

SB

265

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 10, 2010

SUBJECT: 2010 Revisor's Bill (SB 265; Work Order No. 26-LS1220\S)

TO: Senator Linda Menard
Chair of the Senate State Affairs Committee
Attn: Sarah Munson

FROM: Kathryn L. Kurtz *KK*
Assistant Revisor

Enclosed is a copy of the 2010 revisor's bill, which has been referred to your committee, along with a sectional summary, and two letters of support from the Department of Law.

I am also enclosing a statement explaining the need for the bill. Please note that I, as Assistant Revisor, am not able to speak for the Legislative Council, which is the sponsor of the bill. I do hope this statement will suffice for your purposes.

Please schedule this bill for a hearing. I would be happy to appear at the hearing and speak to the bill. You can reach me at 465-6663 if you have questions.

KLK:plm
10-063.plm

Enclosures

LEGAL SERVICES

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MEMORANDUM

February 10, 2010

SUBJECT: Statement of Assistant Revisor Relating to 2010 Revisor's Bill
(SB 265; Work Order No. 26-LS1220\5)

TO: Senator Linda Menard
Chair of the Senate State Affairs Committee
Attn: Sarah Munson

FROM: Kathryn L. Kurtz *KK*
Assistant Revisor

The revisor of statutes prepares a bill draft annually under AS 01.05.036 to correct or remove deficiencies, conflicts, and obsolete provisions, and to otherwise improve the form or substance of the state statutes.¹ This bill provides an opportunity for the legislature to correct errors in the statutes that would otherwise have to remain on the books unless corrected in a substantive bill.

The bill amends sections in several statutory titles. This is permitted under article II, section 13 of the Constitution of the State of Alaska, which provides an exception to the single subject rule for bills revising existing laws.

The bill has been reviewed by the Department of Law, which concluded that it makes "important technical improvements to the law."²

¹ AS 01.05.036 provides:

Sec. 01.05.036. Improvement of statutes. The Legislative Affairs Agency, working in cooperation with the revisor, shall make recommendations to the legislative council concerning deficiencies, conflicts, or obsolete provisions in and the need for reorganization or revision of the statutes, and, at the direction of the legislative council, 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. Each title of the Alaska Statutes shall be systematically reviewed at least once each two years for deficiencies, conflicts, or obsolete provisions.

² See letters from Deborah Behr dated January 11 and January 25, 2010. Note that sec. 6 of the \A version, referred to in the January 11 letter, was deleted from the draft bill.

Senator Linda Menard

February 10, 2010

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The bill was approved for introduction at the Legislative Council meeting held February 4, 2010.

KLK:plm

10-064.plm

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MEMORANDUM

February 10, 2010

SUBJECT: Sectional Summary of the 2010 Revisor's Bill
(SB 265; Work Order No. 26-LS1220S)

TO: Senator Linda Menard
Chair of the Senate State Affairs Committee
Attn: Sarah Munson

FROM: Kathryn L. Kurtz *ICK*
Assistant Revisor

This is a sectional summary of the 2010 revisor's bill. The bill is prepared under AS 01.05.036, which provides, in part, that the Legislative Affairs Agency, working in cooperation with the Revisor of Statutes

... shall make recommendations to the legislative council concerning deficiencies, conflicts, or obsolete provisions in and the need for reorganization or revision of the statutes, and, at the direction of the legislative council, 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. . . .

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Sections that delete, repeal, or update obsolete provisions: 12, 21, 22

Sections that correct errors or oversights: 1, 4, 5, 10, 11, 16, 17, 27

Sections that improve the form or substance of the law: 2, 3, 6 - 9, 13 - 15, 18 - 20, 23 - 26, 28

Senator Linda Menard

February 10, 2010

Page 2

Bill section 1. Amends the definition of "public aircraft" in AS 02.15.260(15). This definition was originally adopted in sec. 1, ch. 123, SLA 1949, prior to statehood. In the session laws, the definition read:

"Public Aircraft" means an aircraft used exclusively in the governmental service with reference to the United States, and the Territorial Government.

