

SB

49

STATE OF ALASKA

FRANK H. MURKOWSKI,
GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

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April 28, 2003

Representative Lesil McGuire
House Judiciary Committee
State Capitol, Room 118
Juneau, AK 99801-1182

Re: CSSB 49(STA) - 2003 Revisor's Bill

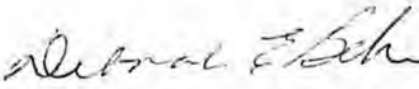
Dear Representative McGuire:

The Department of Law has had an opportunity to review CSSB 49(STA), 2003 revisor's bill. We find no legal problems.

The bill makes technical improvements to the Alaska statutes. We appreciate the efforts of the revisor of statutes on this important legislation. We recommend the scheduling of committee consideration of this bill.

Sincerely,

GREGG D. RENKES
ATTORNEY GENERAL

By: 
Deborah E. Behr
Assistant Attorney General

DEB:pvp

cc: Pam Finley, Revisor of Statutes, Legislative Affairs Agency
Dave Marquez, Attorney General's Office
Mike Tibbles, Legislative Director, Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 49(STA)
 (S) Publish Date: 2/24/03

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title: _____ BRU: _____
 Component: _____
 Sponsor: _____
 Requester: Senate State Affairs Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: SENATE STATE AFFAIRS COMMITTEE Phone 465-3873
 Division: _____ Date/Time 2/21/03 4:33 PM
 Approved by: /s/Senator Taylor, Chair Date 2/21/2003
 Agency: _____

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 24, 2003

SUBJECT: CSSB 49(STA) (2003 Revisor's Bill)

TO: Representative Lesil McGuire
Chair of the House State Affairs Committee

FROM: Pam Finley *PF*
Revisor of Statutes

Enclosed is a copy of CSSB 49(STA) (the 2003 revisor's bill) and a sectional for CSSB 49(STA). I would appreciate your scheduling a hearing on CSSB 49(STA) at your earliest convenience. If you have any questions about the bill or the proposed amendment, please give me a call.

PF:mdr
03-088.mdr

Enclosures

LEGAL SERVICES

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MEMORANDUM

April 24, 2003

SUBJECT: CSSB 49(STA)
TO: Representative Lesil McGuire
Chair of the House Judiciary Committee
FROM: Pam Finley
Revisor of Statutes

The following is a sectional analysis of CSSB 49(STA), the 2003 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 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 3, 5, 9, 10, 11, 12, 28, 31, 32, 38-45, 60, 63, and 68-74 repeal or amend provisions that have become obsolete through other legislative action or the passage of time.

Sections that correct errors or oversights: Sections 1, 2, 4, 6-8, 13, 14, 17-21, 23-25, 27, 29, 30, 34-37, 46-58, 61, 62, 64, 65, and 74 correct errors or oversights.

Sections that improve the form or substance of the law: Sections 15, 16, 22, 26, 33, 59, 66, 67, and 74 propose amendments to improve the form or substance of the statutory law of Alaska.

SECTIONAL ANALYSIS

Section 1. This section corrects a grammatical error in AS 02.15.230(a).

Section 2. Chapter 60, SLA 2002 changed "driving while intoxicated" to "driving while under the influence of an alcoholic beverage, inhalant, or controlled substance" in AS 28.35.030 and other statutes. This bill section makes the same change in AS 04.11.494(e) and also makes several grammatical corrections.

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Section 3. This section changes the statutory citation for the federal Fair Credit Reporting Act in AS 06.01.028(a)(4). In 2001, 15 U.S.C. 1681v was added to the Fair Credit Reporting Act. (15 U.S.C. 1681v requires a consumer reporting agency to give information about a consumer to government agencies if the agency certifies that the information is necessary to an investigation of international terrorism. 15 U.S.C. 1681v also prohibits the agency from disclosing that the government sought or obtained access to the information.)

Section 4. This section amends AS 06.26.190(a) to substitute "international trust company" for "international national trust company." The latter does not exist as a defined term in AS 06.26. This corrects an error in ch. 77, SLA 2002 and was requested by the Department of Law.

Section 5. This section amends the citation for the federal Fair Credit Reporting Act in AS 06.26.610(a)(5). See explanation for bill section 3.

Sections 6 - 8. These sections amend AS 08.13.080(b) and (c) and AS 08.13.100(a) to reflect the fact that licenses to practice are actually issued by the Department of Community and Economic Development after the relevant board, in this case the Board of Barbers and Hairdressers, authorizes the issuance of the license. See AS 08.01.050(a)(9) and AS 08.13.030(b)(1). These bill sections correct a drafting error in ch. 57, SLA 1999.

Sections 9 and 10. These bill sections amend AS 08.36.110(1)(F) and 08.36.234(1)(J) to reflect the correct current name of the American Association of Dental Examiners Clearinghouse for Board Actions.

Sections 11 and 12. These sections amend AS 09.30.310 and AS 09.50.390 to require reference to a serial number as an alternative to a reference to book and page. See explanation for bill sections 38-44.

