

**ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672**

**8186 HOUSE STATE AFFAIRS**

25

# The Model Act

A state insurance regulator compares the company's total adjusted capital against the risk-based capital requirement to determine if regulatory action is called for. That question is answered by the Risk-Based Capital for Insurers Model Act. The formula provides a mechanism for the calculation of an insurance company's Authorized Control Level Risk-Based Capital and its total adjusted capital. The model law sets the points at which a commissioner is authorized and expected to take regulatory action.

The first level is known as the Company Action Level RBC, which is set at twice the Authorized Control Level RBC. The second level is the Regulatory Action Level RBC, at 1.5 times the Authorized Control Level RBC. The third is the Authorized Control Level RBC, and the fourth is the Mandatory Control Level RBC, set at 70 percent of the Authorized Control Level RBC. (See table)

Risk-Based Capital Levels	
Name of RBC Level	Percentage of Authorized Control Level RBC
Company Action Level RBC	200 Percent
Regulatory Action Level RBC	150 Percent
Authorized Control Level RBC	100 Percent
Mandatory Control Level RBC	70 Percent

If a company files a risk-based capital report (RBC report) indicating that, while the total adjusted capital is higher than the Regulatory Action Level RBC, it is lower than the Company Action Level RBC, the insurer must submit to the insurance commissioner a comprehensive financial plan. That plan must identify the conditions in the insurer that contribute to the company's financial condition, contain proposals to correct the company's financial problems, and provide projections of the company's financial condition, both with and without the proposed corrections. The plan also must list the key assumptions underlying the projections and identify the quality of, and problems associated with, the insurer's business.

If the company's total adjusted capital falls between the Regulatory Action Level RBC and the Authorized Control Level RBC, or if the company fails to file an RBC plan when required, the commissioner will perform such examination or analysis as he or she deems necessary of the insurer's business and operations and issue any appropriate corrective orders to address the company's financial problems.

If the company's total adjusted capital falls below the Authorized Control Level RBC, in addition to those actions available to the commissioner for less serious financial problems, the commissioner may place the insurer under regulatory control. Finally, if the company's total adjusted capital falls below the Mandatory Control Level RBC, the commissioner will be required to place the insurer under regulatory control.

As of February 1994, five states (California, Illinois, Missouri, Nebraska and New York) have adopted the NAIC RBC model act as it applies to life/health insurers.

# Conclusion

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In January 1994, the NAIC established a standing task force, the Risk-Based Capital (EX4) Task Force, to evaluate and recommend appropriate refinements to capital requirements for all types of insurers. That task force will continue to research and refine the life/health and property/casualty risk-based capital systems. In addition, the task force will oversee the NAIC's next step in protecting consumers through risk-based capital standards, the development of an RBC for health organizations.

In 1993, the NAIC created the Health Organizations Risk-Based Capital Working Group. That working group is developing a separate risk-based capital formula for health insurance including traditional health insurers, health maintenance organizations (HMOs), Blue Cross/Blue Shield (BCBS) plans, and health service plans. The working group will expand the provisions in the current life/health formula to better measure risk in various health organizations.

For example, insurance companies invest extensively in marketable securities, and the risk-based capital factors are set accordingly. However, some health organizations have substantial assets in ventures—such as hospitals—that are used directly in providing services and, therefore, contribute directly to the health organization's ability to control quantity and cost of services. Also, some have suggested that health organizations transfer risk differently than do health insurers, with the former using such devices as negotiated fee schedules, budgets, and capitation rate agreements, and the latter focusing on reinsurance and stop-loss coverage.

The working group is addressing all these issues, along with many others. The NAIC's goal is to develop a seamless system of risk-based capital requirements that will be appropriate for the existing environment and accommodate future evolution as well. This should facilitate an even playing field for health insurers.

BCBS plans, HMOs, and others, while not stifling the development of innovations.

# Other Related NAIC Publications

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The following NAIC publications deal with issues related to solvency regulation:

*Insurers' Distribution of Assets*

*Insurers' Long-Term Mortgage Loans and Real Estate Investments*

*Insurers' Medium- and Lower-Quality Bond Holdings*

*Issues Concerning Insurance Guaranty Funds*

*Profitability by Line by State*

*The Financial Regulation Standards and Accreditation Program of the NAIC*

*The Valuation of Insurer Assets and the NAIC Securities Valuation Office*

Persons interested in obtaining any of these publications or a catalog of all the NAIC's publications may do so by calling the NAIC Publications Department at (816) 374-7259.

## II. Insolvency Risk and Risk-Based Capital

### A. Property/Casualty Insurer Insolvency Risk

From an economic perspective, an insurer is insolvent if the economic (market) value of its assets is less than the economic (discounted) value of its liabilities, i.e., if the economic value of its net worth is negative. Because shareholders have limited liability, the shortfall will result in some combination of losses to policyholders and guaranty fund assessments on other insurers.

The immediate cause of insolvency can be reductions in asset values, (for example, defaults on bond investments or reductions in the market value of investments), or increases in liabilities for claims, (for example, large natural catastrophes, such as hurricanes and earthquakes or from unexpected increases in the frequency and severity of tort claims). Economic net worth may also become negative as a result of changes in interest rates, if increases in interest rates cause the market value of assets to fall much more than the discounted value of liabilities. However, property/casualty insurers are not subject to product disintermediation as are commercial banks and some life insurance products.

The underlying causes of insurer failures include bad luck and insufficient incentives for safety. While some insolvencies will occur even with substantial incentives for safety, inadequate or misguided incentives can result in excessive risk, including deliberate underpricing of policies to generate cash prior to insolvency. The point at which "economic" insolvency occurs cannot always be determined with precision. "Accounting" net worth may differ substantially from economic net worth, due to differences that arise from conventional accounting practices or managerial efforts to manipulate reported net worth by overstating asset values and understating liabilities. A major problem in valuing property/casualty insurer net worth is that the liability for claims is not known with certainty for some lines of insurance until long after policies are sold. Regulators that believe an insurer is near insolvency may sometimes find it difficult to meet required standards of legal proof to remove the insurer from the market.

Although studies of insurer insolvencies during the late 1960's and early 1970's identified fraud and mismanagement as the primary causes of insurer insolvencies, the situation has changed since these studies were conducted. A recent study of property/casualty insurer insolvencies over the period 1969-1990

by the A.M. Best Company (1991) identified deficient loss reserves and/or inadequate prices as the most common "cause" of insolvency (results of the report are illustrated in Table 1). The table shows that rapid growth, which can sometimes indicate inadequate prices, also has been frequently associated with failure. Less common "causes" of failures include overstated assets, fraud, failure of reinsurance, and catastrophes.<sup>1</sup> Although the study found that the most important problem is inadequate prices, it is not clear whether prices were inadequate at the time business was sold, as opposed to being inadequate after the fact (i.e., after unexpectedly high claims have occurred).<sup>2</sup> The evidence of rapid growth suggests that underpricing up front has been important in some insolvencies, as one way insurers can grow rapidly is by cutting prices.

**Table 1**  
**PRIMARY CAUSES OF PROPERTY/LIABILITY**  
**INSURER INSOLVENCIES, 1969-1990**

PRIMARY CAUSES	NUMBER OF COMPANIES	PERCENT OF TOTAL
Deficient loss reserves (inadequate pricing)	86	28%
Rapid growth	64	21
Alleged fraud	30	10
Overstated assets	30	10
Significant change in business	26	9
Reinsurance failure	21	7
Catastrophe losses	17	6
Miscellaneous	28	9
Total	302	100

Source: A.M. Best Company (1991).

The A.M. Best study found that 63 percent of property/casualty insolvencies during the period 1969-1990 occurred among small insurers, 34 percent among medium insurers, and only 3 percent among larger insurers. Insolvency rates (number of failures divided by number of companies) were much higher for small and medium size insurers than for large insurers and largest among medium sized insurers. However, it would clearly be a mistake to conclude from these statistics that the solvency regulation system should focus primarily on small and medium size companies. The potential for significant insolvency costs is much higher among larger companies even though the failure frequency for this group is lower. For example, 40 percent of property/casualty guaranty fund assessments since 1969 have been generated by five failures and 80 percent by only 25 failures.

More fundamentally, insolvency risk depends on potential volatility in asset returns and claim costs and on the incentives of insurers to reduce insolvency risk by holding more capital, investing in safer assets, reducing interest rate risk, purchasing high quality reinsurance, and diversifying across lines of insurance. Because these risk management methods are costly, safer insurance generally will be more expensive than risky insurance. Apart from any regulatory monitoring, incentives for safety in turn depend on several factors including the demand for safety by policyholders, the cost and ability of policyholders to identify and monitor safe insurers, and whether insurer insolvency will result in significant costs to insurer owners and/or managers.

Potential costs to insurance company owners from insolvency include the loss of future income arising from previous investments made by the insurer in building a reputation and a book of business. The possible loss of this "franchise value" will provide a significant incentive for many insurers to avoid insolvency.<sup>9</sup> This is true even if policyholders are unable to readily identify and monitor safe insurers -- or if policyholders are less concerned with safety because of guaranty fund protection. However, large reductions in net worth due to factors such as large, unexpected increases in claim costs can substantially increase the risk of insolvency and alter insurer incentives. Beyond some point, reductions in net worth may lead an insurer to "go for broke," i.e., to pursue very high risk strategies with the hope of delaying or preventing insolvency.

Costly monitoring of insolvency risk by policyholders, reduced incentives for policyholder monitoring because of guaranty funds, and the possibility of "go for broke" behavior provide the major rationales for regulatory monitoring of

solvency risk and other forms of solvency regulation. Regulation can reduce the cost of insolvency by monitoring insurers, by constraining excessively risky behavior, and by closing down as promptly as possible companies that have become insolvent.