However, in the first revised statutes published in 1962, the definition, then AS 02.15.270(12), read as it does now:

(15) "public aircraft" means an aircraft used exclusively in the governmental service of the United States and the state government;

The changes in the definition, necessitated by the transition to statehood, presumably occurred in the course of the bulk formal revision of the statutes, adopted as the law of Alaska in 1963. See AS 01.05.006.

In its original form, the definition referred to both the government of the United States and the territorial government. The "with reference to" phrasing would have included an aircraft used in the service of either governmental entity. The wording of the revised version retains the "and" used in the original, but does not include the "with reference to" phrasing, suggesting that a particular aircraft would need to be used in both federal and state governmental service to fall within the definition. This seems inconsistent with the original definition, which appeared to be disjunctive. Also, the disjunctive form is more consistent with the definition of "civil aircraft" in AS 02.15.260(8), which reads

(8) "civil aircraft" means any aircraft other than a public aircraft;

Together, it seems clear that these definitions were intended to cover all aircraft. To include an aircraft used only in the service of the state government and not the federal government in the definition of "civil aircraft" would require a strained reading of that definition. For these reasons, the conjunction "and" is replaced with "or" in this section.

Bill section 2. Amends the spanned reference to the Alaska Public Records Act in AS 06.55.407(a) to include the new short title section (added in 2008).

Bill section 3. This section amends a reference to unsworn falsification in AS 06.60.580 to specify unsworn falsification *in the second degree*.

From the revision of the criminal code in 1978 until 2006, the crime of unsworn falsification, a class A misdemeanor, was codified at AS 11.56.210. In 2006, the legislature enacted AS 11.56.205, making unsworn falsification on a permanent fund dividend application a class C felony. Unsworn falsification in other contexts, still

punishable under AS 11.56.210, became unsworn falsification in the second degree. In the 2006 bill, most statutory references to "unsworn falsification" were amended to read "unsworn falsification in the second degree."

AS 06.60.580 was enacted in 2007 with a reference to "unsworn falsification" that did not specify degree. Because the section relates to claims from the originator surety fund, AS 11.56.205 has no relevance here. The amendment adds the words "in the second degree" to correct an oversight.

Bill section 4. This section deletes the phrase "the supervision required by AS 08.04.023" in AS 08.04.450. This phrase is a non sequitur because AS 08.04.023 does not contain any supervision requirement; it is extraneous and without legal effect. Inclusion of the phrase was a drafting error made by the legal services division.

Bill section 5. Changes "planning" to "planing" in AS 08.32.110(a). Although an Internet search reveals references to both "root planning" and "root planing," it appears that "root planing" is the more common usage for the therapy for periodontal disease performed by dental hygienists, and the word "planing" does some more accurately descriptive of the procedure, which involves smoothing the surface of a tooth's root. Also, the term "root planing" is used by the Alaska Department of Health and Social Services¹ and the American Dental Association.²

Bill section 6. Amends the definition of "limited liability partnership" in AS 08.48.341(10), the definition for statutes relating to the professional registration of architects, engineers, and land surveyors.

In 2000, the legislature passed an act adding limited liability companies and limited liability partnerships to the organizations that may practice architecture, engineering, and surveying. It included a new section defining the term "limited liability partnership" with reference to AS 32.05.415 and 32.05.990. That Act, ch. 38, SLA 2000, took effect August 9, 2000. During the same session, the legislature also passed an act repealing AS 32.05, the Uniform Partnership Act, and replacing it with a new version of that Act. The new provisions in that Act, ch. 115, SLA 2000, took effect January 1, 2001. The repeal of AS 32.05 took effect January 1, 2004.

¹ BJ Whistler, Alaska Oral Health Plan: 2008 - 2012, Section of Women's Children's and Family Health, Division of Public Health, Alaska Department of Health and Social Services, 2007, at <http://www.hss.state.ak.us/dph/wcfh/Oralhealth/docs/Oral-Health-Plan.pdf>, accessed January 8, 2010, at p. 13.

² "Treating Periodontal Disease. Scaling and Root Planing. Journal of the American Dental Association, vol. 134, February 2003 at 259, at http://www.ada.org/prof/resources/pubs/jada/patient/patient_23.pdf, accessed January 8, 2010.