Section 13. Under § 2, ch. 43, SLA 2000, AS 44.33.895 (Alaska regional economic assistance program) is to be repealed July 1, 2003. Unfortunately, ch. 43, SLA 2000 did not remove references to AS 44.33.895 in some other statutes. This bill section amends AS 09.65.170(c)(2) to substitute the current definition of "regional development organization" in AS 44.33.895 for a cross-reference to AS 44.33.895. (AS 09.65.170 concerns limitations on liability for officers and directors.) I have substituted the definition, rather than removed the reference to regional development organizations, because it appears that the organizations may continue to exist even after AS 44.33.895 is repealed. This bill section is made effective on the effective date of the repeal of AS 44.33.895.

Section 14. This section amends AS 10.06.580(a)(2) to correspond to AS 10.06.580(a)(1). AS 10.06.580(a)(2) as enacted by ch. 166, SLA 1988 correctly

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referred to a twenty-day period, but for some reason the published statutes in 1988 changed the reference to a 10-day period. Although this change could be made editorially since it just returns the published language to the enacted language, given the length of time that the error has appeared in the published statutes and the ramifications of the error, I would rather have this change made in the revisor's bill

Section 15. This section amends AS 10.06.811(a), which sets the year in which a corporation's biennial report must be filed. Current law addresses the filing date for a foreign corporation receiving a certificate of authority during an even-numbered year, but not for a foreign corporation receiving a certificate of authority during an odd-numbered year. (The applicable definition of "corporation" does not include foreign corporations. AS 10.06.990.) The amendment in bill section 15 requires foreign corporations that receive certificates of authority during an odd-numbered year to file their biennial reports each odd-numbered year.

Section 16. This section amends AS 10.06.833 to substitute "foreign corporation that has been issued a certificate of authority under AS 10.06.705" for "registered foreign corporation". Technically, foreign corporations do not "register"; instead they are issued certificates of authority.

Section 17. This bill section amends AS 10.20.460(1) to substitute "action or suit or an administrative or arbitration proceeding" for "action or suit of an administrative or arbitration proceeding." Since the current language does not make sense, "of" was probably a typographical error.

Section 18. Section 15, ch. 93, SLA 1959 enacted a provision which was split into two sections--- AS 10.25.210 and 10.25.220--- when Alaska's session laws were codified in 1963. As enacted, the section required an affidavit that the provisions of "this section" were complied with. Because the provisions of sec. 15, ch. 93, SLA 1959 are now found in both AS 10.25.210 and 10.25.220, the affidavit requirement should also refer to both of those sections. To that end, section 18 amends AS 10.25.220 to add a reference to AS 10.25.210.

Section 19. Cemetery associations have trustees. AS 10.30.010. Nonprofit cemetery corporations, like other corporations, have a board of directors. AS 10.30.055. However, AS 10.30.060 refers to the "trustees" of a cemetery corporation and neglects to refer to the trustees of an association. This bill section corrects that error.

Section 20. This section substitutes "recording district" for "recording precinct" in AS 10.40.110. Alaska has recording districts, but no recording precincts. AS 40.17.010.

Section 21. Professional corporations have "shareholders" not "members". See AS 10.45.010 and 10.45.050. However, AS 10.45.133 refers to "members". This bill section changes that reference to "shareholders".

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Section 22. This bill section rearranges the definition of "sexual penetration" in the criminal code to conform to the style of the Alaska Statutes.

Section 23. Chapter 113, SLA 2000 repealed AS 45.09 and enacted AS 45.29, but failed to address the reference to AS 45.09 in AS 13.16.580. This bill section corrects that drafting error.

Section 24. Chapter 94, SLA 2001 enacted AS 14.03.075(g)(1), which referred to the definition of "children with disabilities" in AS 14.30.350. However, sec. 29, ch. 67, SLA 2001 changed the definition in AS 14.30.350 from "children with disabilities" to "child with a disability." This bill section amends AS 14.03.075(g)(1) to conform to the change made in sec. 29, ch. 67, SLA 2001. Because AS 14.03.075 does not take effect until February 1, 2004---secs. 7 and 11, ch. 94, SLA 2001--- the amendment to AS 14.03.075(g)(1) made by this bill section is also tied to that effective date.

Section 25. This bill section substitutes "regional educational attendance area" for "rural educational attendance area" in AS 14.11.008(a). The proper term is "regional educational attendance area." AS 14.08.031. This corrects an error in ch. 3, SSSLA 2002.

Section 26. Section 39, ch. 83, SLA 1998 repealed AS 14.17.160, while sec. 6, ch. 77, SLA 1998 added what is now AS 14.11.100(n), which contained a reference to AS 14.17.160. This bill section addresses that situation by inserting "former" before "AS 14.17.160" in AS 14.11.100(n).