The objective of solvency regulation should be to duplicate as closely as possible the outcome of a competitive market in which all parties have efficient access to all of the information needed for rational decisions. This means that solvency regulation should not attempt to prevent all insurer failures. Market exit through failure and voluntary withdrawal is a normal outcome in a competitive market. However, failed firms should not be permitted to place a significant burden on healthy firms and policyholders through guaranty fund assessments and delayed or incomplete payment of claims. Thus, the objective should be to facilitate where possible the rehabilitation of weak insurers and to bring about the orderly exit of unsuccessful companies as closely as possible to the point where the economic value of assets falls below the economic value of liabilities.

## B. Theoretical Basis for Risk-Based Capital Requirements

In theory, risk-based capital refers to a system in which insurers would be required to meet or exceed a minimum capital requirement tied to specific characteristics of the company that are presumably related to the risk of insolvency. Under a risk-based capital system, if an insurer's reported capital (surplus) failed to exceed its required risk-based capital (or some percentage of risk-based capital), it would be subject to regulatory action. Possible regulatory responses that could be specified in a risk-based capital system might include increased monitoring, restrictions on growth, requiring the insurer to add more capital to avoid being placed in receivership, and/or placing the insurer in receivership or conservatorship. A well-designed risk-based capital system should help regulators identify financially weak companies while there is still time for rehabilitation and remove unsalvageable companies from the market before they incur significant deficits that would place a burden on healthy insurers. Such a system should also motivate insurers which otherwise would have inadequate incentives for safety to hold more capital and otherwise manage their operations to reduce their risk of insolvency in order to avoid increased attention or intervention from regulators.

Risk-based capital would differ fundamentally from the current system of minimum dollar capital (and surplus) requirements, which are identical for all insurers (or broad classes of insurers, such as stocks or mutuals). Existing minimum

capital requirements typically are less than or equal to \$2 million. These requirements probably deter entry by some insurers that would otherwise be inadequately capitalized and likely to fail and facilitate regulatory action against small insurers that are experiencing financial difficulty. Existing minimum capital requirements, however, have little or no impact on insurers beyond some very small size. An advantage of this feature is that they do not constrain behavior and increase costs (and thus prices) for financially sound insurers. A disadvantage is that little or no guidance is provided to regulators about the adequacy of capital for all but the smallest insurers. Existing requirements also are of little value to regulators in providing a legal basis for intervening in the operations of all but the smallest insurers. In addition, a weak insurer's reported (statutory) capital may not fall below the legal minimum until the market value of its assets fall far below its true liabilities. Of course, regulators have already developed a variety of tools to monitor insurer capital relative to risk, including the Insurance Regulatory Information System (IRIS), less formal analyses of insurer premiums and liabilities relative to capital, and the assessments developed by private rating agencies.

A formal risk-based capital system offers several possible advantages compared to the existing systems of minimum capital requirements and regulatory monitoring of capital relative to risk. These advantages have the potential to achieve an efficient reduction in the expected cost of insolvencies. As noted, a well-designed risk-based capital system should encourage greater safety for insurers for which market incentives for safety are inadequate. A genuinely well-designed risk-based capital system will also provide guidance and assistance to regulators. It will provide information to help identify weak companies and to facilitate regulatory intervention either before an insurer becomes insolvent or at a minimal level of deficit.

A risk-based capital system will give regulators legal authority to intervene if reported capital falls below risk-based capital requirements (or some percentage of risk-based capital). This authority will be valuable in cases where it might otherwise have been difficult for intervention to be upheld by the court system. In some instances, a risk-based capital system may force regulators to take some action rather than delay intervention due to pressure from the troubled company or the hope that things will get better without having to declare an insurer insolvent or to significantly restrict its activities.

At the same time, there are possible systems besides risk-based capital that could encourage insurer safety and facilitate regulatory monitoring and prompt regulatory attention to weak

insurers. For example, a system of financial ratio analysis in which regulatory action would be required under specified circumstances in principle could help achieve these goals.<sup>4</sup> This type of system could in effect create implicit capital requirements for insurers in order to avoid increased regulatory attention. The theoretical advantages of risk-based capital over a ratio based system include greater ability to reflect and aggregate the major aspects of insurer risk and the creation of an explicit linkage between insurer risk and required capital.<sup>5</sup>

On the other hand, risk-based capital requirements have a number of serious potential limitations. It is infeasible for a risk-based capital system to duplicate precisely the capital levels and incentives for safety that would exist in a dynamic, competitive environment in which both consumers and insurers have adequate incentives for safety. Insolvency risk depends on numerous factors that are difficult to quantify, and the insurance market is characterized by substantial diversity across insurers in types of business written, characteristics of customers, and methods of operation. It is impossible to specify the "right" amount of capital for most insurers through a formula. Unavoidable imperfections in any meaningful risk-based capital system will likely distort some insurer decisions in undesirable and unintended ways. As we discuss further below, overly stringent risk-based capital requirements would produce significant market dislocations to the detriment of many insurers and consumers. Thus, the desire to achieve the objectives of a risk based capital system must be tempered by the reality that any such system will be imperfect and that the inevitable imperfections have the potential to impose significant costs on healthy insurers.

In addition, risk-based capital requirements by themselves will do little or nothing to help regulators determine whether an insurer's reported net worth is overstated. The great difficulty in determining whether an insurer's reported losses and loss reserves are significantly understated, especially for long-tailed lines of business subject to large volatility in costs, limits the ability of risk-based capital to encourage weak insurers to hold more capital and to assist regulators. In fact, poorly designed risk-based capital requirements could increase incentives for some insurers to under-report loss reserves in order to show lower required risk-based capital, higher capital relative to required risk-based capital, or both. In general, some insurers will try to manage their required level of risk-based capital through means that do not reduce risk or increase economic net worth. Thus, risk-based capital is not a substitute for regulatory monitoring of prices, reserves, and other financial variables.

### C. Goals and Objectives of Risk-Based Capital

The overall goal of risk-based capital should be to minimize the expected cost of insolvency, including both direct and indirect costs. The direct costs of insolvency include the regulatory monitoring and prevention which are ultimately borne by insurance buyers. The most important indirect costs are market dislocations and distortions caused by the inevitable inaccuracies that will be imbedded in any practical risk-based capital system. These costs encompass unintended adverse effects on insurance pricing and availability as well as penalties to owners of sound insurance companies resulting from inaccurate signals from the risk-based capital system. In other words, the potential benefits of risk-based capital must be balanced against the costs that arise because of the infeasibility of duplicating the outcome of an efficient competitive market. A well-designed risk-based capital system must achieve an appropriate balance among a number of specific objectives related to risk measurement and market responses to risk-based capital requirements:<sup>6</sup>

1. The risk-based capital formula should provide incentives for weak companies to hold more capital and/or reduce their exposure to risk without significantly distorting the decisions of financially sound insurers.

A major goal of a risk-based capital system should be to improve the incentives of insurers to reduce the expected cost of insolvency in efficient ways. Because market incentives for safety are inadequate in some cases, some insurers may pose too great a threat of insolvency. Risk-based capital should encourage insurers for which market incentives for safety are inadequate to hold more capital and/or take other actions to reduce risk. It should be emphasized that these actions generally will lead to higher premium rates for these insurers.

When attempting to affect the behavior of weak insurers, risk-based capital requirements must confront a basic tradeoff: increases in the amount of required risk-based capital may likely reduce the frequency and severity of insolvencies, but they will also lead to more and greater distortions in the decisions of financially sound companies. If risk-based capital requirements are set too low, they will have little effect on insolvencies. However, if they are set too high, they will create costs that exceed the benefits of lower insolvency costs. As we discuss further below, adverse consequences include that the price of coverage would become higher than necessary.

2. The risk-based capital formula should reflect the major types of risk that affect insurers and how these risks differ across insurers.

It is important that all major types of risk be reflected in the formula. To the extent possible, the types of risk incorporated in the formula should be related to the underlying theory of insurer insolvency risk and the empirical evidence on the causes of insolvencies. Subject to practical considerations, the major types of risks should be measured as accurately as possible. This will reduce the extent of undesirable distortions on decisions and make it more difficult for insurers to increase risk in ways that are not constrained by the system. It also will make it less likely that certain segments of the industry will be unfairly and inefficiently disadvantaged by application of the formula. For example, the formula should not have differential effects on stocks vs. mutuals, agency companies vs. direct writers, or small vs. large companies unless there is clear evidence of significant differences in risk between the groups that can be measured with reasonable precision.<sup>7</sup>

3. The risk-based capital charges (or weights) for each major type of risk should be proportional to their impact on overall risk of insolvency.

Differences in risk-based capital charges for the major types of risk should be consistent with their importance in explaining prior insolvencies based on both theoretical and empirical analysis. For example, since both theory and evidence suggest that a large proportion of property/casualty insurer insolvencies were associated with inadequate prices and loss reserves rather than reductions in asset values, the formula should produce results that are broadly consistent with these findings.

4. The risk-based capital system should focus on identifying insurers that are likely to impose the highest costs of insolvency.

Although most insurers that fail are small and insolvency frequency rates are higher among small insurers than for larger insurers, a relatively small number of insurance failures have also imposed substantial insolvency costs on the guaranty fund system. Although about 200 insurer insolvencies have resulted in guaranty fund assessments since 1969, five failures account for 40 percent of the assessments and twenty-five account for 80 percent (A.M. Best Company, 1991). Clearly, the objective of reducing total insolvency costs can best be achieved by focusing resources on the identification of those companies that

have the greatest risk of imposing high costs in the event of financial distress.

5. The formula and/or the measurement of actual capital should reflect economic values of assets and liabilities whenever practicable.

Net worth calculated according to either statutory or generally accepted accounting principles can differ significantly from the economic value of net worth. For example, loss reserves generally are not discounted and bonds are carried at amortized value rather than market value (or estimated market value). Ignoring potentially large differences between accounting and economic values would reduce the ability of a risk-based capital system to assist regulators and encourage greater safety for weak companies.

6. To the extent that is possible, the risk-based capital system should discourage under-reporting of loss reserves and other forms of manipulation by insurers.

As noted, poorly-designed risk-based capital requirements might increase incentives for insurers to under-report loss reserves. They also might be subject to other forms of manipulation by insurers through the presentation of their financial results. The formula should be designed to reflect and control these possibilities to the extent that is practically feasible.