Chapter 115, the Act enacting the new Uniform Partnership Act, did not make conforming changes to AS 08, as amended by chapter 38. As a result, since the repeal of AS 32.05 in 2004, the definition in AS 08.48.341(10) has pointed to two statutes that no longer exist. However, chapter 115 did amend AS 04.21.080(b)(11) and (15), definitions nearly identical to those in AS 08.48.341(10). Since the original definitions were so similar, the changes in this bill are modeled on those in secs. 2 and 3, ch. 115, SLA 2000. The changes are necessary to alert the reader to the location of the current law, which, under sec. 10, ch. 115, SLA 2000, has applied to all limited liability partnerships since January 1, 2004.

Bill section 7. Inserts the word "has" at the beginning of AS 08.65.140(d)(14) to improve the readability of the paragraph, and for consistency with the remainder of the subsection.

Bill section 8. Amends AS 12.55.035(c) by deleting "greater" (the comparative form of the adjective) and inserting "greatest" (the superlative form). This change is suggested because the comparative is generally used for comparing two things and the superlative is used for comparing three or more things. Since the rest of the sentence asks the reader to choose among three options, the superlative form is preferable here.

Bill section 9. Amends the spanned reference to the Alaska Public Records Act in AS 12.65.140(b) to include the new short title section (added in 2008).

Bill section 10. Amends AS 13.26.344(j) to add a missing part of the verb. This change makes the provision parallel to other subsections of AS 13.26.344.

Bill section 11. Changes a reference to a federal regulation in AS 13.27.030, part of the Uniform Adult Guardianship and Protective Proceedings Act enacted in 2008. The statute now refers to "protected health information as defined in 45 CFR 164.504." However, that section of the CFR does not include a definition of the term "protected health information." The term is defined for purposes of 45 CFR 164.504 and the rest of subchapter C, subtitle A, title 45 in 45 CFR 160.103.

Alaska's statute used the reference included in the model act. Through the attorney general's office, we have received confirmation from the National Conference of Commissioners on Uniform State Laws that the cite in section 105 of the model act was erroneous, and that the correct cite is 45 CFR 160.103. This corrects the error.

Bill section 12. Amends AS 14.43.930(e)(2) to reflect the current name of the Northwest Association of Accredited Schools, which was formerly the Northwest Association of Schools and Colleges. The Association changed its name in 2004.

Bill section 13. Amends the spanned reference to the Alaska Public Records Act in AS 17.37.010(a) to include the new short title section (added in 2008).

Bill section 14. Amends the spanned reference to the Alaska Public Records Act in AS 18.65.087(e) to include the new short title section (added in 2008).

Bill section 15. Codifies at AS 26.23.240 a short title for AS 26.23.010 - 26.23.240 and 26.23.900 -- the "Alaska Disaster Act." This term has frequently been used by the Attorney General as a shorthand reference to AS 26.23 (see Op. Atty Gen. file nos. 883-03-0070 (June 2, 2003), 663-93-0425 (July 8, 1993), and 663-92-0494 (January 13, 1993) for example). The term was employed by the Alaska Supreme Court in *City of Seward v. Afognak Logging*, 31 P.3d 780, 785 (Alaska 2001).

The phrase "Alaska Disaster Act" was used as a chapter heading when AS 26.23 was originally enacted, in sec. 3, ch. 104, SLA 1977. In 1990, two sections were added to the chapter: AS 26.23.300, creating a disaster relief fund, and AS 26.23.400, creating a fuel emergency fund. Each of these was created as a new article, and the definitions section, formerly AS 26.23.230, was renumbered as AS 26.23.900. In 2002, the Emergency Management Assistance Compact was enacted (AS 26.23.135 - AS 26.23.136), replacing the former Interstate Civil Defense and Disaster Compact, which was repealed. "Alaska Disaster Act" has been retained as the article title for Article 1 of AS 26.23.

In codifying the short title, the question arises whether it should apply only to the sections enacted in 1977, or to the 1990 additions as well. The drafting manual advises that a short title "should be used only with a bill that contains a cohesive body of proposed law dealing comprehensively with a particular subject." Manual at 23. For the sake of consistency with the existing article heading and usage by the Alaska Supreme Court and the Attorney General, the revisor's bill applies the short title only to Article 1 of AS 26.23 and the definitions section, AS 26.23.900, which was part of the original material designated as the Alaska Disaster Act in the 1977 legislation.