Section 27. In 1994, the legislature amended AS 16.10.320(d) in two separate acts. Chapter 62, SLA 1994 expanded the purposes for which commercial fishing loans could be made under AS 16.10.310(a)(1). Specifically, the Department of Community and Economic Development was authorized to make loans under AS 16.10.310(a)(1)(A) to improve quality of Alaska seafood products and to pay outstanding federal income tax indebtedness. Chapter 62 also amended AS 16.10.310(d) to place a \$300,000 cap on the total balances outstanding on all loans, including debt refinancing, that could be made to a borrower under AS 16.10.310(a). At the time that ch. 62 took effect (May 26, 1994), commercial fishing loans could be made only under AS 16.10.310(a)(1)(A) and (B), so the \$300,000 cap applied only to AS 16.10.310(a)(1)(A) and (B).

Section 2, ch. 73, SLA 1994 amended AS 16.10.310(a)(1) by adding a new subparagraph (C) to authorize the Department of Community and Economic Development to make loans for the purchase of quota shares. Section 3, ch. 73, SLA 1994 amended AS 16.10.320(d) by adding a new sentence: "The total balances outstanding on loans made to a borrower under AS 16.10.310(a)(1)(C) may not exceed \$300,000." Chapter 73, SLA 1994 took effect June 7, 1994.

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When the 1994 amendments to AS 16.10.320(d) were codified, both amendments were incorporated verbatim without taking into account the fact that the amendment made by ch. 62 only placed a limit on the amount of outstanding indebtedness that a borrower could have on loans made under AS 16.10.310(a)(1)(A) and (B) because AS 16.10.310(a)(1)(C) did not exist at the time that ch. 62 took effect. By codifying the two amendments into AS 16.10.320(d) verbatim, the apparent interpretation is that the total amount of outstanding indebtedness that a borrower could hold is \$300,000, regardless of whether the indebtedness was incurred under AS 16.10.310(a)(1)(A), (B), or (C). However, if the amendments made to AS 16.10.320(d) by ch. 62 and ch. 73 are considered independently, then the limit on indebtedness for loans under AS 16.10.310(a)(1)(A) and (B) (including debt refinancing) would be \$300,000 and a separate limit for indebtedness for loans under AS 16.10.310(a)(1)(C) would be \$300,000.

The Department of Community and Economic Development has, since 1994, construed and applied AS 16.10.320(d) such that there is a \$300,000 cap on indebtedness incurred under AS 16.10.310(a)(1)(A) and (B) and another \$300,000 cap on indebtedness incurred under AS 16.10.310(a)(1)(C). This issue has arisen at this time as the result of an audit of the commercial fishing loan program being conducted by the Division of Legislative Audit. The auditor's position appears to be that this interpretation is not consistent with the law as set out in the Alaska Statutes. There is no litigation known to the Department of Community and Economic Development or the Department of Law that involves the construction of AS 16.10.320(d). The Department of Community and Economic Development is anxious to resolve the matter as to the appropriate construction of AS 16.10.320(d) in a timely manner so as not to be at odds with the Legislative Auditor over the proper interpretation of this subsection. While the Legislative Auditor is quite right in applying the statute as it is set out in the Alaska Statutes, I agree with the Department of Community and Economic Development that the legislature probably intended chs. 62 and 73, SLA 1994 to operate independently. The fact that sec. 4, ch. 73, SLA 1994 amended the last sentence of AS 16.10.320(i) to substitute "if the total of the balance outstanding on loans received by the borrower under AS 16.10.310(a)(1)(A) and (B) does not exceed \$300,000" for "if the total of the balance outstanding on loans received by the borrower under AS 16.10.310(a) does not exceed \$300,000" supports the proposition that the legislature intended the \$300,000 limit to exclude loans under AS 16.10.310(a)(1)(C).

This bill section amends AS 16.10.320(d) to make it clear that the two \$300,000 caps operate separately. If the legislature disagrees with my interpretation, this section should be removed from the revisor's bill.

Section 28. The descriptions of the Egegik Critical Habitat Area are described in statute as "protracted", i.e., drawn without benefit of a survey monumenting the lines on the ground. However, according to the Department of Fish and Game, a U.S. Rectangular Land Survey of the area was approved July 15, 1993, and therefore the word "protracted"

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is no longer accurate. This bill section deletes "protracted" from the description in AS 16.20.565.

Section 29. Section 3, ch 55, SLA 1999 amended AS 18.07.031(a)(3) so that a certificate of need was no longer required when a category of health services provided by a health care facility was to be eliminated. Accordingly, the reference to a deletion of a category of health services in the definition in AS 18.07.111(3) of "commencement of activities" should have been removed in ch. 55, SLA 1999 but was not. This bill section makes that change.

Section 30. This bill section substitutes "housing assistance loan fund" for "housing assistance revolving fund" in AS 18.56.590. There is no "housing assistance revolving fund" although the housing assistance loan fund is a revolving fund. AS 18.56.420.

Sections 31 and 32. These bill sections delete references to Rule 45 of the Alaska Rules of Appellate Procedure. Rule 45 was repealed decades ago. Currently Rules 601 - 612 of the Alaska Rules of Appellate Procedure govern appeals to the superior court.

