

HB

66

LEGAL SERVICES

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

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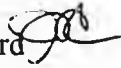
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 24, 1999

SUBJECT: Proposed Amendment to the Revisor's Bill (HB 66;
Work Order No. 21-LS0339\A.1)

TO: Representative Pete Kott, Chair
House Judiciary Committee
Attn: Cory Winchell

FROM: James P. Crawford 
Assistant Revisor

Attached is a recommendation for the revisor's bill in the form of a proposed amendment.

First, the amendment addresses a problem brought to our attention this week by APOC relating to the amendment last year of AS 15.13.116(a) in sec. 8, ch. 74, SLA 1998. As a general matter, AS 15.13.116 relates to disbursements of campaign assets after elections. In ch. 74, what previously had been designated as AS 15.13.116(a)(5) -- permissible distributions of unused campaign funds to repay loans from a candidate to the candidate's own campaign -- became AS 15.13.116(a)(4). However, cross-references to this section in AS 15.13.078(b), which relates to contributions and loans from a candidate, were not altered at the time to reflect this numbering change. This amendment adds a section to the revisor's bill amending AS 15.13.078(b) to correct the cross-references now.

The amendment also corrects a typographical error in section 16 of the bill so that the statute designation of section 16 correctly reads "AS 28.40.100(a)(2)".

Finally, the amendment removes section 20, the repealer, from the bill in line with the recommendation stated in my memo dated February 10, 1999.

If you have any questions about the amendment, don't hesitate to call.

JPC:lmb:jr
99-018.lmb

Enclosure

2/24

AMENDMENT

#1

Passed.

OFFERED IN THE HOUSE

TO: HB 66

1 Page 10, following line 31:

2 Insert a new bill section to read:

3 **** Sec. 8.** AS 15.13.078(b) is amended to read:

4 (b) The provisions of this chapter do not prohibit the individual who is a
5 candidate from lending any amount to the campaign of the candidate. Loans made by
6 the candidate shall be reported as contributions in accordance with AS 15.13.040 and
7 15.13.110. However, the candidate may not

8 (1) recover, under this section and AS 15.13.116(a)(4)
9 [AS 15.13.116(a)(5)], the amount of a loan made by the candidate to the candidate's
10 own campaign that exceeds

11 (A) \$25,000, if the candidate ran for governor or lieutenant
12 governor;

13 (B) \$10,000, if the candidate ran for

14 (i) the legislature; or

15 (ii) delegate to a constitutional convention;

16 (C) \$10,000, if the candidate was a judge seeking retention;

17 (D) \$5,000, if the candidate ran in a municipal election; or

18 (2) repay a loan that the candidate has made to the candidate's own
19 campaign unless, within five days of making the loan, the candidate notifies the
20 commission, on a form provided by the commission, of the candidate's intention to
21 repay the loan under AS 15.13.116(a)(4) [AS 15.13.116(a)(5)]."

22 Renumber the following bill sections accordingly.

23 Page 14, line 18:

1 Delete "AS 28.40.100(2)"

2 Insert "AS 28.40.100(a)(2)"

3 Page 17, lines 5 - 6:

4 Delete all material.

5 Renumber the following bill sections accordingly.

6 Page 17, line 7:

7 Delete "Section 19"

8 Insert "Section 20"

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MEMORANDUM

February 10, 1999

SUBJECT: Sectional Summary of the 1999 Revisor's Bill, HB 66 (Work Order No. 21-LS0339\A)

TO: Representative Pete Kott, Chair 
House Judiciary Committee

FROM: James P. Crawford
Assistant Revisor

The following is a sectional analysis of HB 66, the 1999 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 correct, delete, or repeal, obsolete provisions: Sections 2, 3, 10, 11, 14, 15, 16, and 20 delete, update, or repeal provisions that have become obsolete either through other legislative action or the passage of time.