Bill section 16. Amends AS 29.65.050(b) to conform the usage to the term defined in AS 29.65.130(10) -- "vacant, unappropriated, unreserved land." Since the subsection in which the phrase "land that was vacant, unappropriated, or unreserved" was adopted in the same 1985 revision of the municipal code as the definition in AS 29.65.130(10), it is assumed that the inconsistency is a drafting error or oversight.

Bill section 17. Amends AS 29.65.060(a). Currently, the statute reads "vacant, unappropriated, *or* unreserved land as defined in this chapter" (emphasis added). The "or" is deleted to conform the usage with the phrase that is actually defined in the chapter.

Bill section 18. Amends AS 34.45.320(b) to specify unsworn falsification in the second degree (under AS 11.56.210), which is generally applicable, as opposed to unsworn falsification in the first degree (under AS 11.56.205), which relates only to permanent fund dividend applications.

AS 34.45.280(b) specifies that reports of abandoned personal property are to be made on a form which gives notice that statements on the form are made under penalty of unsworn falsification. Since this section relates to reports of unclaimed property rather than permanent fund dividend applications, unsworn falsification in the second degree under AS 11.56.210 is clearly the applicable statute. This section predates the 2006 changes to the law of unsworn falsification, and it is not clear why the reference was not changed in the 2006 bill. Although the general reference may suffice -- "under penalty of unsworn falsification" is not wrong, it is merely imprecise -- a reference that includes "in the second degree" is more accurate here. For further explanation, see the discussion in bill sec. 3, above.

Bill section 19. Amends AS 34.45.380(a) to specify unsworn falsification in the second degree (under AS 11.56.210), which is generally applicable, as opposed to unsworn falsification in the first degree (under AS 11.56.205), which relates only to permanent fund dividend applications. See bill sec. 18, above; the only difference is that AS 34.45.380(a) relates to abandoned property claim forms (rather than report forms).

Bill section 20. Amends the spanned reference to the Alaska Public Records Act in AS 40.25.220 to include the new short title section (added in 2008).

Bill section 21. Amends AS 41.21.506(b)(2) to remove an exception added in sec. 2, ch. 61, SLA 2009 relating to AS 16.40.260 and 16.40.270 on the date that those two sections are repealed. The repeal will take effect January 1, 2011, under sec. 8, ch. 70, SLA 2004 as amended by sec. 3, ch. 61, SLA 2009, unless that section is further amended.

Bill section 22. Corrects a reference to the United States Code in AS 42.40.430. In 2002, 40 U.S.C. 471 was renumbered as 40 U.S.C. 401 in a general revision of federal laws relating to public property. According to the statement of purpose for the revision Act, P.L. 107-217, sec 5(b)(1), "[t]his Act makes no substantive change in existing law and may not be construed as making a substantive change in existing law."

Bill section 23. Amends the spanned reference to the Alaska Public Records Act in AS 43.05.455(d) to include the new short title section (added in 2008).

Bill section 24. Amends the spanned reference to the Alaska Public Records Act in AS 43.05.475(b) to include the new short title section (added in 2008).

Bill section 25. Adds a short title at AS 44.62.319 for AS 44.62.310 - 44.62.312, which is commonly referred to as "the open meetings act." See for example *Abood v. League of Women Voters*, 743 P.2d 833 (Alaska 1987), *Hickel v. Southeast Conference*, 846 P.2d 38 (Alaska 1992), *Griswold v. City of Homer*, 55 P.3d 64 (Alaska 2002), and 1995 Op. (Inf.) Atty Gen. Alas. 317, file no. 663-95-0524 (August 21, 1995).

Senator Linda Menard

February 10, 2010

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Bill section 26. In AS 46.14.500(c), changes a parenthetical reference to the Clean Air Act to make the form similar to that used for other United States Code citations cited in the Alaska Statutes.