7. The formula should avoid complexity that is of questionable value in increasing accuracy of risk-measurement.

Increased complexity will likely be subject to diminishing returns in increasing accuracy. Giving up potentially minor (or questionable) increases in accuracy to reduce complexity will make the system easier to explain, understand, and use. Increases in complexity will make it more difficult for insurers to discern the implications of their decisions on required risk-based capital, and it may lead some users to mistakenly believe that the system is more precise than actually is the case. Additional complexity could increase the likelihood of significant unintended consequences, because of the additional difficulty in considering all of the possible effects of risk-based capital on the market. As a practical matter the benefits and costs of any additional data reporting under a system of risk-based capital also will need to be considered carefully.

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Date Referred: April 15, 1994

HOUSE COMMITTEE REPORT  
FURTHER REFERRALS:

Judiciary  
waived  
4/22/94

Date of Committee Action: 4-28-94

The STATE AFFAIRS Committee considered:

CSSB 349(JUD)

CS FOR SENATE BILL NO. 349(JUD)

GRAND JURY EVIDENCE BY POLICE OFFICERS

"An Act amending Alaska Rule of Criminal Procedure 6(r) relating to admiscibility of hearsay evidence by peace officers before the grand jury."

RECOMMENDATIONS:

be replaced with \_\_\_\_\_ [ ] the same title

[ ] have attached amendments(s)

[] do pass

[ ] do not pass

[ ] no recommendations

[ ] individual recommendations

[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact \_\_\_\_\_

[ ] fiscal note(s) \_\_\_\_\_

[ ] zero fiscal note \_\_\_\_\_

[] zero fiscal note(s) Adm (2) LAW

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Al Vezar</i>	X	<i>Harley Olberg</i>		✓	
<i>Pete Holt</i>	X	<i>Betty D. Davis</i>		X	
<i>Jeff Sanders</i>	✓	<i>John Adams</i>		X	
<i>Larry L. Davis</i>	✓				

*Al Vezar*  
CHAIRMAN'S SIGNATURE

# FISCAL NOT

No. 4

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Bill Version: SB 349

(S) Publish Date: 3-9-94

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
Title: "An Act relating to admissibility of hearsay..." BRU: Office of Public Advocacy  
Component: Office of Public Advocacy

Sponsor: \_\_\_\_\_  
Requestor: Governor COMPONENT SERIAL NO. 43

Expenditures/Revenues		(Thousands of Dollars)				
OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

FUND SOURCE		(Thousands of Dollars)				
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of current year (FY94) cost: none

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

date \_\_\_\_\_ Comte Aide (initial) \_\_\_\_\_

Changes in CS SB 349 (Jud) have no fiscal impact. This fiscal note is appropriate.  
4/12/94 LB

Prepared by: Brant McGee, Public Advocate Phone: 274-1684  
Division: Office of Public Advocacy Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usera Date: 2/17/94  
Agency: Administration

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# FISCAL NOT No. 3

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Rit, Version: SB 349  
(S) Publish Date: 3-9-94

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
Title: "An Act relating to admissibility of hearsav..." BRU: Public Defender Agency  
Component: Public Defender Agency

Sponsor: \_\_\_\_\_  
Requestor: Governor COMPONENT SERIAL NO. 1631

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: none

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

date \_\_\_\_\_ Comte Aide (initial) \_\_\_\_\_  
Changes in CS SB 349 (JUB)  
have no fiscal impact. This  
fiscal note is appropriate.  
4/12/94 \_\_\_\_\_

Prepared by: John Salemi, Public Defender Phone: 264-4400  
Division: Public Defender Agency Date: \_\_\_\_\_  
Approved by Commissioner: Nancy Bear Usera Date: 2/18/94  
Agency: Administration

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# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

No. 2  
 BILL Version: SB 349  
 (S) Publish Date: 3-9-94

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: Hearsay Evidence BRU: AST  
 Component: Detachments  
 Sponsor: Rules by Request  
 Requestor: Governor COMPONENT SERIAL NO. 799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ( )	-0-	-0-	-0-	-0-	-0-	-0-
<small>Revenue Code</small>						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 94) impact: \$ \_\_\_\_\_

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

date \_\_\_\_\_ Comte Aide (initial) \_\_\_\_\_  
 Changes in CS SB 349 (JUD)  
 have no fiscal impact. This  
 fiscal note is appropriate.

Prepared By: Lee Ann Lucas Phone: 465-4377  
 Division: Commissioner's Office Date: 2/22/94  
 Approved by Commissioner: [Signature] Date: 2/22/94  
 Agency: Richard L. Burton, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Bill Version: SB 349  
(S) Publish Date: 3-9-94

Revision Date: February 16, 1994  
Title: "...relating to admissibility of hearsay evidence  
by peace officers before a grand jury."  
Sponsor: Rules/Request of Governor  
Requestor: Governor's Office

Department Affected: Department of Law  
BRU: Prosecution  
Component: All  
COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

date 4/12/94 Comte Aide (initial) RP

ANALYSIS: (Attach a separate page if necessary.)  
Please see the attached analysis.

Changes in CS SB349 (JUD)  
have no fiscal impact. This  
fiscal note is appropriate.

Prepared by: Richard I. Pegues, Director  
Division: Administrative Services Division

Phone: 465-3672  
Date: February 16, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General  
Agency: Department of Law

Date: February 16, 1994

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FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. \_\_\_\_\_

ANALYSIS CONTINUATION:

This bill amends Alaska Rule of Criminal Procedure 6(r) to permit peace officers to testify before a grand jury as to what their fellow officers saw or heard - for example, as to the contents of their fellow officers' official police reports.

The language in Rule 6(r) presently prohibits virtually all hearsay testimony before the grand jury. Consequently, if several officers were involved in an investigation, all must testify before the grand jury even if the involvement of some was minor or insignificant. The change proposed in the bill is similar to testimony already permitted by the federal courts in Alaska. For instance, the lead case agent on a particular investigation testifies before the federal grand jury about the entire scope of what was learned during the investigation. If 12 law enforcement agents were involved, the federal court rules do not require all 12 agents to personally appear and testify before the grand jury. The federal rules allow for just one case agent to appear and testify before the grand jury leaving the other 11 agents available on the street to fight crime. The bill seeks the same result for Alaska's peace officers, and that is to return them to the street to fight crime. The bill will not have a fiscal impact for the Department of Law. It will make far more efficient use of law enforcement officers' time.

**GOVERNOR HICKEL'S  
BILL TO PUT POLICE BACK ON THE STREET  
(SB 349 & HB 523)**

This bill will put Alaska's police back on the street by amending Criminal Rule 6(r) to allow one police officer to testify at grand jury as to what their fellow officers heard, said, or did in the course of a criminal investigation. This will reduce the number of officers that are routinely tied up in court when a case is presented to a grand jury.

In Alaska's federal courts, the lead agent on a particular case simply comes before the grand jury, and testifies about the full scope of what was learned during the course of an investigation. If twelve FBI agents were involved, they don't call all twelve agents in before the grand jury. They just call in the lead agent--and leave the other eleven free to be out on the street fighting crime.

Not so in Alaska's state courts. Because hearsay is generally not allowed in the grand jury, the lead police or trooper investigator cannot simply testify about what he or she learned from fellow cops. They can't even tell the grand jury about what they heard over the radio--all of their fellow cops have to be called off the job and into court to testify about it in person.

As the federal courts in Alaska routinely prove, this expensive and unnecessary rule does absolutely nothing to protect the constitutional rights of Alaska's citizens. All it does is pull dozens of cops and troopers off patrol week in and week out. They cool their heels in the D.A.'s office or the courthouse, invariably spending many wasted hours simply waiting around to testify.

The language in Criminal Rule 6(r)(1), which presently prohibits virtually all hearsay testimony in the grand jury, should be amended to permit peace officers to testify as to what their fellow officers saw or heard. This simple, constitutional rule change can reduce grand jury costs to the State--and at the same time free up more police. Let's save money and put Alaska's police and troopers back out on the street where they belong--fighting crime.

to file  
WALTER J. HICKEL  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

Law 0033  
P. O. Box 110001  
Juneau, Alaska 99811-0001  
(907) 465-3500

SB 349

March 9, 1994

The Honorable Rick Halford  
President of the Senate  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that amends Alaska Rule of Criminal Procedure 6(r) to allow one peace officer, such as an Alaska state trooper or police officer, to testify at grand jury as to what another peace officer heard, said, or did in the course of a criminal investigation. This will reduce the number of peace officers that must be involved and required to testify when a case is presented to a grand jury, especially when the peace officers may have only played a minor role in the investigation.

In federal courts in Alaska, the lead case agent on a particular investigation simply comes before the federal grand jury and testifies about the entire scope of what was learned during the course of an investigation. If 12 law enforcement agents were involved, the federal court rules do not require all 12 agents to personally appear and testify before the grand jury. The federal rules allow for just one case agent to appear and testify before the grand jury -- leaving the other 11 agents available on the street to fight crime.

This is not the situation in Alaska's state courts. Because hearsay evidence is generally not allowed to be presented before the grand jury in criminal cases, the lead peace officer investigating the case cannot simply testify about what that officer learned from fellow officers conducting the investigation. The lead officer cannot even testify before the grand jury about what that officer heard over police radio -- the police dispatcher who made the particular radio transmission must be called into court to testify about the statement in person. It frequently takes many work hours to prepare, and to be present, to testify.

The Honorable Rick Halford

March 9, 1994

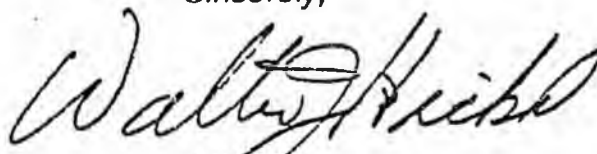
Page 2

As the federal courts in Alaska routinely prove, Alaska's hearsay rule does not provide any greater protection of the constitutional rights of Alaskans than does the federal practice. The present state court rule unnecessarily pulls dozens of peace officers off patrol every month simply to wait around to testify.