Section 33. This bill section substitutes "fire services personnel" for "men" in AS 18.70.160 in order to conform to the policy of avoiding words referring to only one sex. See AS 01.05.031(c). The term "fire services personnel" is used in AS 18.70.320.

Section 34. This bill section substitutes "Emergency Management Assistance Compact" for "Interstate Civil Defense and Disaster Compact" in AS 26.23.070(c). In ch. 55, SLA 2002, the Emergency Management Assistance Compact was adopted and the Interstate Civil Defense and Disaster Compact was repealed.

Section 35. Literally, the first sentence of AS 28.05.095(b) requires the driver of a motor vehicle to provide a child. It is more likely that the legislature intended to require the driver to provide a safety device (either a child safety device or a safety belt, as appropriate), as well as to secure each child in the device. This bill section makes that intent clear.

Section 36. This bill section corrects an error in ch. 56, SLA 2002. AS 28.15.231(b) prohibits the assessment of points for parking violations "[e]xcept as otherwise provided in AS 28.35.235(b)." However, in the final version of ch. 56, SLA 2002, AS 28.35.235(b) did not require the assessment of points. Accordingly, this bill section deletes the "except" clause in AS 28.15.231(b).

Section 37. AS 28.20.400(a) states how a person may qualify as a self-insurer for vehicles. It provides rules for a person who has more than 25 vehicles and for a person who has less than 25 vehicles, but makes no provisions for the person who has exactly 25 vehicles. The law originally allowed self-insurance only for persons having more than 25 vehicles. Section 27, ch. 108, SLA 1989 added the current second sentence. Since it

appears that the intent of ch. 108, SLA 1989 was not to change the rule for persons having more than 25 vehicles, but rather to add provisions for others, the second sentence is amended to include a person who has exactly 25 vehicles.

Sections 38 - 44. AS 40.17.030(a)(6) --- which was rewritten in 1996 --- requires certain documents to refer to either the "book and page" or the "serial number" of a previously recorded document. These bill sections add a reference to the "serial number" of a document in statutes that currently refer only to the "book and page" on which a document was recorded. These statutes were last amended before 1996 and so do not currently reflect the policy in AS 40.17.030(a)(6) of allowing a serial number as an alternative to a book and page reference. The Department of Law requested these amendments because the recorder's office is now using serial numbers instead of book and page references when it records documents.

Section 45. This bill section removes an obsolete date from AS 34.45.290(d).

Sections 46 - 52. Chapter 92, SLA 1982 was, as its title indicates, an act "transferring the administration of school or education-related facility construction from the Department of Transportation and Public Facilities to the Department of Education." Unfortunately, ch. 92 failed to delete references to schools and regional educational attendance areas in several sections of AS 35.10 and AS 35.15, which relate to the Department of Transportation and Public Facilities. These bill sections delete those references. (Note that the definition of "public work" in AS 35.95.100 includes only buildings constructed or maintained by the Department of Transportation and Public Facilities, thereby excluding schools.)

Section 53. This bill section amends AS 36.30.850(b)(30) to include the current definition of "regional development organization" in AS 44.33.895. It will become effective upon the repeal of AS 44.33.895. See the explanation for bill section 13 above.

Sections 54 - 58. These bill sections make technical corrections to sections enacted by initiative in 2002. In AS 41.41.070(d), "authority" is substituted for "corporation" because the entity created is an "authority". The other amendments are self-explanatory.

Section 59. This bill section substitutes "joint venture" for "joint adventure" in AS 43.70.110(4). "Joint venture" is the more contemporary term.

Section 60. This bill section deletes a reference in AS 44.23.020(b)(9) to the division of consumer protection in the Department of Law. The division of consumer protection was not created in statute and has not existed in fact for many years.

Section 61. Chapter 58, SLA 1999 moved the adult basic education program from the Department of Education to the Department of Labor and Workforce Development. Because the Department of Education had authority to adopt regulations for this program

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under AS 14.07.020(12) and 14.07.060, the Department of Labor and Workforce Development should have received authority to adopt regulations for the program when it received authority over the program. It did not, and this bill section corrects that omission in ch. 58, SLA 1999. (The Department of Education and Early Development has requested that this bill not amend AS 14.07.020(12) because of that statute's usefulness in the administration of certain federal programs for the disabled.)

Section 62. This bill section amends AS 45.01.206(b) to substitute "AS 45.29.203" for "AS 45.09.203." AS 45.29 was enacted, and AS 45.09 repealed, in ch. 113, SLA 2000. AS 45.29.203 is the equivalent of AS 45.09.203.

Section 63. This bill section deletes "consumer protection section" from AS 45.45.210 since that section no longer exists. Since this amendment involves forms, the effective date is delayed until January 1, 2004.

Sections 64 and 65. These bill sections amend AS 45.50.475(d) and (e) to substitute "this section" for "AS 45.50.475" to conform to the style of the Alaska Statutes.

Section 66. This bill section gives a short title ---the Alaska Unfair Trade Practices and Consumer Protection Act--- to AS 45.50.471 - 45.50.561. This body of law is referred to often enough that a short title would be useful. (In Matanuska Maid v. State, 620 P.2d 182 (Alaska 1980), the Alaska Supreme Court used this particular short title for this article, and it has long been the article heading.)