Bill section 27. Moves the phrase "the facility may" in AS 47.30.695 from the introductory text into the text of paragraph (1). This is necessary because the phrase "the facility may" cannot be applied to paragraph (2), since paragraphs (1) and (2) are disjunctive ("or" is the conjunction), and (2) has a different verb phrase ("the treating physician may").

Bill section 28. Instructs the revisor to conform references to the Open Meetings Act to reflect the short title codified in sec. 25 of the bill.

Bill section 29. Makes the effective date for sec. 21 of the Act conditional; this section should only take effect if the sections referred to are actually repealed.

Bill section 30. Provides an effective date for sec. 21, if sec. 21 takes effect under sec. 29.

Bill section 31. Provides an effective date for the remaining sections of the bill.

KLK:plm
10-065.plm

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 265
 () Publish Date: _____

Identifier (file name): SB265-LAW-CIV-02-12-10
 Title An Act making corrective amendments to the Alaska Statutes
as recommended by the revisor of statutes
 Sponsor Rules by request of Legislative Council
 Requester State Affairs
 Dept. Affected: Law
 RDU Civil
 Component Legislation/Regulations
 Component Number 2209

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
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	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 Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

SB 265 is the 2010 revisor of statute's bill. It makes important technical improvements to Alaska statutes. It has no fiscal impact on the Department of Law.

Prepared by: Eileen Donahue, Division Operations Manager
 Division Administrative Services
 Approved by: Daniel S. Sullivan, Attorney General
Department of Law

Phone 465-5427
 Date/Time 2/12/10 1:30 PM
 Date 2/12/2010

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

SEAN PARNELL, GOVERNOR

LEGISLATION & REGULATIONS SECTION
P.O. BOX 110300
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FAX: (907) 465-2520

January 11, 2010

Kathryn L. Kurtz
Assistant Revisor
Legislative Affairs Agency
Division of Legal and Research Services
Terry Miller Bldg, Room 329
Juneau, Alaska

Re: 2010 Revisor's Bill (December 22, 2009 draft (26-LS1220\A))

Thank you for the opportunity to review the December 22, 2009 draft (26-LS1220\A) of the 2010 revisor's bill.

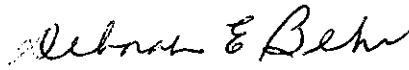
We had previously discussed the litigation concerning sec. 6 of this draft, which concerns "confidential records relating to university land and interest in land." Because of the litigation, we would recommend deleting sec. 6.

Otherwise the draft bill looks great and makes important technical improvements to the law. Thanks for your effort.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By:



Deborah E. Behr
Chief Assistant Attorney General

DEB:pav

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

SEAN PARNELL, GOVERNOR

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January 25, 2010

Kathryn L. Kurtz
Assistant Revisor
Legislative Affairs Agency
Division of Legal and Research Services
Terry Miller Bldg, Room 329
Juneau, Alaska 99801

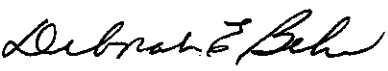
Re: Additional Sections of Draft 2010 Revisor's Bill (January 18, 2010 draft
(26-LS1220\E))

Thank you for the opportunity to review the January 18, 2010 draft (26-LS1220\E) of additional sections to the draft 2010 revisor's bill.

The additional sections to the draft bill look great and make important technical improvements to the law. Thanks for your effort.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: 
Deborah E. Behr
Chief Assistant Attorney General

DEB:tjd

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 2/8/10

FURTHER: Judiciary

Date of 5-Day Notice: _____
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 2/16/10

State Affairs Committee considered SENATE BILL NO. 265

SB 265 2010 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."

and recommends:

- be replaced with SCS or CS _____ (_____)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<hr/>	
HOUSE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____


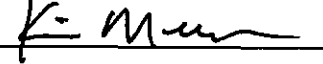
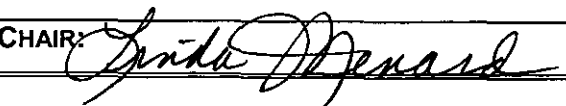
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Law	02/12/10			X	

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME:	DO PASS	DO NOT PASS	NO REC	AMEND
	French			✓	
	Meyer	X			
CHAIR: 	MENARD	X			