The language in Alaska Rule of Criminal Procedure 6(r), which presently prohibits virtually all hearsay testimony in the grand jury, should be amended to permit peace officers to testify as to what their fellow officers saw or heard -- for example, as to the contents of their fellow officers' official police reports. The state is presently facing a projected decline in revenue. This simple, constitutional, rule change can reduce grand jury costs to the state by allowing one officer, rather than many, to present the relevant evidence, at the same time freeing up nontestifying officers to do essential public protection duties. If this bill is enacted, we could save money and keep Alaska's police and troopers out on the street fighting crime, without affecting the quality of evidence presented to the grand jury.

I urge your favorable action on this bill.

Sincerely,



Walter J. Hickel  
Governor

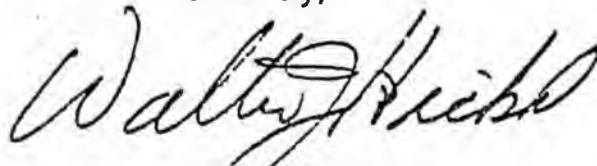
The Honorable Rick Halford  
March 9, 1994  
Page 2

As the federal courts in Alaska routinely prove. Alaska's hearsay rule does not provide any greater protection of the constitutional rights of Alaskans than does the federal practice. The present state court rule unnecessarily pulls dozens of peace officers off patrol every month simply to wait around to testify.

The language in Alaska Rule of Criminal Procedure 6(r), which presently prohibits virtually all hearsay testimony in the grand jury, should be amended to permit peace officers to testify as to what their fellow officers saw or heard -- for example, as to the contents of their fellow officers' official police reports. The state is presently facing a projected decline in revenue. This simple, constitutional, rule change can reduce grand jury costs to the state by allowing one officer, rather than many, to present the relevant evidence, at the same time freeing up nontestifying officers to do essential public protection duties. If this bill is enacted, we could save money and keep Alaska's police and troopers out on the street fighting crime, without affecting the quality of evidence presented to the grand jury.

I urge your favorable action on this bill.

Sincerely,



Walter J. Hickel  
Governor

File 58-349

TO: REP. AL VEZEY  
CHAIRMAN, HOUSE STATE AFFAIRS COMMITTEE

FROM: ED McNALLY, DEPUTY ATTORNEY GENERAL (tel.: 269-6333)

DATE: WEDNESDAY, APRIL 20th, 1994

RE: WAIVING SB 349 & SB 353 THROUGH STATE AFFAIRS

Thank you for your leadership in working to enact tough, common sense, anti-crime legislation this Session, and for shepherding HB 523 (permitting police hearsay in the Grand Jury) through State Affairs in March.

Here's what's up: Today both HB 523 (police hearsay) and HB 528 (balancing jury selection) have cleared all House Committees and are awaiting a vote on the floor of the House, where Rep. Brian Porter is serving as floor manager.

But in the meantime, the identical Senate versions of these two bills have been passed out by the full Senate, and are now awaiting action before House State Affairs. The bills are:

SB 349	(police hearsay)	Identical to your HB 523
SB 353	(jury selection)	Identical to your HB 528

Both of these two bills, in their "HB" form, are currently awaiting a full up-or-down vote in the House. Even the minority supports them (the bills were endorsed by the police and by the Anchorage Daily News) and everyone says both bills will pass. But a full vote on the "HB" versions will merely send the two bills back over to the Senate -- where they've already passed.

**HERE'S OUR REQUEST:** A better result would be for you (supported by Rep. Porter and Rep. Barnes) to move instead for the full House to vote to waive SB 349 (HB 523) and SB 353 (HB 528) through State Affairs. Followed by a vote to also waive them through Judiciary (where the identical HB versions have already been considered and passed out), they could then be enacted by the House and -- bingo -- we have two smart new laws on the books that will fight crime, save money and put more police on the streets in Fairbanks and elsewhere -- two new laws for which you should and will receive credit.

*Rep. Vezev - This is a follow-up on Harry Davis' call earlier today. We'd like to walk with you and support you in any way we can.  
Many thanks - Ed McNally*

**S B**

**3 5 3**

(7)

Date Referred: April 15, 1994

HOUSE COMMITTEE REP  
FURTHER REFERRALS:

Judiciary  
waived  
4/22/94

Date of Committee Action: 4-28-94

The STATE AFFAIRS Committee considered:

CSSB 353(JUD)

CS FOR SENATE BILL NO. 353(JUD)

PEREMPTORY CHALLENGE OF JURORS

"An Act amending Alaska Rule of Criminal Procedure 24(d) relating to peremptory challenges of jurors in felony criminal proceedings."

- RECOMMENDATIONS:  the same title  
 be replaced with \_\_\_\_\_  a new title
- have attached amendments(s)  
 do pass  
 do not pass  
 no recommendations  
 individual recommendations  
 additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

- ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)
- fiscal impact \_\_\_\_\_  fiscal note(s) \_\_\_\_\_
- zero fiscal note \_\_\_\_\_  zero fiscal note(s) ADMI(2) LAW - Pub Safety

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	X	<i>[Signature]</i>		✓	
<i>[Signature]</i>	X	<i>[Signature]</i>		X	
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				

*[Signature]*  
CHAIRMAN'S SIGNATURE

# FISCAL NOT

No. 4  
 Bill Version: SB 353  
 (S) Publish Date: 3-9-94

STATE OF ALASKA  
 1994 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
 Title: "An Act Relating to Peremptory Challenges  
of Jurors in Felony Criminal Cases." BRU: Office of Public Advocacy  
 Component: Office of Public Advocacy  
 Sponsor: \_\_\_\_\_  
 Requestor: Governor COMPONENT SERIAL NO. 43

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of current year (FY94) cost: none

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

date \_\_\_\_\_ Comte Aidé (initial)

Changes in CS SB 353 (JUP)  
 have no fiscal impact. This  
 fiscal note is appropriate.  
4/12/94 [Signature]

Prepared by: Brant McGee, Public Advocate Phone: 274-1684  
 Division: Office of Public Advocacy Date: \_\_\_\_\_  
 Approved by Commissioner: Nancy Bear Usery Date: 2/16/94  
 Agency: Administration

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(Rev. 10/93) nl 2/16/94

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. \_\_\_\_\_

ANALYSIS CONTINUATION:

This bill amends the Alaska Rule of Criminal Procedure 24(d) to provide that each side in a felony criminal proceeding is allowed six peremptory challenges. Rule 24(d) currently allows the defense ten peremptory challenges and allows the prosecution six peremptory challenges. This rule, which is intended to help level the playing field in criminal prosecutions when trying to select a fair jury to hear a criminal case, will not have a fiscal impact on the Department of Law. We also note that allowing both sides six peremptory challenges may reduce the cost of criminal trials by reducing the time needed for jury selection.

# FISCAL NOT

No. 3  
 Bill Version: SB 353  
 (S) Publish Date: 3-9-94

STATE OF ALASKA  
 1994 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
 Title: "An Act Relating to Peremptory Challenges  
of Jurors in Felony Criminal Cases." BRU: Public Defender Agency  
 Component: Public Defender Agency  
 Sponsor: \_\_\_\_\_  
 Requestor: Governor COMPONENT SERIAL NO. 1631

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of current year (FY94) cost: none

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

date \_\_\_\_\_ Comte Aide(initial) \_\_\_\_\_  
 Changes in CS SB 353 (JUD)  
 have no fiscal impact. This  
 fiscal note is appropriate.  
4/12/94

Prepared by: John Salemi, Public Defender  
 Division: Public Defender Agency

Phone: 264-4400  
 Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usura  
 Agency: Administration

Date: 2/17/94

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# FISCAL NOTE

No. 2

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL ( Bill Version: SB 353

(3) Public Law: 3-9-94

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety

Title: Relating to Peremptory Challenges of Jurors in BRU: Alaska State Troopers

felony Proceedings Component: Detachments

Sponsor: Rules by Request

Requestor: Governor COMPONENT SERIAL NO. 799

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL EXPENDITURES</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CHANGE IN REVENUES ( )</b>	-0-	-0-	-0-	-0-	-0-	-0-
<small>Revenue Code</small>						

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 94) impact: \$ \_\_\_\_\_

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

date \_\_\_\_\_ Comte Aide (initial) \_\_\_\_\_

Changes in CS SB 349(J4D) have no fiscal impact. This fiscal note is appropriate.

4/12/94 RP

Prepared By: Lee Ann Lucas Phone: 465-4322

Division: Office of the Commissioner Date: 2/16/94

Approved by Commissioner: *[Signature]* Date: \_\_\_\_\_

Agency: Richard L. Burton, Dept. of Public Safety

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FISCAL NOTE

No. 1

Bill Version: SB 353

(S) Publish Date: 3-9-94

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Revision Date: February 15, 1994  
Title: "...relating to peremptory challenges of jurors in felony criminal proceedings."  
Sponsor: Rules/Request of Governor  
Requestor: Governor's Office

Department Affected: Department of Law  
BRU: Prosecution  
Component: All  
COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

date \_\_\_\_\_ Comte Aide (initial) \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)  
Please see the attached analysis.

Changes in CS SB 353(540) have no fiscal impact. This fiscal note is appropriate. 1/12/94

Prepared by: Richard I. Pegues, Director  
Division: Administrative Services Division  
*Richard I. Pegues / FOR*

Phone: 465-3672  
Date: February 15, 1994

Approved by Commissioner: Bruce M. Borelho, Attorney General  
Agency: Department of Law

Date: February 15, 1994

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WALTER J. HICKEL  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

Jan 0038  
P. O. Box 110001  
Juneau, Alaska 99811-0001  
(907) 465-3500

SB 353

March 9, 1994

The Honorable Rick Halford  
President of the Senate  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to peremptory challenges of jurors in felony criminal proceedings. During jury selection for felony trials, such as for murder, sexual assault, domestic violence, or child abuse, peremptory challenges are used by both prosecutors and defense lawyers to remove potential jurors from the case in an effort to obtain a fair jury to hear the case. But current court rules allow criminal defendants to peremptorily challenge 10 jurors without stating a cause, while prosecutors are only permitted to challenge six on this basis. This difference in the court rules balances the scales unfairly, tilting jury selection in favor of criminal defendants.