Sections that correct deficiencies (errors, oversights, etc.): Sections 1, 5, 6, 7, 12, and 19 correct errors or oversights that cannot be corrected editorially.

Sections that improve the form or substance of the statute law: Sections 4, 8, 9, 13, 17, and 18 propose amendments to improve the form or substance of the statute law of Alaska.

SECTIONAL ANALYSIS

Section 1. AS 08.54.605(a) contains a deficiency that is the product of an apparent error. The phrase "a violation of" was not inserted at the beginning of sub-paragraph (a)(1)(A) when the section was added by sec. 3, ch. 33, SLA 1996, while other sections added by sec. 3 containing similar concepts did include the phrase. See, e.g., AS 08.54.710(a)(1), 08.54.720(a)(1), and 08.54.740(a) and (b). Section 1 adds the phrase.

Sections 2 and 3. AS 09.55.040 and 09.55.069 contain language that subsequent legislative action has made obsolete. Specifically, these sections contain a reference to "the 'Relief Fund' created by the laws dealing with lost persons." This is an apparent reference to AS 18.60.110, "Fund for the rescue and relief of lost persons," which at one time stated:

There is created a fund out of money in the state treasury, not otherwise appropriated, for the rescue and relief of any person who becomes lost. The fund shall be known as the Relief Fund.

However, this fund was repealed over thirty years ago by sec. 1, ch. 15, SLA 1968, and no replacement fund was created or designated in the repealing legislation. Consequently, sections 2 and 3 remove the references to this repealed fund.

Section 4. AS 10.50.995 is in need of improvement as to form. The chapter that it references was entitled "Chapter 50. Limited Liability Company Act" when enacted in ch. 99, SLA 1994 (Emphasis added). The sections in Chapter 50 relate to limited liability companies. Section 4 changes the reference in AS 10.50.995 to clarify that the concept of limited liability in Chapter 50 is related to companies.

Section 5. AS 11.61.123(e) contains a deficiency that is the product of an apparent oversight. Paragraph (e)(2) refers to AS 47.10.990 for the meaning of the phrase "juvenile detention facility." However, sections 45 and 46, ch. 59, SLA 1996 moved the definition of "juvenile detention facility" from AS 47.10.990 to AS 47.12.990 in 1996. Section 5 corrects the reference.

Section 6. AS 13.05.060 suffers from a deficiency that is the product of an apparent oversight. This section, which is part of Alaska's version of the Uniform Probate Code ("UPC"), was redrafted in 1996 in ch. 75, SLA 1996. However, the UPC definition of "person" was not added to the redraft. According to Arthur H. Peterson, Uniform Law Commissioner for the State of Alaska who was involved in the redrafting effort, it was thought at the time that the general definition of "person" in AS 01.10.060 was considered adequate. The UPC definition was consequently omitted.

Subsequent discussions between Mr. Peterson and Legislative Counsel Terry Bannister have pointed out the fact that the UPC definition of "person" includes an "organization," which itself is defined to include "government or governmental subdivision or agency." These entities are not specifically listed in AS 01.10.060's definition of "person". Section 6 changes the definition so that AS 13.05.060 matches the UPC in this respect.

Section 7. AS 13.26.344(a)(9) contains a deficiency that is the product of an apparent error. In various paragraphs in the section, the phrase "other instrument that the agent considers useful" appears. (Emphasis added). These paragraphs include (b)(7), (c)(9), (e)(7), (f)(9), (g)(7), and (j)(11). However, in paragraph (a)(9), the language is ungrammatically

phrased as "other instrument the agent useful." The word "considers" appears to have been omitted unintentionally. Section 7 adds it.

Section 8. AS 15.45.250 is in need of improvement as to form; specifically, section 13 adds "an" before "appropriation".