Section 67. This bill section gives a short title ---the Alaska Restraint of Trade Act--- to AS 45.50.562 - 45.50.598. This body of law is also referred to often enough that a short title would be useful. (Again, in Matanuska Maid v. State, 620 P.2d 182 (Alaska 1980), the Alaska Supreme Court used this particular short title for this article, and it has long been the article heading.)

Section 68. This bill section amends AS 47.05.012(9) to set out the current name of the compendium relating to animal rabies.

Sections 69 - 71. The Citizens' Foster Care Review Board, and the local review panels, were not extended under AS 44.66.010 and therefore expired in 2000. Accordingly the statutes establishing and governing the Board are repealed in bill section 74. Bill section 69 deletes a reference to the Board and the local review panels in AS 47.10.093(b)(1). Bill sections 70 and 71 amend AS 47.12.315(d) and AS 47.14.100(i) to delete a reference to AS 47.14.299, but add the definition of "out-of-home care provider" that currently exists in AS 47.14.299.

Sections 72 and 73. These bill sections substitute "federal Temporary Assistance for Needy Families program" for "federal program designated as the successor to the aid to families with dependent children program." in AS 47.27.005(4) and 47.27.020(b). At the

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time these statutory provisions were drafted, it was known that the federal government was going to replace AFDC, but the title of the new program was not known. These bill sections add the correct title of the TANF program. The same change was not made to AS 47.07.020(b), 47.07.035(26), and AS 47.27.015(b) because the Department of Law intends to make more substantive amendments to those sections.

Section 74. This bill section repeals several statutes. The text of these statutes is attached.

AS 11.46.480(b)(5) defines "tamper", but an identical definition of "tamper" appears in AS 11.46.495(5). Accordingly, AS 11.46.480(b)(5) is repealed.

AS 44.66.010(a)(17)

AS 47.10.080(m) and (n)

AS 47.10.142(g)

AS 47.12.120(h)

AS 47.14.200 - 47.14.299 are all repealed because of the expiration of the Citizens' Foster Care Review Board.

Section 75. This bill section ties the effective date of bill sections 13 and 53 to the repeal of AS 44.33.895.

Section 76. This bill section ties the effective date of bill section 24 to the effective date of sec. 3, ch. 58, SLA 1997, as amended by sec. 7, ch. 94, SLA 2001.

Section 77. This bill section gives bill section 63 a January 1, 2004, effective date because bill section 63 involves the change of a form.

Section 78. This bill section gives the bill sections not covered by bill sections 75-77 an immediate effective date.

TEXT OF STATUTES REPEALED

AS 11.46.480(b)(5):

(5) "tamper" means to interfere with something improperly, meddle with it, or make unwarranted alterations to its existing condition.

AS 44.66.010(a)(17):

(17) Citizens' Foster Care Review Board under AS 47.14.200 - June 30, 2000;

AS 47.10.080(m) and (n)

(m) Within 60 days after the date a child is removed from the child's home by the department, the department shall notify the Citizens Foster Care Review Board established in AS 47.14.200.

(n) Within 60 days after a court orders a child committed to the department under (c) of this section and at a review under (f) or (l) of this section, the department shall inform the parties about the local review panel established under AS 47.14.220.

AS 47.10.142(g).

(g) Within 60 days after a court orders a child committed to the department under this section, the department shall inform the parties about the local review panel established under AS 47.14.220.

AS 47.12.120(h).

(h) Within 60 days after the date a minor is removed from the minor's home by the department, the department shall notify the Citizens' Foster Care Review Board established in AS 47.14.200.

AS 47.14.200 - 47.14.299.

Sec. 47.14.200. Citizens' Foster Care Review Board.

(a) There is created in the Department of Administration the Citizens' Foster Care Review Board. The board consists of nine public members appointed by the governor from among persons who have training, experience, special knowledge, or a demonstrated interest in the welfare of children. An out-of-home care provider or a person employed by the court system, the Department of Health and Social Services, the office of public advocacy, the Public Defender Agency, or the Department of Law may not serve as a public member of the board. The governor shall appoint at least one public member from each judicial district and shall appoint persons who are reasonably representative of the various social, economic, racial, ethnic, and cultural groups of the judicial district from which the members are appointed. The governor may not appoint a person who has committed a felony or violated AS 11.51.130 or a law with substantially similar elements. The board also includes, as nonvoting members, the following state officials or their designees:

- (1) the commissioner of health and social services;
- (2) the director of the office of public advocacy.

(b) Public members of the board serve at the pleasure of the governor for staggered terms of three years or until their successors are appointed. These members may not serve more than two consecutive full terms, except that they may be reappointed to one or two additional consecutive full terms if they have been off the board for at least three years immediately preceding the reappointment.

(c) The voting members of the board shall elect from among the voting members a chair who shall serve for one year. Five voting members of the board constitute a quorum for the transaction of business. The board may not take official action without the affirmative vote of at least five of its voting members.

