HB

115

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: February 5, 1997 FURTHER REFERRALS:

Date of Committee Action: 3/17/97

The JUDICIARY Committee considered: HB 115

HOUSE BILL NO. 115 1997 REVISOR'S BILL

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

recommends it be replaced with the following committee substitute CSHB 115 (JUD) [X] the same title [ ] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[/] fiscal note(s) _____ [ ] fiscal note(s) _____

[/] zero fiscal note(s) HSS [ ] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
	CROFT				
	CROFT	✓			
	ROKEBERG	✓			
	PORTER	✓			
	BUNDE				
	BERKOWITZ				

Vice
CHAIR'S SIGNATURE _____

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 115

Revision Date:
Title: An act making corrective amendments to Alaska Statues as recommended by the revisor of statutes
Sponsor: House JUD
Requestor: Legislative Council

Dept. Affected: Health and Social Services
BRU: Public Assistance
Component: ATAP
COMPONENT SERIAL NO. 220
See also (SN#):

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGES IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: $0.0

ANALYSIS: (Attach a separate page if necessary)

This proposed legislation makes technical amendments to the Alaska temporary assistance program. It has no fiscal impact.

Prepared by: Jim Nordlund, Director
Division: Public Assistance
Phone: 465-2680
Date: 02/12/97

2/14/97

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services
Date: 2/12/97

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 18, 1997

Pam Finley
Assistant Revisor of Statutes
Legislative Affairs Agency
130 Seward Street, Ste. 409
Juneau, AK 99801-2105

Dear Pam:

On behalf of the Department of Law, I have reviewed HB 115, the 1997 revisor's bill. The Department of Law has no legal problems with this bill. The bill makes appropriate technical improvements to the Alaska statutes.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

Deborah E. Behr

By: Deborah E. Behr
Assistant Attorney General

DEB:lmm

cc: Rep. Joe Green
Chair
House Judiciary Committee

Pat Pourchot
Office of the Governor

Bruce Botelho
Chrystal Smith

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MEMORANDUM February 24, 1997

SUBJECT: HB 115 (1997 Revisor's Bill)

TO: Representative Joseph Green
Chair, House Judiciary Committee

FROM: Pamela Finley
Revisor of Statutes

The following is a sectional analysis of HB 115, the 1997 revisor's bill. 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 15, 16, 28, 35, 36, and 39 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 2, 3, 5-14, 17, 24, 25, 27, 29, 30, 34, 37, 38, 40 and 41 correct errors or oversights.

Sections that improve the form or substance of the law: Sections 1, 4, 18-23, 26, 29, and 31-33, propose amendments to improve the form or substance of the statute law of Alaska.

SECTIONAL ANALYSIS

Section 1. This section corrects the sentence structure of a statute requiring publication of a book containing brands and marks on record.

Section 2. This bill section substitutes "employees of one of the municipalities" for "employers of one of the municipalities" in AS 05.15.112(b), relating to charitable gaming. It corrects a typographical error in ch. 70, SLA 1993.

Section 3. This bill section amends the definition of "qualified organization" in the charitable gaming statutes by substituting "license or permit" for "license." Qualified organizations apply for permits primarily, although they also can apply for operator's licenses. This corrects an error in ch. 27, SLA 1960.

Section 4. While most occupational regulation is performed by various boards, the Department of Commerce and Economic Development has direct responsibility for certain occupations. See AS 08.01.010. The occupations regulated directly by the department have also been listed at AS 08.01.050(a)(4) and (9), which means that whenever the department is given responsibility for directly regulating an occupation, these two paragraphs must be amended. This is unnecessary since a general reference to occupations or activities that are regulated directly by the department would suffice. This section substitutes that general reference for the existing list.

Section 5. AS 08.02.010(a) requires members of certain occupations to use certain designations. Some of the occupations covered by subsection (a) are regulated directly by the Department of Commerce and Economic Development rather than by a board, i.e., acupuncturists, audiologists, and naturopaths. However, subsection (b), which sets penalties for a violation of subsection (a), refers only to the "appropriate licensing board." This bill section adds a reference to the department so that the department can enforce subsection (a) for those occupations regulated directly by the department.