Section 9. AS 18.26.030(b) is in need of improvement as to form. By letter dated November 26, 1997, Ms. Karen Boorman, Executive Director of the Alaska Public Offices Commission, requested that the title to AS 39.50 be changed from "Conflict of Interest" to "Public Official Financial Disclosure" for the following reason:

The Commission believes that the existing title of the statute is a misnomer and creates the impression that the law enables APOC to determine when a conflict of interest exists. The law does not specify what constitutes a conflict, or how a conflict may be resolved or sanctioned. Instead, the law requires the disclosure of income sources, business interests, real property interests and loans or debts so that the public may know of the financial and business interests of persons seeking or holding office.

Although changes to titles of chapters can usually be accomplished in letter instructions to the publisher, in this case, the old title reference is found mentioned in the text of AS 18.26.030(b). The reference also appears in AS 24.60.130(m), amended by sec. 13, and AS 44.85.030, amended by sec. 17. Sections 9, 13, and 17 make the necessary changes. The revisor will instruct the publisher to make necessary title changes if these sections remain in the revisor's bill and if the bill becomes law.

Section 10. AS 19.10.300(f) contains an obsolete reference. Specifically, subparagraph (f)(1)(C)(iii) contains a spanned reference, 49 U.S.C. 1801-1813 (Hazardous Materials Transportation Act), which no longer exists. The obsolete reference is also found in AS 19.10.399(1), amended by sec. 11; AS 28.33.140(d), amended by sec. 14; AS 28.33.190(8), amended by sec. 15; and AS 28.40.100(2), amended by sec. 16. The Table of Dispositions for the United States Code Service volume for Title 49 of the federal statutes indicates that the provisions encompassed by the obsolete spanned reference were recodified without substantive change and are now found in 49 U.S.C. 5101-5127. The Department of Transportation and Public Facilities has suggested this spanned reference as the appropriate correction. Sections 10, 11, 14, 15, and 16 make this change.

Section 11. See the explanation for sec. 10.

Section 12. AS 24.60.050(d) contains a deficiency that is the product of an apparent oversight. Last year, sec. 36, ch. 74, SLA 1998 added a new section to AS 24.60 -- AS 24.60.105 -- which relates to deadlines for filing certain disclosures. A default deadline in the section is March 15. In light of this new date, AS 24.60.050(c) was given a conforming amendment in sec. 24 of the same 1998 bill. As amended, subsection (c) reads "the date required under AS 24.60.105" instead of the former date reference, "February 15".

However, at the time subsection (c) was changed, subsection (d), which had heretofore contained the same date reference as subsection (c), was not similarly changed. Section 12 corrects this.

Section 13. See the explanation for sec. 9.

Section 14. See the explanation for sec. 10.

Section 15. See the explanation for sec. 10.

Section 16. See the explanation for sec. 10.

Section 17. See the explanation for sec. 9.

Sections 18. AS 47.10.080(c)(3) is in need of improvement as to form. It now reads, in pertinent part, "the court shall ... by order ... the termination." It logically should read "the court shall ... order ... the termination." Section 19 makes this change, which has the additional effect conforming its sentence structure to that of paragraphs (c)(1) and (c)(2) of this section.

Section 19. Section 54, ch. 123, SLA 1996 (HCS 2d CSSB 136(FIN) am H(brf sup maj fld H)(efd fld S)("SB 136")) contains a deficiency that is the product of an apparat error. The section contains a reference to sec. 102, but review of ch. 123 reveals that sec. 102 does not exist. The last section in ch. 123 is sec. 101.

In light of the bill's history, the reference is corrected to read "sec. 100". SB 136 passed the House of Representatives on reconsideration. 1996 House Jour. 4579 (May 7, 1996). This version -- version "D" -- did have a sec. 102 (103 sections total), and sec. 54's reference to sec. 102 was correct at the time. It also had two alternate effective date sections, which were secs. 100 and 101. However, when SB 136 version "D" came before the Senate to determine whether the Senate would concur in House amendments, the Senate failed to adopt the effective date clauses. 1996 Senate Jour. 4178 (May 7, 1996). When the new version -- version "H" -- was reprinted as HCS 2d CSSB 136(FIN) am H (brf sup maj fld H)(efd fld S), the effective date clause sections that failed were removed, and the provisions previously designated as sec. 102 became sec. 100, as can be seen by comparing the two versions. Unfortunately, sec. 54's reference to sec. 102 remained unchanged. Section 24 makes the change now.