(d) Members of the board are entitled to reimbursement for actual expenses necessary to perform their duties as board members. The reimbursement may not exceed the amount of per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

(e) The board shall meet at least once annually. Meetings shall take place telephonically whenever practical, and the board may meet by video conference.

(f) The board may employ a program coordinator who shall serve at the pleasure of the board. The program coordinator shall employ staff as necessary to carry out the program coordinator's duties under board directives and to provide technical assistance to local review panels. The board may delegate duties to the program coordinator as necessary to assist the board in administering AS 47.14.200 - 47.14.299.

Sec. 47.14.210. Powers and duties of the board.

(a) The board shall

(1) hold regular and special meetings the board considers necessary;

(2) adopt regulations necessary to carry out its duties and to govern the performance of the duties of the local review panels established under AS 47.14.220; the regulations must include provisions that

(A) ensure that reviews conducted by local review panels meet the permanency planning review requirements for state compliance with 42 U.S.C. 671 - 675;

(B) set priorities to be followed by local review panels so that the cases that have the highest priority for review include cases that involve children who are likely to be in out-of-home placement for longer than 90 days, who have been in more than one out-of-home placement, whose siblings have been in more than one out-of-home placement, or whose parents' parental rights are likely to be terminated;

(C) establish procedures for expedited review of cases described in (B) of this paragraph; and

(D) establish the minimum number of local review panel members that must review a case and provide for the appointment of substitute local review panel members to participate in the review of a case when a member cannot be available due to an emergency;

(3) ensure that the public members of the board and of the local review panels receive the level of training necessary to effectively carry out their duties, document in the board's records that the public members

of local review panels have completed the training, and ensure that a public member of a local review panel does not review a case until training has been received;

(4) coordinate and review the activities of the local review panels;

(5) apply for private and federal grants and solicit contributions, gifts, and bequests to administer and implement AS 47.14.200 - 47.14.299;

(6) award grants or contracts from available money to local governmental or public or private nonprofit agencies to provide assistance to the state board and local review panels, to support their activities, and to carry out projects or studies related to improving the system for permanency needs of children in state foster care;

(7) review and make recommendations to the department about the department's regulations that govern out-of-home placement of children;

(8) use board staff to evaluate applicants for public members of local review panels and to provide training to local review panel members;

(9) prepare a report annually, by the 10th day of each regular session of the legislature, concerning the activities of the state board and the local review panels during the previous fiscal year; the report must include the number of cases reviewed by each local review panel, a description of the characteristics of the children whose cases were reviewed by the local review panels, the number of children reunited with their families, the number of children placed in other permanent homes, systemic barriers to achieving permanency for children, and recommendations and justifications for improvement in services and programs provided to children, including recommendations relating to state agencies and to the panel review system; the report may contain other information on the experience of the local review panels; the board shall notify the governor and the legislature that the report is available.

(b) The board may by regulation require the department to provide to the board or to a local review panel aggregate data about the permanency planning system and information about particular cases that is not required under AS 47.14.240. The department shall provide the data and information requested under these regulations.

Sec. 47.14.220. Appointment of local review panels.

(a) Except as provided in regulations adopted under AS 47.14.210(a)(2)(D) relating to substitutes, the board shall appoint for each judicial district at least five persons available to serve as public members on local review panels who are residents of the judicial district. Public members shall serve staggered terms of three years or until their successors are appointed. Public members may not serve more than two consecutive full terms, except that, after being off all panels for at least

three years, a member may be reappointed to one or two consecutive full terms.

(b) The board shall appoint as public members persons who have training, experience, special knowledge, or a demonstrated interest in the welfare of children. An out-of-home care provider or a person employed by the court system, the department, the office of public advocacy, the Public Defender Agency, or the Department of Law may not serve as a public member of a local review panel. The board may not appoint a person who has committed a felony or violated AS 11.51.130 or a law with substantially similar elements.

(c) The public members of a local review panel must be reasonably representative of the various social, economic, racial, ethnic, and cultural groups of the district from which the members are appointed.

(d) If the board determines that additional public members are necessary in a judicial district because of excessively large or complex caseloads for review or because of the demographics of cases, the board may appoint additional public members. Appointments of public members under this subsection are governed by (a) - (c) of this section. Public members serve on the panel at the pleasure of the board.

(e) When a person is appointed to serve as a public member on a local review panel, the person shall swear or affirm in writing to keep confidential all information that comes before the local review panel except for nonidentifying case information included in a report to the state board, information for reports required under AS 47.17, or as required by court order for good cause shown. A public member of a local review panel may also share confidential information, on a need-to-know basis, with other members of the local review panel, the board, and the staff who serve the board or local review panel.

Sec. 47.14.230. Meetings; expenses.

(a) A local review panel shall conduct its meetings in the judicial district in which its public members reside.

(b) [Repealed, Sec. 26 ch. 94 SLA 1997].

(c) [Repealed, Sec. 26 ch. 94 SLA 1997].