Sections 6 and 7. These bill sections substitute "commission" for "board" in two statutes relating to the Real Estate Commission. Although real estate brokers were licensed by a board in 1959, a commission was substituted for the board in ch 95. SLA 1964. The amendment to AS 08.88.041(a) corrects an error in ch. 258, SLA 1976. The amendment to AS 08.88.281 corrects an error in ch. 95. SLA 1964.

Section 8. In ch. 119, SLA 1992, AS 09.50.250 (relating to claims against the state) was amended by deleting "superior court" at the end of the first sentence. The purpose was to give the state district court, as well as the state superior court, jurisdiction over claims against the state, except for small claims. The title of ch. 119, SLA 1992 was "Relating to the jurisdiction of the district court and to the district court's ability to hear actions as small claims." The Attorney General's Office has informed me that the deletion of the phrase "in the superior court" has been claimed to authorize claims against the state to be brought in federal court. To return the statute to what was intended in ch. 119, SLA 1992, "in a state court that has jurisdiction over the claim" is added at the end of the first sentence. This amendment was requested by the Attorney General's office.

Section 9. This bill section amends the definition of "serious offense" in AS 12.62.900 by substituting "AS 11.51.130(a)(1)-(3)" for "AS 11.51.130(a)(1),(3), and (5)." AS 12.62.900 was added by ch. 118, SLA 1994. At the time it was drafted, AS 11.51.130(a)(1),(3),and (5) were the only paragraphs in AS 11.51.130(a), paragraphs (2) and (4) having been previously

repealed. However, ch. 33, SLA 1994 redesignated paragraphs (3) and (5) as (2) and (3), respectively, and added new paragraph (4). Therefore the references to former AS 11.51.130(a)(1), (3), and (5) are equivalent to current AS 11.51.130(a)(1)-(3), and that change is made here. (AS 11.51.130(a)(4), added by ch. 33, SLA 1994 is not included because the legislature has not made the policy choice that (a) (4) should be included in the definition of "serious offense". If the legislature wishes to include (a)(4), that should be done in a different bill.)

Sections 10 and 11. Ch. 2, FSSLA 1996 rewrote AS 14.17.021, so that the definition of "basic need" that had previously appeared in subsection (b) now appears in subsection (c). The definition in current subsection (c) is the same as the definition in former subsection (b). However, a reference to "basic need as determined under AS 14.17.021(b)" still appears in AS 14.17.025(a)(2) and (b)(2). Bill sections 10 and 11 make the conforming changes to AS 14.17.025 that should have been made when AS 14.17.021 was amended in ch. 2, FSSLA 1996. Because § 6, ch. 2, FSSLA 1996 made the amendment to AS 14.17.021 retroactive to July 1, 1995, the conforming changes in bill sections 10 and 11 are also made retroactive to that date under bill sec. 40.

Section 12. This bill section amends AS 14.20.020(a), governing teachers certificates. In ch. 105, SLA 1992, an additional requirement for a certificate was added as subsection (h). However, a cross-reference to this requirement was omitted from subsection (a). That oversight is corrected in this bill section.

Section 13. This bill section amends AS 14.20.177(a) (relating to reductions in force) by substituting "AS 14.17.021(c)" for "AS 14.17.021(b)." See explanation for sections 10 and 11. This change is needed because ch. 31, SLA 1996, which added AS 14.20.177, passed the legislature before ch. 2, FSSLA 1996 amended AS 14.17.021. Because § 6, ch. 2, FSSLA 1996 made the amendment to AS 14.17.021 retroactive to July 1, 1995, the conforming change in bill section 13 is also made retroactive to August 16, 1996 (the effective date of AS 14.20.177) under bill sec. 41.