This bill will amend Alaska Rule of Criminal Procedure 24(d) to give prosecutors and defendants the same number of peremptory challenges in jury trials in felony criminal cases. This bill will help level the playing field in criminal prosecutions when trying to pick a fair jury to hear a criminal case. Also, allowing both sides six peremptory challenges may reduce the cost of criminal trials by reducing the time needed for jury selection.

I urge your favorable action on this bill.

Sincerely,

A handwritten signature in cursive script that reads "Walter J. Hickel".

Walter J. Hickel  
Governor

**GOVERNOR HICKEL'S  
FAIR JURY SELECTION BILL  
(SB 353 & HB 528)**

The American Bar Association (ABA) Standard No. 15-2.6 provides that--in trials involving just one defendant (as is the case in the vast majority of Alaska trials)--the prosecution and the defense should have the same number of jury challenges.

This bill would bring Alaska into conformity with those national standards.

At present, during jury selection in all rape, domestic violence and other felony trials, criminal defense lawyers are permitted to preempt ten jurors they consider unfavorable to their case, while prosecutors only are permitted to challenge six. This balances the scales unfairly, tilting jury selection in favor of criminal defendants.

Governor Hickel's proposed legislation would amend Alaska Rule of Criminal Procedure 24(d) to equalize the number of peremptory challenges that prosecutors and defendants have in jury trials. This legislation can help level the playing field in criminal prosecutions, reduce the cost of criminal trials, and give the State a reasonable chance to do its job to protect the public.

Alaska's laws should be brought in keeping with national standards--and, at least initially, provide both sides with the same number of challenges. Acting to level the playing field in this way would not serve to deprive any defendant of the protections already afforded under Alaska law. Under the proposed Rule, Alaska's courts would continue to have the option of granting defendants additional challenges in cases where it is merited (such as trials involving multiple defendants).

**SB**

**355**

Revision Date: \_\_\_\_\_ Dept. Affected: Community & Regional Affairs  
 Title: "An Act relating to errors in surveys of land." BRU: \_\_\_\_\_  
 Sponsor: Senate Comm. and Regional Affairs Committee Component: \_\_\_\_\_  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current (FY94) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Remond Henderson *Remond Henderson* Director Phone: 465-4708  
 Division: Administrative Services Date: 3/14/94  
 Approved for the Commissioner by: Bruce Geraghty *BG* Deputy Commissioner Date: 3-14-94  
 Agency: Community & Regional Affairs

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

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STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

BEFORE THE BOARD OF ARCHITECTS, ENGINEERS, AND LAND SURVEYORS

In the Matter of: )  
 )  
 William E. Johnson, )  
 Respondent )  
 \_\_\_\_\_ )

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND PROPOSED DECISION

Case No. AE 89L-12

A hearing was held on December 6, 1988 in the Frontier Building, Suite 722, Anchorage, Alaska. In attendance was Assistant Attorney General, Lawrence Delay, Esq. representing the State of Alaska, along with Ray Spiess, Investigator. Mr. William E. Johnson, the Respondent, did not attend the hearing, nor did he respond in any way.

The hearing was conducted in the most part, by telephone. The first witness was an Alan Rathbun, who was and is the registrar for the Board of Professional Engineers and Land Surveyors for the State of Washington. Mr. Rathbun had served as the board's secretary, and also the supervisor of the staff of investigators. He was responsible for the record keeping for the Washington State Board. He was sworn and testified that William Johnson was charged in Washington with misconduct in June of 1984 by a Mr. Imakura. The State of Washington investigated the complaint and found that Johnson had committed a number of technical errors as a land surveyor, that Johnson performed work which was useless work, that the work performed by Johnson was to develop a plan of engineering needed to develop a mobile home project. Johnson, who was not a licensed engineer in the State of Washington, developed road plans and overall site plans for the project. The facts were that a substantial part of the site was undevelopable because of floodplain limitation. When Johnson found out about the floodplain problem, he did not tell the client, but continued to work as if the floodplain problem did not exist.

Two years later the mobile home project was changed to residential lots. The short plats development had a technical error in it caused by Johnson, and Johnson also ignored a water easement, which lost one lot to development. There were only four lots, and therefore, the loss of one was a substantial engineering fault. Johnson did the staking on the final project before the preliminary plat had been approved, and thus, a lot of changes had to be made after the preliminary plat was approved.

The Washington State Board had a hearing on October 26, 1985 and Johnson did not appear. The Board found that Johnson practiced engineering in four separate ways for which he was not licensed. Secondly, that he was guilty of misconduct or malpractice in at least five instances as a surveyor and revoked his license, put him on suspension of license for five years, and charged him a \$5,000 fine, and required him to pass the surveyor's license exam when and if he reapplied in Washington. Since then Johnson has not abided by any of the sanctions of the Washington State Board of Engineers and Surveyors.

The next witness was Ray Spiess, the investigator for the State of Alaska. Mr. Spiess started the investigation of Johnson in April 1987 in Alaska. Mr. Spiess filed for the record in this hearing a certified copy of the statement of charges in the State of Washington and a certified copy of the Board Finding of Fact and Conclusions of Law and the Board Order in the Washington case.

#### Findings of Fact

1. William E. Johnson is currently registered as a land surveyor in the State of Alaska, holding license # LS 1482. His license will expire, unless revoked, on December 31, 1989.
2. On November 15, 1985, the Washington State Board of Professional Engineers and Land Surveyors, after a hearing, ordered the revocation of Johnson's license to practice land surveying in the State of Washington for a period of five years and ordered Johnson to pay a \$5,000 fine caused by five acts of misconduct in the practice of land surveying.
3. The misconduct proved at the hearing, consisted of continuing to do engineering and surveying for a client after Johnson had been notified that the project on which he was working consisted of undevelopable land. The land in question was below the flood plain for the area. After being alerted to the flood plain problem, Johnson did not tell his client and continued to work on the project. Johnson, two years later, working on the same project, ignored a waterline easement and lost a lot from the plat. The Washington State Board found that Johnson was guilty of misconduct, suspended his license for a period of five years from November 1985, and fined him \$5,000.
4. Johnson, to this date, has never paid the fine, nor fulfilled any other conditions for the State of Washington potential renewal of license.

#### Conclusions of Law


1. AS 08.48.111(2) states that "the Board may suspend, refuse to renew, or revoke the certificate of or reprimand a registrant or corporation who is found guilty of...(2) gross negligence, incompetence, or misconduct in the practice of architecture, engineering, or land surveying;"
2. AS 08.01.075(a) a board may take the following disciplinary actions singly or in combination: (2) suspend a license for a specified period; (4) impose limitations or conditions on the professional practice of a licensee; (6) impose requirements for remedial professional education to correct deficiencies in the education, training, and skill of the licensee;
3. 12 AAC 36.310 a person who, after a hearing under the Administrative Procedures Act (AS 44.62) is found to have violated a provision of AS 08.48 or this chapter is subject to the disciplinary penalties listed in AS 08.01.075, including public notice of the violation and penalty in appropriate publications.

Proposed Decision

Johnson, having been found guilty of misconduct in the practice of land surveying by the Washington State Board of Professional Engineers and Land Surveyors is subject to appropriate discipline within the State of Alaska by the Alaska Board of Registration for Architects, Engineers and Land Surveyors. The Alaska Board has ample authority to discipline William Johnson in any appropriate manner based on the Order of the Board of Professional Engineers and Land Surveyors in the State of Washington.

It is recommended as requested by the Division of Occupational Licensing, that Johnson's license within the State of Alaska be subject to two year's suspension from the date of the Board's recommended order. Then Johnson may petition for reinstatement and must pass an appropriate examination for land surveyors within the State of Alaska.

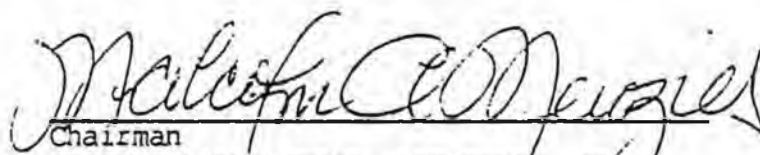
Dated in Anchorage, Alaska this 3rd day of March, 1989.

  
\_\_\_\_\_  
David M. Roderick  
Administrative Hearing Officer

BOARD ACTION ON PROPOSED DECISION

The Alaska Board of Architects, Engineers and Land Surveyors has reviewed the recommendation of the Hearing Officer, and hereby Adopts/Rejects/Modifies/Remands the Proposed Decision to suspend the license of William E. Johnson for two years.

Dated at Juneau, Alaska, this 3rd day of March, 1989.

  
\_\_\_\_\_  
Chairman  
Board of Architects, Engineers, and  
Land Surveyors

0694h



# Alaska State Legislature

## SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Senator Randy Phillips, Chair  
Senator Robin Taylor, Vice Chair  
Senator Loren Leman  
Senator Al Adams  
Senator Fred Zharoff

SESSION:  
State Capitol  
Juneau, Ak 99801-1182  
(907) 465-4989

INTERIM:  
P. O. Box 142  
Eagle River, Ak 99577  
(907) 694-4949

### SB 355 - "An Act relating to errors in surveys of land."

SB 355 would allow a party to enjoin all property owners of record, after proper petition to the court and resolution by the local government, to request a resurvey and replat of manifestly defective subdivision lines and subsequent changes in individual lots through Superior Court action.

When outside survey lines of a subdivision are grossly incorrect, it causes the inside lines of some or all of the individual lots to be incorrect as well. If this occurs, no one in the entire subdivision is afforded clear title, creating difficulties in title transfer.

Several officials of the Municipality of Anchorage have requested this legislation to help correct two "manifestly defective" subdivision surveys in the Anchorage area. The Municipality has exhausted all other aspects of law to correct this problem and finds that this legislation is the only practical solution to offer relief to assist property owners in correcting this defect. While the immediate reason for this legislation occurs in Anchorage, the changes would be available statewide for manifestly defective surveys.