Section 20. Repeals sections 2, 3, and 7, ch. 143, SLA 1990.

Section 21. Section 21 makes the correction to sec. 54, ch. 123, SLA 1996 retroactive to July 1, 1996, the effective date of sec. 54, ch. 123, SLA 1996 in order to protect any reliance interest of those expending money under sec. 54, ch. 123, SLA 1996.

Section 22. Effective date.

TEXT OF LAWS REPEALED

Section 2, ch. 143, SLA 1990 reads as follows:

- * Sec. 2. AS 16.20.033(a)(5) is amended to read:
 - (5) Township 21 South, Range 11 East, Copper River Meridian
[EXCLUDING THAT PORTION OF] Tract A-148 lying north and
west of Seal River [:]
 - Sections 1 - 2
 - Sections 3 - 4: North and east of the Seal River and its associated
lake system
 - Section 10: East of Seal River and one mile north of mean high tide
line on the Gulf of Alaska
 - Sections 11 - 12
 - Sections 13 - 14: Above mean high tide line on the Gulf of Alaska

Section 3, ch. 143, SLA 1990 reads as follows:

- * Sec. 3. AS 16.20.033(a) is amended by adding new paragraphs to read:
 - (12) Township 21 South, Range 9 East, Copper River Meridian Tract A-148
 - (13) Township 21 South, Range 10 East, Copper River Meridian Tract
A-148.

Section 7, ch. 143, SLA 1990 reads as follows:

- * Sec. 7. Sections 2 - 3 of this Act take effect on the effective date of an appropriation Act appropriating to the University of Alaska those amounts necessary to compensate the university for the agreed value reached under sec. 5(b) of this Act for the interest of the university in Tract A-148 at Cape Suckling after crediting to the university those amounts received by the university under sec. 5(c) and (d) of this Act.

JPC:jdr
99-063.idr

DEPARTMENT OF NATURAL RESOURCES

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February 17, 1998

Pam Finley
Revisor of Statutes
Legislative Legal and Research Services
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

Dear Ms. Finley:

One of my staff recently noticed that the Editor's Notes for Alaska Statutes 16.20.033. the Yakataga State Game Refuge, need to be updated.

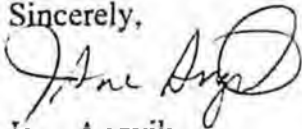
Specifically, the Editor's notes under AS 16.20.033 (copy attached), the Yakataga State Game Refuge, need to reflect that the legislature did not purchase the University's timber rights and that the Yakataga Area Plan has been completed.

The notes need to point out that the legislature did not purchase the University's timber rights, therefore Sections 2, 3, and 7 of Chapter 143, SLA 1990, that are mentioned in the notes, never went into effect. The state and University could not agree on the value of the timber (see section 5(b), Ch 143, SLA 1990). Instead, the University, the state, and various litigants agreed to transfer the University's timber harvest rights to other land.

The Yakataga Area Plan was signed by Commissioner of Natural Resources on April 3, 1995. The area plan recommended that a portion of the Special Management Area, referred to in Section 9 of chapter 143, SLA 1990, be added to the refuge. A copy of the area plan is enclosed for your information.

If you need more information on the Yakataga Area Plan, contact Dick Mylius of my staff at 269-8532 (e-mail: dickm@dnr.state.ak.us).

Sincerely,



Jane Angvik
Director

cc: Janet Kowalski, Director, Division of Habitat and Restoration Division, Department of Fish and Game

TONY KNOWLES, GOVERNOR

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 11, 1999

Hon. Pete Kott
Chair
House Judiciary
State Capital
Juneau, AK 99801

Re: HB 66

Dear Representative Kott:

The Department of Law has had the opportunity to review HB 66, the 1999 comprehensive revisor's bill.