(d) A public member of a local review panel is not eligible for travel expenses, per diem, or other expenses for service on the local review panel unless the state board requires the public member to travel to attend a meeting. If the state board requires a public member of a local review panel to travel to attend a meeting, the public member is entitled to reimbursement for actual expenses incurred by the member in attending the meeting, except that the reimbursement may not exceed the amount of per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

Sec. 47.14.240. Duties of local review panel.

(a) A local review panel shall review the case plan of each child in the custody of the department who is in a placement other than the child's own home under AS 47.10.080(c)(1) or (3), 47.10.142, or AS 47.14.100(c) if the case is under the jurisdiction of a court in the judicial district served by the local review panel. A local review panel may request a local review panel in another judicial district to conduct a review and make a report if that local review panel is more convenient for the child and other persons involved.

(b) The local review panel shall review a case as required under 42 U.S.C. 671 - 675 (P.L. 96-272) within 90 days after the day the child is initially removed from the child's home for a case that is determined under the board's regulations to be of highest priority and within 180 days after the child is initially removed for other cases and every six months after the date of the first court hearing on the child's case. A court review may be substituted for a review required under this subsection if the court review meets the requirements of this subsection.

(c) At least 30 days before the local review panel begins a review, or as soon as practicable, the local review panel or the state board shall provide written notice to the following persons that a review will be conducted and that each person notified may participate in the review:

- (1) the appropriate employees of the department;
- (2) the child or the child's legal representative;
- (3) the child's parents;
- (4) the child's guardian;
- (5) the child's guardian ad litem;
- (6) the child's out-of-home care provider; and
- (7) if the case is governed by 25 U.S.C. 1901 - 1963 (Indian Child Welfare Act),
 - (A) the child's Indian custodian; and
 - (B) the designated representative of the child's Indian tribe if the tribe has intervened in the court case.

(d) In reviewing a case, the local review panel shall consider the case plan and any progress report of the department or the child's guardian ad litem, court records, and other relevant information about the child and the child's family. The local review panel shall provide to the following persons an opportunity to be interviewed by the local review panel in person or by telephone or to provide written material to the local review panel:

- (1) the child whose case is being reviewed if the child is 10 years of age or older;
- (2) the parents, custodians, or other relatives of the child;
- (3) the child's out-of-home care provider;
- (4) the child's guardian;

(5) the child's guardian ad litem;
(6) the case worker or social worker assigned to the case;
(7) the child's health care providers;
(8) if the case is governed by 25 U.S.C. 1901 - 1963 (Indian Child Welfare Act),

(A) the child's Indian custodian; and

(B) the designated representative of the child's Indian tribe if the tribe has intervened in the court case; and

(9) other persons with a close personal knowledge of the case.

(e) At the discretion of the child's guardian ad litem, if the child whose case is being reviewed is under 10 years of age, the child may be present at interviews conducted under (d) of this section and during review by the local review panel or may be interviewed. At the child's request, a child who is 10 years of age or older shall be allowed to be present at interviews or a review of the local review panel that concerns the child's case unless the panel determines that for good cause the child's presence would be contrary to the best interests of the child or there is other good cause for denying the child's request.

(f) During a review under (a) of this section, a local review panel shall

(1) determine whether the child has a case plan designed to achieve placement in the least restrictive, most family-like setting available in close proximity to the home of the child's parents that is consistent with the best interests and special needs and circumstances of the child;

(2) evaluate the continuing necessity and appropriateness of the child's placement, the extent of the compliance with the child's case plan, and the extent of progress that has been made toward mitigating the causes that necessitated placement away from the child's parents;

(3) ascertain the date by which it is likely the child may be returned to the home or placed for adoption or legal guardianship;

(4) determine whether there has been compliance with applicable provisions of 25 U.S.C. 1901 - 1963 (Indian Child Welfare Act) and other applicable state and federal laws; and

(5) determine whether there has been compliance with court review requirements of AS 47.10.080(f) and (l) and 47.10.142(h).

(g) The local review panel shall within 15 working days after reviewing the case submit a written report to the persons listed in (c) of this section.

(h) The report required under (g) of this section must make advisory recommendations based on the best interests of the child in accordance with AS 47.10.082 and must include notification of the right to request court review under AS 47.10.080(f). If the court has scheduled the case for review, the local review panel shall submit its report at least 20

days before the hearing, and the department shall present to the court the recommendations that are made in the report.

(i) The local review panel shall report to the state board information needed by the state board to prepare the report required under AS 47.14.210.

Sec. 47.14.250. Cooperation with state board and local review panels.

(a) The department, Department of Law, other departments of the executive branch, public defender, office of public advocacy, and court system shall cooperate with the state board and the local review panels to facilitate timely review of plans for children whose cases are reviewed under AS 47.14.200 - 47.14.299. The duty of executive branch agencies to cooperate under this section extends to the provision of addresses and other information necessary for a local panel to locate a person entitled to participate in a review under AS 47.14.240(c) or (d) if the addresses and other information may be disclosed by the agency to the department for conducting its child protection and child placement duties under this title notwithstanding that providing the addresses or other information to entities other than the department may be prohibited under other laws relating to those agencies.