The Board of Architects, Engineers and Land Surveyors, the Municipal League, the ASPLS, and the Municipality of Anchorage have been notified of this legislation. Further, the Division of Occupational Licensing and various land title companies can attest to the problems caused by manifestly defective subdivision surveys.

Municipality  
of  
Anchorage



300551  
ANCHORAGE ALASKA 99501-1880  
1983

April 21, 1983

E. Lee Browning, Municipal Engineer  
Public Works Department  
Engineering Division  
3500 East Tudor Road  
Anchorage, Alaska 99507

Subject: Rabbit Creek Heights Subdivision, and;  
Rabbit Creek View Subdivision

It was recently brought to our attention that many of the lot lines, lot corners, streets, right-of-ways, etc., as shown on the subdivision plats for the Rabbit Creek Heights Subdivision and Rabbit Creek View Subdivision may be incorrect.

In an attempt to confirm this information, this office contacted the Municipal Surveyor, Mr. Jack Stanley, and Mr. Jerry Weaver of the Planning and Zoning Department. Mr. Stanley confirmed that several survey closure checks made by his office, on these subdivisions, did not close satisfactory. Mr. Stanley further indicated that several other subdivisions surveyed by the same registered surveyor (Mr. William Johnson, whose stamp #14825 appears on the subdivision plats) are also in error. Numerous other professional surveyors have refused to conduct as-built surveys in these areas, due to the discrepancies in the original surveys and the related subdivision plats. According to Mr. Weaver, Mr. Johnson received a registered letter but did not respond, and the matter has since been turned over to the Municipal attorney.

In view of the confirmed fact that there are many known discrepancies on the lot lines, lot corners, streets, right-of-ways, etc., in the Rabbit Creek Heights Subdivision and Rabbit Creek View Subdivision; this department will discontinue the issuance of on-site water and sewer permits or health authority approvals for bank financing in both subdivisions. We will

E. Lee Browning, Municipal Engineer  
April 21, 1983  
Page Two

lift this discontinuance at such time that we have some form of acceptable assurance that lot lines and configurations are correctly shown on an approved subdivision plat.

If there are any further questions, please call this office at 264-4720.

Sincerely,



Robert W. Robinson  
Environmental Engineering Manager

RWR/ljw

cc: Public Works Department  
Bob Daniel, Permit Office  
John Bishop, Building Official  
Jack Stanley, Municipal Surveyor  
Frank Huber, Construction Engineer  
Michael Kerr, Zoning Enforcement Officer

Planning Department  
Don Alspach, Manager of Zoning and Platting  
Jerry Weaver, Platting Officer

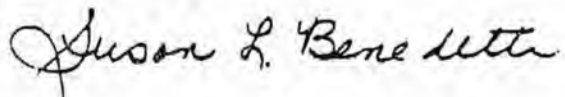
Health and Environmental Protection  
Lynn Lindquist  
John Kennedy  
Robert Pratt  
John W. Lynn



Mr. Thomas Knox  
RE: Rabbit Creek Heights and  
Rabbit Creek View Subdivisions  
May 21, 1991  
Page 2

We sincerely appreciate any information or suggestions you are able to provide. Please contact us if we can be of assistance in this matter.

Sincerely,



Susan L. Benedetti  
Mortgage Operations Officer

cc: Municipal Attorney's Office  
Don Alspach

# Municipality of Anchorage



P O BOX 196650  
ANCHORAGE, ALASKA 99519 6650  
(907) 786-8160

TOM FINK  
MAYOR

DEPARTMENT OF PUBLIC WORKS  
(3500 East Tudor Road)

June 10, 1991

Susan L. Benedetti  
Mortgage Operations Officer  
AHFC  
P.O. Box 101020  
Anchorage, Alaska 99510

RE: RABBIT CREEK VIEW AND RABBIT CREEK HEIGHTS SUBDIVISIONS

Dear Ms. Benedetti:

The Municipality understands the dilemma faced by the lending institutions, investors and lot owners of property situated in the above named subdivisions. It is however, a problem affecting the rights of private parties who have a direct financial interest in the lots. The Municipality's interest lies only in those areas dedicated to public uses. These are identifiable even though they do not agree with the plats on file at the District Recorder's office.

My staff conducted research on surveying and boundary law issues pertaining to erroneous plats. The courts have recognized that the actual survey is substance and the plat is merely a picture. Where the plat and the actual survey are in conflict, the actual survey, as laid out on the ground, will control and the plat will be considered as surplusage. In a conveyance that refers to a plat, it is the lines actually surveyed on the ground that control the lots. Your problem is to properly identify the lot locations according to the original boundary. This can be accomplished by having a location survey performed for each lot that you have an interest in or by vacating the existing plats and resubdividing.

If a majority of property owners wish Municipal assistance to vacate and resubdivide the properties, then property owners are required to come into Public Works at 3500 Tudor Road and initiate a special assessment district. Contact Mark Sollenberger (786-8208) in special assessments to obtain the details of such a program.

According to the Municipal Attorney's office, Title 21 Municipal Land Use Regulations does not contain any language which would permit the Municipality to require erroneous plats to be resubdivided or to bring this type of matter before the courts. The state statutes do not address this situation either.

Susan L. Benedetti  
June 10, 1991  
Page 2

According to AWWU, the utility is forbidden to service this area with water and sewer facilities by Municipal Ordinance. The Hillside Wastewater Management Plan would have to be amended along with the ordinance before AWWU would consider utility extensions in this area.

The two plat areas are outside of the Building Safety Service Area and therefore are not required to obtain a building permit. If such a permit were required then we would require a builder to supply us with a plot plan showing the location of the proposed building on the lot. Since the lot corners have been staked in these two subdivisions builders would be able to meet our requirements.

We know the approximate magnitude of error through reports given to us by land surveyors. Since these plats are in a limited road service area, which is maintained by the residents of the subdivisions, the Municipality does not have any experience with problems associated with plat to lot errors. It would be difficult to guess at how many lots would need to be involved with a resubdivision. It would be prudent to resubdivide all the lots in each subdivision in order to insure that all errors would be corrected.

You have requested the Municipality's assistance in any way possible. For years the Municipality has responded to whomever has requested this help in the only way we are legally able to help. That is through the special assessment district process. To date none of the interested parties have come forward and initiated the process. If you have any further questions you may contact me at 786-8109.

Sincerely,

Ross Dunfee, P.E.  
Municipal Engineer

RBD/TK/gfc  
/28

cc: Tom Knox, Municipal Surveyor

COORD. STAMP / INITIAL / MAIL WHEN SIGNED			
OFFICE	ADMIN. SERV.	ADMIN. SERV.	
SIGN	TK	R	
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ATTACHMENTS: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>			#:



Anchorage Office, Region A  
 222 W 8th Avenue, #84  
 Anchorage, AK 99513-7537

RECEIVED

JUN 27 1991

ENGINEERING DIVISION  
 PUBLIC WORKS

JUN 26 1991

Thomas W. Knox, RLS  
 Municipal Surveyor  
 Municipality of Anchorage  
 P.O. Box 196650  
 Anchorage, AK 99519-6650

Dear Mr. Knox:

Subject: Rabbit Creek and Rabbit Creek Heights Subdivisions

The Department of Housing and Urban Development (HUD) has become aware of the survey problems in the subject subdivisions. We have received information that lot corners as staked are not in the same position as shown on plats and that some surveyors are finding positional errors in the range of 20 to 30 feet.

In the past, HUD/FHA has insured properties in the Rabbit Creek and Rabbit Creek Heights Subdivisions, being unaware of the discrepancies in the lot plats and surveys. In the past year our Property Disposition Branch has received a number of homes in these subdivisions back in foreclosure and HUD sustains significant losses if the properties cannot be resold with mortgage insurance.

Please advise our office as to what steps are being taken by the Municipality to solve these problems. Until these problems can be resolved HUD will be unable to insure any homes in the Rabbit Creek and Rabbit Creek Heights areas.

If you have any questions regarding this matter, please contact Alice Bethka, Valuation Branch, at 271-4657.

Sincerely,

Arlene L. Patton  
 Manager

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To	CON RENNAY	From	Kass
Co.		Co.	DPW
Dept.		Phone #	786-8109
Fax #	465-3871	Fax #	512-5762



**STEWART TITLE**  
COMPANY OF ALASKA

November 16, 1992

Mr. Paul Richardson  
Performance Real Estate

Re: Rabbit Creek Heights/Rabbit Creek View

Dear Paul:

As discussed with you Thursday, I am writing to clarify our Company's position as to the survey/boundary discrepancies of the above referenced subdivisions.

It is commonly known that when these two subdivisions were originally surveyed and platted the common boundary between the two contained errors in the bearings and distances and therefore creating encroachments, location, boundary and area discrepancies that spread throughout and affect all lots in these subdivisions. Many surveyors will not even perform as-built surveys because of this problem. Many lenders will not lend either.

An Alaska Owner's Policy of Title Insurance (insuring the buyer) contains a general exception as follows:

"Encroachments or questions of location, boundary and area, which an accurate survey may disclose...."

This exception means that the policy does not afford coverage relating to these problems in these subdivisions.

As far as possible solutions of this problem, it would require a comprehensive replat of both subdivisions. This would have to be accomplished by agreement between all property owners or by a court action that would bind all property owners to cause a replat.

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Submitted by: Assemblymembers Abney and Bell  
Prepared by: Department of Law  
For reading: September 14, 1993

CLERK'S OFFICE  
APPROVED

Date: 11-9-93 ANCHORAGE, ALASKA  
AC NO. 93-156

AN ORDINANCE OF THE MUNICIPALITY OF ANCHORAGE AMENDING CHAPTER 19.10 OF THE ANCHORAGE MUNICIPAL CODE REGARDING SPECIAL ASSESSMENT DISTRICTS, ADDING SURVEYING AS A PURPOSE FOR WHICH SPECIAL ASSESSMENT DISTRICTS ARE AUTHORIZED.