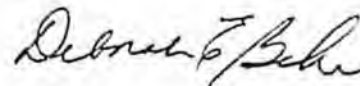
We believe that the bill overall makes important technical improvements to Alaska law. We have spoken with the assistant revisor of statutes about the deletion of section 20, as the section more appropriately belongs in a substantive law bill. We understand that the assistant revisor of regulations has no objection to that recommendation.

If you need more information, please let me know.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Deborah E. Behr
Assistant Attorney General

DEB:jf

cc: James Crawford
Assistant Revisor of Statutes

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MEMORANDUM

February 10, 1999

SUBJECT: Update to the 1999 Revisor's Bill, HB 66 (Work Order No. 21-LS0339\A)

TO: Representative Pete Kott, Chair 
House Judiciary Committee

FROM: James P. Crawford
Assistant Revisor

In sec. 20, the revisor's bill currently repeals secs. 2, 3, and 7, ch. 143, SLA 1990. However, since the revisor's bill was introduced, we have received new information about these sections. As a result, we no longer recommend that they be repealed in the revisor's bill.

Sections 2 and 3, ch. 143, SLA 1990 relate to adding a certain tract of land to the Yakataga State Game Refuge. The specific tract in question is Tract A-148 ("Cape Suckling"). Sections 2 and 3 have a conditional effective date set out in sec. 7, and if the condition were to take place, the land in question would become part of the Refuge.

The condition in sec. 7 is based on the commissioner of natural resources reaching agreement with the University of Alaska on the fair market value of the University's timber rights in Cape Suckling. See secs. 5(b) and 7, ch. 143, SLA 1990.

The reason why these sections were repealed in the first place was based on the fact that Ms. Jane Angvik, Director of the Division of Land (DNR), informed our office that "[t]he state and University could not agree on the value of the timber." Letter of Ms. Angvik dated February 17, 1998, attached.

Instead, various participants in litigation relating to Cape Suckling "agreed to transfer the University's timber rights to other land." That being the case, no more University timber rights in Cape Suckling meant, logically, that there could be no agreement on what the fair market value of those rights were.

It followed that, because there could be no "agreed value," sec. 7's condition could never be triggered; secs. 2 and 3 could never go into effect; and Cape Suckling could never be added to the Refuge -- at least not under ch. 143, SLA 1990.

Hence the repealer in the revisor's bill: the transfer of University rights to other land made the sections in question obsolete.

Representative Pete Kott
February 10, 1999
Page 2

Or so we thought.

Our initial information has since been updated by Mr. John Baker, an attorney in the Natural Resources section of the Department of Law. Mr. Baker was directly involved in the litigation relating to Cape Suckling and is familiar with the details of the settlement agreement mentioned by Ms. Angvik. It turns out that the transfer of University rights to other land was not a total transfer. The sections are therefore not obsolete.

According to Mr. Baker, it is possible that the University may reacquire rights in Cape Suckling. This results from the fact that the settlement agreement provides for a twenty year period during which it is possible (though improbable) that an escape clause will be triggered so that the University gets rights in Cape Suckling again.

This means that, contrary to our original understanding, the conditional effective date set out in sec. 7, ch. 143, SLA 1990 might be activated at some point in the future, with the result that Cape Suckling could be included in the Yakataga Game Refuge.

In sum, the significance of this is that the repeal of secs. 2, 3, and 7, ch. 143, SLA 1990, is more than simply a matter of form. These sections still have some life, which makes their repeal substantive, and based on our updated information, we can no longer recommend that the repeal be included in the revisor's bill.

Please let me know if you would like an amendment to or a committee substitute for the revisor's bill that reflects the removal of the repealer, sec. 20.

JPC:jdr
99-061.jdr

Attachment