Section 14. AS 14.03.160, requiring suspension or expulsion of students for certain weapons violations, was enacted by ch. 33, SLA 1995. At that time, AS 14.30.010(b), which lists exceptions to required attendance at school, should have been amended to include a reference to children suspended or expelled under AS 14.03.160. This section makes that amendment. This section also substitutes "paragraph" for "subsection" in AS 14.30.010(b)(7) and improves the sentence structure in (b)(11).

Section 15. This bill section removes a dated reference from AS 14.36.030(b), which relates to community school program grants.

Section 16. This bill section amends AS 14.43.120(b)(2)(B) to give the current name of the Council of Recognition of Postsecondary Accreditation. It was requested by the Attorney General's Office.

Section 17. This bill section amends AS 14.43.140, relating to the enforceability of student loan obligations agreed to by minors 16 years of age or older. The reference to "19" years of age (as the age of majority) is changed to "18" years of age. This change should have been made in 1977 when the age of majority was reduced from 19 years of age to 18 years of age.

Sections 18- 23. These bill sections substitute "division of state libraries, archives, and museums" for "division of state libraries" in several statutes. Although this division has not been established by statute, it is referred to in quite a few statutes and should at least have its current name.

Section 24. AS 21.18.100(h) contains a definition of "plan type" ---a term used in AS 21.18.100(f)--- but subsection (h) indicates that the definition in that subsection applies to "this subsection" when it should apply to "this section". This bill section makes that change.

Section 25. This bill section amends AS 23.30.195(a), relating to workers' compensation, by deleting a reference to AS 23.30.190(a)(20). AS 23.30.190(a)(20) ceased to exist when AS 23.30.190 was amended in ch. 79, SLA 1988.

Section 26. This bill section amends AS 24.05.135(c), relating to tapes of legislative proceedings, by substituting " division of state libraries, archives, and museums" for "division of libraries". See explanation for sections 18-23.

Section 27. This bill section amends AS 28.10.431(b) by substituting "registration fee" for "license fee." The referenced fees are for registration, not licensure.

Section 28. This bill section amends a definition of "department" in AS 30.30.170, relating to abandoned and derelict vessels, to remove a reference to the "division of waters and harbors." This division does not exist in statute or in the state directory.

Section 29 This bill section reorganizes AS 37.05.146, the definition of "program receipts" into two subsections and moves the receipts of certain employee programs from the paragraph listing funds to paragraphs of their own. (The employee programs are not, properly speaking, "funds".) It also substitutes "public school trust fund" for "public school fund" to correct an error in ch. 141, SLA 1988, which changed the name of the fund.

Section 30. This bill section substitutes "public school trust fund" for "public school fund" in AS 37.05.530(g)(2). This amendment should have been made in ch. 141, SLA 1988, when the name of the public school fund was changed.

Section 31. This bill section substitutes "under or subject to AS 14.25.180" for "under AS 14.25.180" in a definition relating to the Alaska State Pension Investment Board. AS 14.25.180 sets out management duties of the Board and is referred to in regard to other funds managed by the Board, e.g., AS 39.35.080. While "under AS 14.25.180" probab would be interpreted as including funds managed by the Board that are not in AS 14.25 but are to be managed in accordance with AS 14.25.180, adding the phrase "subject to" makes that result clearer. Note that the phrase "subject to AS 14.25.180" also appears later in the same definition.

Sections 32-33. These bill sections amend two sections in the Pipeline Act. Bill section 32 corrects a grammatical error and breaks a long sentence into shorter ones. Bill section 33 rewrites another section for clarity.

Section 34. This bill section deletes a reference in the tax code to AS 43.58. The tax under AS 43.58 terminated on December 31, 1977 and AS 43.58 was repealed in 1984.

Section 35. This section substitutes a cross-reference to a section for a cross-reference to a paragraph within that section. The paragraph number has been changed and a reference to the specific paragraph is not necessary.

Section 36. This bill section corrects the name of the Council on Recognition of Postsecondary Accreditation. It was requested by the Attorney General's Office.

