
29 of the owner, alter lines or boundaries of parcels or lots that are not found to be  
30 materially incorrect.

31 \* Sec. 10. AS 09.45.860 is amended to read:

1           Sec. 09.45.860. STANDARDS FOR JUDGMENT. In reaching the conclusions  
2 called for by AS 09.45.855, the court shall give effect to the changes in land  
3 boundaries caused by the earthslide or reflected in the resurvey, mitigated, however,  
4 so far as can equitably be done, by allocating to contiguous lots parts of the land  
5 released by a municipality by its voluntary vacation of areas formerly constituting  
6 public ways, which vacatings of streets shall be approved in this judgment.

7 \* Sec. 11. AS 09.45 is amended by adding a new section to read:

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

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

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

19 \* Sec. 13. AS 09.45.880 is amended to read:

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