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1: That AMC 19.10.020 is amended to read as follows

19.10.020 Special assessment districts--Authorized improvements.

A special assessment district for a public improvement including, without limitation, for any one or more of the following improvements may be initiated:

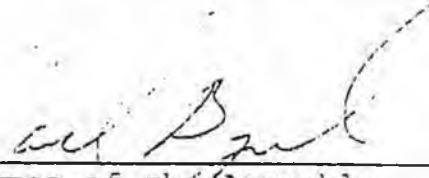
- A. Streets, roads, parkways, street lighting, curbs and gutters, driveways, curb cuts and sidewalks;
- B. Storm sewers or drains;
- C. Sanitary sewers;
- D. Parks, recreation areas and open space;
- E. Off-street parking facilities;
- F. Changes in channel of streams or watercourses;
- G. Bridges, culverts, levees, embankments and dikes for streams or water courses;
- H. Water supply system including water mains, water connections and fire hydrants;
- I. Fallout or disaster shelters;
- J. Street, road parkway and sidewalk drainage, ciling, sprinkling and snow removal;
- K. Placing overhead utility distribution lines as defined in section 19.60.010, underground;
- L. Natural gas lines[.];
- M. The re-survey and re-platting of manifestly inaccurate surveys of record

Post-it™ brand fax transmittal memo 7671		# of pages 2	
To: Ann	From: [Signature]		
Co: [Signature]	Co: [Signature]		
Dept: [Signature]	Phone: 214-5-1111		
Fax: 465-1069	Fax: [Signature]		

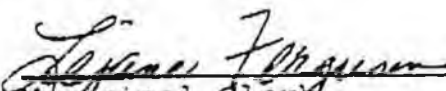
49  
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52

1 Section 2: That this ordinance shall become effective immediately  
2 upon passage and approval.  
3

4 PASSED AND APPROVED by the Anchorage Assembly this 9th  
5 day of November, 1993.  
6  
7

8  
9  
10   
11  
12 Chairman of the Assembly

13 ATTEST:

14  
15  
16   
17 Municipal Clerk  
18  
19 [Legal:\assy\ao\survey.sbe/dp]

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Page 2  
Mr. Paul Richardson

Under today's municipal regulations for platting, the costs involved could be astronomical, however, this is the only appropriate solution to this dilemma.

Best of luck in your endeavors and please call if I may be of further assistance.

Yours truly,

STEWART TITLE COMPANY OF ALASKA, INC.

  
Howard Hancock  
Advisory Title Officer

HH:bt

AMENDMENT #1

OFFERED IN THE SENATE

TO: SB 355

Page 4, line 13:

Delete "[SHALL]"

Insert "shall"

Page 4, line 14:

Delete "shall"

Page 4, line 18:

Delete "shall"

Page 4, line 22:

Delete "shall"

Page 4, lines 28 - 29:

Delete "may not, except as provided in AS 09.45.845 or with the consent of the owner, alter"

Insert "to the extent reasonably practicable, attempt to minimize disruption to"

A M E N D M E N T # 7

OFFERED IN THE SENATE

TO: SB 355

Page 5, following line 6:

Insert a new bill section to read:

\*\* Sec. 11. AS 09.45.865 is amended by adding a new subsection to read:

(b) If a judgment is entered under AS 09.45.855 because of a defective survey, a parcel or lot affected by that judgment may not, solely by reason of the judgment or its effect, become ineligible for a use or development for which it was eligible before the entry of judgment."

Renumber the following bill sections accordingly.

# Municipality of Anchorage



P.O. BOX 196650  
ANCHORAGE, ALASKA 99519-6650  
(907) 343-4545

TOM FINK,  
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

March 25, 1994

Senator Steve Rieger  
Attn: Ann  
Alaska State Senate  
State Capitol, Room 516  
Juneau, Alaska 99801

RE: Amendments to Senate Bill 355

Dear Senator Rieger:

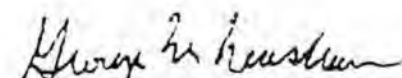
I have not had an opportunity to review the proposed amendments to SB 355 which were faxed to me on March 23. I believe that the amendment suggested to page 4 of SB 355 which changes Section 09.45.855(4) addresses the concerns I had concerning the ability of the Superior Court to fashion an equitable replat.

In addition, there seemed to be some concerns expressed regarding the "grandfather rights" of property owners who might be adversely affected by the replat order from the Superior Court. I would propose the following language to address that concern:

Any property parcel which was, prior to the final order of the Superior Court on the replat, qualified for development or use for a particular purpose, shall not, by reason of such final order, become non-qualified.

The Municipality of Anchorage appreciates your work on this legislation and we would support its passage, as you have suggested amending it.

Very truly yours,

  
George M. Newsham  
Assistant Municipal Attorney

GMN:lmc

Cover Page + 0 Pages

APR 18 1994

**STUTZMANN ENGINEERING ASSOC., INC.**

P.O. BOX 1429

FAIRBANKS, ALASKA 99707

(907) 452-4094

(FAX) 452-1034

**FACSIMILE COVER SHEET**

To: AL VEZEY 1-465-3258  
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From: NEIL EKLUND R.L.S.  
 name

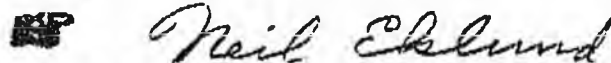
Date: 4/18/94  
 date time

Re: CSSB 355

**COMMENTS**

WE HAVE JUST REVIEWED THE PROPOSED CHANGES TO THE "EARTHSIDE CHANGING LAND BOUNDARIES" ACT WHICH WOULD BE EXPANDED TO INCLUDE DEFECTIVE SURVEYS OR SUBDIVISION PLATS. WE DO NOT BELIEVE THAT THESE PROPOSED CHANGES WILL BE OF MUCH HELP AND WE ARE SOMEWHAT CONCERNED THAT THEY MAY HAVE THE POTENTIAL TO CAUSE MORE HARM THAN GOOD. IF THIS ACTION IS AIMED AT THE RABBIT CREEK PROBLEMS, WE SUGGEST THAT A MORE SPECIFIC SOLUTION BE PURSUED AND THIS PRESENT ACTION BE AT THE LEAST POSTPONED FOR FURTHER STUDY BY THE SURVEYING COMMUNITY.

THANK YOU.

 Neil Eklund

APR 18 1994

Apr 18, 1994

A1

I scribbled some thoughts about the defective survey bill in the margins. Basically I don't see where this solves anything. It all comes back to a judgement anyway, so the judge can solve a situation just exactly the same as he can now. I just can't imagine an ownership situation that involved property owners could not resolve by hiring a surveyor and saying "do the best you can for everybody" and then going along with it. The real problem arises after the surveyor has wracked his brain to solve the technical problems in the fairest way he can think of and the political problems of getting everyone to agree spring to life. Numerous cases such as everyone in a subdivision building one lot down the line, bad plat dimensions, etc can, have been, and will continue to be solved (and relatively easily) as long as everybody cooperates. It is only when someone finds it not in his best interest to go along with the group solution (often a re-plat) that problems approach insurmountable ... such is the stuff law suits are made of. I find no relief or assistance in this proposed legislation.

I would be terribly inclined to amend to substitute "incompetent survey" for "defective survey" if I were doing this at all.

An informal poll of a few members of the local surveyors society (of which I am not a member and for whom I cannot pretend to speak) indicated some small concurrence with my attitude at the top of page 1 of the bill and especially in light of that thought that it would be much better for this to die than to go forward before it can be discussed by the State surveyors society (which takes time to schedule, etc.)

I have a lot of trouble understanding the concept of the bill in that the opening paragraph 09.45.800 states "If the boundaries of land ..... are manifestly inaccurate due to defective survey ..... [then] recognize boundaries as they presently exist ..." If the boundaries are presently existing and recognizable then it sounds rather to me like the problem is not one of survey and plat (though one or both may be of poor quality) but rather a problem of a property owner not being content with the lot he owns. This hardly sounds like a proper subject for the Alaska State Legislature to me (unless, of course, the State of Alaska is involved in such a dispute as one of said land owners and seeks to affect its position?). If, in fact, the perceived problem that this bill would pretend to address is one where existing boundaries (given that there is ownership, then there is a boundary -- resolving where said boundary is may well be a survey problem but I see nothing in this bill to help solve it) are not visible for property owners to see, then a survey solution may well be in order to mark the boundary in a manner discernable to the property owners -- this bill has no impact on either the right or obligation of a property owner to hire a surveyor to show him where a boundary is. If the problem is such that after the boundary has been identified a property owner says

APR 18 1994

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"I refuse to recognize it as my boundary", then we are back to the opening sentence of this paragraph and I again see nothing in this bill to assist in resolution of the situation.

The premise of the "defective survey" portion of the bill is stated as accepting litigation as a foregone conclusion (page 1 line 10) -- I see here no new contribution to the law to aid in resolving anything.

Ken

REPRESENTATIVE VEZEY

7 PAGES

465 3258

DOES THIS ALTER ANY PRESENT EXPECTATION ONE MIGHT HAVE FOR EQUITABLE JUDICIAL DECREEES ?

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

7 \* Sec. 11. AS 09.45.865 is amended by adding a new subsection to read:

8 (b) If a judgment is entered under AS 09.45.855 because of a defective survey,  
9 a parcel or lot affected by that judgment may not, solely by reason of the judgment or  
10 its effect, become ineligible for a use or development for which it was eligible before  
11 the entry of judgment.

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

13 Sec. 09.45.872. ASSESSMENT OF COST OF RESURVEY. The court shall  
14 assess the cost of a resurvey under AS 09.45.800 - 09.45.880 for a defective survey  
15 to the owners of the parcels or lots within the subdivision. This section does not affect  
16 the right of the owner of a parcel or lot to recover damages for the defective survey  
17 or limit the liability of the person who performed the defective survey.