(b) The department shall cooperate and consult with the state board in the development of departmental information systems relating to children in out-of-home placements whose cases are subject to review by local review panels. The department shall develop information systems that ensure that aggregate data and individual case information needed by the state board and the local review panels for the performance of their duties are readily available from all of the department's information systems.

Sec. 47.14.260. Records: communications.

(a) Notwithstanding AS 47.10.090 and 47.10.093, at the request of a local review panel, the department, a municipality, the child's guardian ad litem, and the court shall furnish to the local review panel relevant records concerning a child and the child's family who are the subjects of a local panel review. At the conclusion of a review, all copies of records provided to a local review panel under this section shall be returned to the staff that serves the local review panel or to the agency from which the original copy was obtained unless the local review panel members need the copies to prepare the reports required under AS 47.14.240(g) - (i). Copies retained for preparation of the reports shall be returned to the staff that serves the local review panel or to the originating agency upon completion of the reports. Notwithstanding AS 44.62.310, records and reports of the local review panel, testimony before the local review panel,

and deliberations of the local review panel are confidential under AS 47.10.090.

(b) A public member of a local review panel may not reveal to another person, other than another member of the local review panel or the staff serving the local review panel, a communication made to the member while performing the member's duties under AS 47.14.200 - 47.14.299 except as required under AS 47.17 or as required by court order for good cause shown. A public member of a local review panel may share with the state board communications made during the public member's performance of official duties if the public member omits identifying information.

(c) A local review panel proceeding is not governed by AS 44.62.310.

Sec. 47.14.270. Court review of report.

(a) The local review panel shall submit its final report to the court to aid the court in its review of temporary custody orders issued under AS 47.10.142 and in its dispositional hearings and reviews under AS 47.10.080 and 47.10.083.

(b) The court may refer to the board for assignment to a local review panel a case called for a special review under AS 47.10.080(f), as appropriate.

Sec. 47.14.280. Immunity of board and panel members and staff.

A state board member, a local review panel member, and a person serving as staff to the state board or a local review panel shall be immune from civil liability for a negligent act or omission of the board or panel member or a person serving as staff to the board or a local review panel that occurs in the performance of the member's or person's duties under AS 47.14.200 - 47.14.299 unless the civil liability results from the board or panel member's or other person's gross negligence or violation of

(1) AS 47.14.260(b); or

(2) the oath or affirmation required under AS 47.14.220(e).

Sec. 47.14.299. Definitions.

In AS 47.14.200 - 47.14.299,

(1) "board" means the state board;

(2) "department" means the Department of Health and Social Services;

(3) "local review panel" means a local review panel appointed under AS 47.14.220;

(4) "out-of-home care provider" means an agency or person, other than the child's legal parents, with whom a child who is in the custody of the state under AS 47.10.080(c)(1) or (3), 47.10.142, or AS 47.14.100(c)

Representative Lesil McGuire
Chair of House Judiciary Committee
April 24, 2003
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is currently placed; in this paragraph, "agency or person" includes a foster parent, a relative other than a parent, a person who has petitioned for adoption of the child, and a residential child care facility;

(5) "panel" means a local review panel;

(6) "state board " means the Citizens' Foster Care Review Board established in AS 47.14.200.

PF:mdr
03-089.mdr



HOUSE STATE AFFAIRS COMMITTEE

STATE CAPITOL, ROOM 102
465-2028

MEMORANDUM

COMMITTEE MEMBERS

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Chairman
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465-2028

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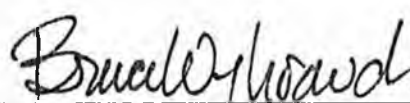
Date: April 24, 2003

To: Speaker Kott


From: House State Affairs Committee

Re: SB 49

The House State Affairs Committee has agreed to waive SB 49 – The Revisor’s Bill out of Committee. The next committee of referral is the Judiciary Committee where the majority of the work on this bill will take place.



Representative Bruce Weyhrauch
Chair



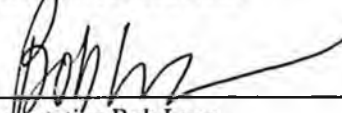
Representative Jim Holm, Vice-Chair



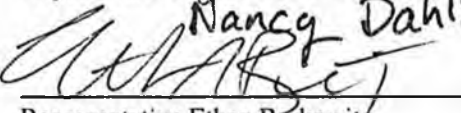
Representative Paul Seaton



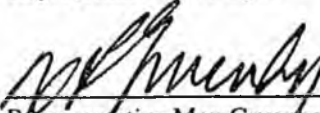
Representative Nancy Dahlstrom



Representative Bob Lynn



Representative Ethan Berkowitz



Representative Max Gruenberg

waved STA 4-24-03

Gunny
Please put
in the
"official bill
file"

100-100000

4/24/03

Bruce - if the
wording is all right
on this, go ahead and
get it signed. Please
have a page make
a copy for the file.

You need to make an
announcement on the
floor that the committee
wishes to waive the bill from
Committee.