Sections 37 and 38. These bill sections amend the Alaska temporary assistance program, which was established by legislation passed last session. The paragraph amended by bill section 37 (AS 47.27.015(a)(1)) contains subparagraphs that establish exceptions to the 5 year maximum period of assistance. Subparagraph (D) contains a general "hardship" exception and also limits the maximum number of families for which an exemption may be in effect under that "paragraph" to 10 percent or the maximum allowed under federal law, whichever is greater. It is my understanding that the limitation was indeed intended to apply to all of the subparagraphs in paragraph (1) so that the reference to "this paragraph" is correct. However, under the drafting style used in the Alaska Statutes, a provision that applies to an entire paragraph should not appear in an indented subparagraph. Accordingly, the limiting language is removed from subparagraph (D) and moved to a new subsection (f), added by section 38. If the legislature will be considering other amendments to the Alaska temporary assistance program, these bill sections could be removed from the revisor's bill and included in the other bill.

Section 39. This bill section repeals the definition of "department" in AS 30.15 because the term does not appear in AS 30.15, except in a reference to a different, specified department. The text of the statute being repealed is attached.

Section 40. This bill section makes the amendments in bill sections 10 and 11 to AS 14.17.025(a) and (b) retroactive to July 1, 1995, the date to which the 1996 amendment to AS 14.17.021 was made retroactive. See explanation for bill sections 10 and 11.

Section 41. For the same reason given for section 40, this bill section makes the amendment to AS 14.20.177(a) made by bill section 13 retroactive to August 16, 1996. August 16, 1996 was used rather than July 1, 1995 because AS 14.20.177 did not exist until August 16, 1996. See explanation for bill section 13.

Section 42. This bill section gives the bill an immediate effective date.

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

PF:pl
WKP7\054

TEXT OF STATUTES BEING REPEALED

AS 30.15.070(2):

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

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MEMORANDUM February 24, 1997

SUBJECT: HB 115 (1997 Revisor's Bill) and Proposed amendments B.1 - B.3

TO: Representative Joseph Green, Chair
House Judiciary Committee

FROM: Pamela Finley
Revisor of Statutes

Enclosed is a sectional analysis for HB 115 and three amendments for the committee's consideration. I would appreciate your scheduling the bill for hearing at your earliest convenience. Explanations of the proposed amendments are as follows:

Yes Adopted

B.1. This makes an additional change in bill section 1. The term "mailing address" is substituted for "post office address". The former is a more inclusive term. This amendment was recommended by the Attorney General's Office.

Adopted @ retro to 1/1/97

B.2. This amends AS 13.12.603(a)(1), relating to construction of wills, by adding a "not" that was inadvertently omitted in ch.75. SLA 1996, which enacted a revised version of the Uniform Probate Code. A copy of a letter from Mr. Arthur Peterson, Uniform Law Commissioner for Alaska, requesting and explaining the proposed amendment is attached. As Mr. Peterson points out, the uniform law on which this section is based does contain the "not". In addition, nothing in our files indicates that the omission was intentional. It appears to have been a typographical error.

Fails

B.3 The amendment would delete retroactivity provisions for bill sections 10, 11, and 13. Bill sections 10, 11, and 13 make conforming changes that should have been made when AS 14.17.021 was rewritten in ch. 2, FSSLA 1996. Because the amendment to AS 14.17.021 was itself made retroactive to July 1, 1995, the conforming changes would also have been made retroactive to that date if they had been included in ch. 2 FSSLA 1996. To alert the legislature to the retroactivity issue, I included bill sections 40 and 41, which would made the conforming changes retroactive. However, in general I prefer to avoid making any part of the revisor's bill retroactive because it is intended to be only a housekeeping measure. Although I am willing to leave the retroactivity provisions in the bill if that is the will of the committee, I would prefer to delete them.

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

PF:glc
97-112.glc
Enclosure

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February 19, 1997

Pam Finley
Revisor of Statutes
Legislative Affairs Agency
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

Re: Correction of AS 13.12.603(a)(1) (Anti-lapse Probate Provision) -- Addition to Revisor's Bill

Dear Pam:

As we have discussed, AS 13.12.603(a)(1) needs to be corrected by having the word "not" inserted after "devise is." The first part of that paragraph should read as follows:

> (1) except as provided in (4) of this subsection, if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants....

This provision was enacted by sec. 3, ch. 75, SLA 1996, derived from CSHB 308 (Jud). That bill was, in turn, based on the prior legislature's SSHB 307, introduced in January 1994. It turns out that the missing "not" was dropped as a typographical error back in 1994, and none of us ever caught it until Anchorage Attorney Brian Durrell called it to my attention a couple of weeks ago.

This provision was promulgated by the National Conference of Commissioners on Uniform State Laws as part of its revision of article 2 of the Uniform Probate Code. All of the NCCUSL material (including the official West Publishing Company version) has the "not" in this location. In addition, the NCCUSL's official commentary under its UPC sec. 2-603(b)(1) explains this and related provisions in a way that makes clear that the "not" has to be there. There never was any intent of the legislature or drafters to not have the "not" there.

Thanks for taking care of this correction.

Yours truly,

Arthur H. Peterson
Uniform Law Commissioner for
Alaska

das/docs/ahp/finleyletter

cc: Brian W. Durrell, Esq.

Honorable Sean Parnell
Alaska State Senate

das/docs/ahp/finleyletter

0-LS0231\B.1
Finley
2/21/97

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 115

1 Page 1, lines 8 - 9:

2 Delete "post office"

3 Insert "**mailing** [POST OFFICE]"

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 115

1 Page 5, following line 22:

2 Insert a new bill section to read:

3 "* **Sec. 10.** AS 13.12.603(a) is amended to read:

4 (a) If a devisee fails to survive the testator and is a grandparent, a descendant
5 of a grandparent, or a stepchild of either the testator or the donor of a power of
6 appointment exercised by the testator's will, the following apply:

7 (1) except as provided in (4) of this subsection, if the devise is **not** in
8 the form of a class gift and the deceased devisee leaves surviving descendants, a
9 substitute gift is created in the devisee's surviving descendants; the surviving
10 descendants take by representation the property to which the devisee would have been
11 entitled had the devisee survived the testator;

12 (2) except as provided in (4) of this subsection, if the devise is in the
13 form of a class gift, other than a devise to "issue," "descendants," "heirs of the body,"
14 "heirs," "next of kin," "relatives," or "family," or a class described by language of
15 similar import, a substitute gift is created in the surviving descendants of a deceased
16 devisee; the property to which the devisees would have been entitled had all of them
17 survived the testator passes to the surviving devisees and the surviving descendants
18 of the deceased devisees; each surviving devisee takes the share to which the
19 surviving devisee would have been entitled had the deceased devisees survived the
20 testator; each deceased devisee's surviving descendants who are substituted for the
21 deceased devisee take by representation the share to which the deceased devisee
22 would have been entitled had the deceased devisee survived the testator; in this
23 paragraph, "deceased devisee" means a class member who failed to survive the
24 testator and left one or more surviving descendants;

25 (3) for the purposes of AS 13.12.601, words of survivorship, as in a

1 devise to an individual "if the individual survives me," or in a devise to "my surviving
2 children," are not, in the absence of additional evidence, a sufficient indication of an
3 intent contrary to the application of this section;
4 (4) if the will creates an alternative devise with respect to a devise for
5 which a substitute gift is created by (1) or (2) of this subsection, the substitute gift is
6 superseded by the alternative devise only if an expressly designated devisee of the
7 alternative devise is entitled to take under the will;
8 (5) unless the language creating a power of appointment expressly
9 excludes the substitution of the descendants of an appointee for the appointee, a
10 surviving descendant of a deceased appointee of a power of appointment can be
11 substituted for the appointee under this section, whether or not the descendant is an
12 object of the power."

13 Renumber the following bill sections accordingly.

14 Page 17, line 30:
15 Delete "10 and 11"
16 Insert "11 and 12"

17 Page 18, line 1:
18 Delete "13"
19 Insert "14"

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 115

1 Page 17, line 30, through page 18, line 2:

2 Delete all material.

3 Renumber the following bill section accordingly.