18 \* Sec. 13. AS 09.45 is amended by adding a new section to read:

19 Sec. 09.45.878. DEFINITION. In AS 09.45.800 - 09.45.880, "defective survey"  
20 means a survey that cannot be reconciled with the plat of the property, does not  
21 conform with the physical location of the property boundaries, and is manifestly  
22 defective for a subdivision.

23 \* Sec. 14. AS 09.45.880 is amended to read:

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

WE CAN GENERALLY  
"AS BUILT" AND  
RECONCILE ANYTHING  
BUT THE AS BUILT JUST  
MIGHT NOT LOOK MUCH  
LIKE THE PLAT. IN  
GENERAL, IS A SUEVGY WAS 24  
ACTUALLY DONE AND CORRECT  
THAT AS REGARDS THE INTERIOR  
CORNERS THEN I WILL SUGGEST  
WILL TEND TO HOLD SWAY, THIS MAY RESULT  
IN SUBSTANDARD AREAS AND SUCH, BUT IS A  
RECONCILIATION WITH THE GROUND POSITION  
MAY NOT BE QUITE SO SIMPLE, BUT I WILL SUGGEST THAT LINES  
THE SUBDIVIDER CANNOT SELL WHAT ISN'T HIS - HENCE OSTENSIBLE BE  
ERRONEOUSLY STAKED ON THE PROPERTY OF OTHERS MUST BE  
ADJUSTED BACK TO THE "TRUE" PROPERTY LINE, OSTENSIBLE LINES  
AND ABANDONMENT OF THE EXCLUDED GROUNDS, CONSTITUTE  
THESE ARE THINGS THAT ANY COMPETENT SURVEY PRACTITIONER  
CAN WORK OUT (WITH SEVERAL OPTIONS IF NEED BE) FOR  
THE APPROVAL OF AFFECTED PROPERTY OWNERS AND MORE  
CAN REPLAY - PROBLEM DONE. IF ONE OR MORE RESOLUTION  
IS POSSIBLE WITH GO ALONG, NO OR MORE BILL  
UNTIL A JUDGE ALTERS THE PLAYER(S)  
PROPERTY WILL NOT BE GOING ALONG  
THAT HE (THEY) ARE GOING ALONG  
ANYWAY, THIS BILL  
DOESN'T AFFECT  
THAT,

CSB 355 (2007)

APP 18 1994

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

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

Sec. 09.45.845. VACATING OF STREETS IN WHOLE OR IN PART. The

vacating of streets in whole or in part by the voluntary action of a municipality, for the purpose of making it possible for the court to mitigate the hardships suffered by individuals because of the change in land boundaries caused by the act of God, consisting of an earthshide, or the defective survey, can be accomplished by the offer of the municipality expressed in the complaint followed by the court's approval of it in the action authorized in AS 09.45.800 - 09.45.880, without other formalities. This provision is a special [EMERGENCY] substitute for the provisions contained in AS 29.40.120 - 29.40.160.

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

Sec. 09.45.855. SCOPE OF JUDGMENT. The judgment shall

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

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

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

(A) rendered inaccurate by the act of God consisting of an earthshide; or

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

(4) to the extent reasonably practicable, attempt to minimize disruption to lines or boundaries of parcels or lots that are not found to be materially incorrect.

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

CS6B 355(RES)

New Text Underlined (DELETED TEXT BRACKETED)

BB8388

A COURT WILL HAVE TO FIND WHAT IS REASONABLE & PRACTICAL AND WHAT MINIMIZES DISRUPTION - IT CAN ALREADY DO SO UNDER ITS POWERS OF EQUITY ANYWAY WHAT DOES THIS ADD?

THERE IS EXISTING A BODY OF LAW, POLICY, AND PRACTICE GOVERNING HOW TO RESOLVE CONFLICTS BETWEEN ON-THE-GROUND (IF ORIGINAL) EVIDENCE AND PAPER WORK, AND A HIERARCHY OF PRECEDENCE OF CALLS - DOES THIS MEAN TO NULLIFY/AMEND/OVERRIDE EXISTING PRINCIPLES?

NOBODY NEEDS THIS BILL TO EMPOWER THEM TO VACATE ANY OR ALL OF THEIR INTEREST IN LAND - IF SAID MUNICIPALITY WANTS TO VACATE THEY CAN DO SO NOW

WHAT? YOU'RE TELLING ME THAT A COURT DECREE ISSUED TOMORROW WOULD NOT HOLD SWAY OVER PARTIES IN A SUIT WITHOUT THIS BILL?

APR 18 1994

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

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

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

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

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

(b) An answer must

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

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

- (A) act of God, consisting of the earthshide; or
- (B) defective survey.

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

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

SB0355b

3.  
New Text Underlined (DELETED TEXT BRACKETED)

CSDB 388(MB)

WHAT IS A REASONABLY DILIGENT SEARCH ?

IF ROADS ARE BEING VACATED AND NEW ROADS BEING PLATTED ? WHAT IS THIS VACATION STATE ABOUT ?

DOES THIS EQUATE INCOMPETENT ACTIONS OF A LICENSE HOLDER ISSUED BY THE STATE OF ALASKA TO AN ACT OF GOD ?

I DON'T UNDERSTAND WHAT THIS ADDRESSES THAT IS NOT PRESENTLY REMEDIABLE BY A REPLAT APPROVED BY AFFECTED PARTIES. ANY OR ALL LOT LINES CAN BE REDDEFINED AT ANY TIME BY AMENDING THE PLAT (REPLATTING) BUT AFFECTED LAND OWNERS MUST AGREE TO THE FORM OF SUCH REPLAT (ON THEIR OWN OR WITH THE HELP OF A JUDGE'S PEN)

APR 13 1994

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

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

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

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

8 (a) An action authorized by AS 09.45.800 - 09.45.880 may be commenced by  
9 (1) a borough with the joinder of a city or cities included in the  
10 borough;

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

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

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

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

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

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

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

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

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

IF DEFECTIVE (OR SUBSTITUTE INCOMPETENT) SURVEYS ARE SO PREVALENT THAT WE NEED TO ADDRESS THIS COMMON OCCURRENCE FOISTED UPON US BY PRACTITIONERS WHOH THE STATE OF ALASKA ALREADY LICENSES (AND THEREFORE UNDERWRITES THEIR COMPETENCY AND QUALIFICATIONS, PRESUMABLY) THEN CERTAINLY I WOULD THINK THERE SHOULD BE SOME COMPANION PROGRAM TO CLEAN OUT THIS "PRIVILEGED" CLUB OF LICENSE HOLDERS CREATING SAID SURVEYS. IF THIS IS A BILL TO ADDRESS RABBIT CREEK THEN WRITE IT TO ADDRESS RABBIT CREEK, DON'T TRY WRITE AN OMNIBUS BILL.

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CS FOR SENATE BILL NO. 355(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 3/31/94  
Referred: Rules

Sponsor(s): SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to errors in surveys of land."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 \* Section 1. AS 09.45.800 is amended to read:

4 Sec. 09.45.800. DEFECTIVE SURVEY OR [PREREQUISITE]  
5 EARTHSLIDE CHANGING LAND BOUNDARIES. If the boundaries of land, owned  
6 either by public or by private persons (1) have been moved by an act of God,  
7 consisting of an earthslide, so that they are in a location different from that at which,  
8 by solar survey, they were located before the earthslide, or (2) are manifestly  
9 inaccurate due to a defective survey of a subdivision and the ownership status of  
10 the land precludes resurvey and replat without the intervention of the court, an  
11 action in rem to recognize the boundaries as they presently exist and to quiet title  
12 within the boundaries in the persons judicially found entitled to title under  
13 AS 09.45.800 - 09.45.880, is authorized, maintainable by the persons and with the  
14 procedures in AS 09.45.800 - 09.45.880 for the handling of the circumstances

IF WE HAVE ALREADY ESTABLISHED THAT THE (A) COURT MUST HANDLE OUT AN EQUITABLE SOLUTION, THEN WHAT DOES THIS CONTRIBUTE?

# Municipality of Anchorage



P.O. BOX 196650  
ANCHORAGE, ALASKA 99519-6650  
TELEPHONE: (907) 343-4431  
FAX: (907) 343-4991

Tom Fink, Mayor

OFFICE OF THE MAYOR

April 22, 1994

The Honorable Al Vezey, Chair  
House State Affairs Committee  
Alaska State Capitol  
Juneau, AK 99801

Post-It <sup>®</sup> brand fax transmittal memo 7671		# of pages	2
To	Al Vezey	From	Den Moore
Co.		Co.	
Dept.		Phone #	343-4282
Fax #	465-3258	Fax #	

Dear Representative Vezey: *al*

Recently, your committee was assigned CSSB 355 (RES), "An Act Relating To Errors In Surveys of Land." The Municipality strongly encourages the House State Affairs Committee to pass the bill out of committee, so that it can be voted on by the full House as soon as possible.

The Municipality believes SB 355 is important because within the Municipality there are seven subdivisions or plats which we know are substantially mis-surveyed. In particular, at this point, three subdivisions in South Anchorage, the Bear Valley and Glen Alps areas, are actively pursuing the establishment of a survey improvement district to allow for the initial step in redrawing the plats for these subdivisions.

The Municipality's concerns of behalf of the residents in the area are that due to the survey errors, residents and property owners are unable to buy or sell their property. Title companies, who are all aware of the survey problems, are unwilling to insure title to those properties. Lenders are also unwilling to lend on these properties due to the survey problems with the plat.

The Municipality believes that current state law only allows a corrected survey to be filed by the original surveyor within two years of its filing. After that, there is no effective way for a substantially defective survey to be corrected so that the plat can be corrected. This bill would allow a one time proceeding, such as that already authorized for earthquake or slide replatting, which would allow the court to equitably divide the burden of the bad survey among all affected property owners.

We have tried to make sure that the rights of all property owners are protected. There is nothing which would keep property owners from asserting any claims of adverse possession which they may have against their neighbor's property. We would hope that the court would consider those claims which particularly affect structures, where for example, a septic system or well may have been placed on

The Honorable Al Vezey, Chair  
Page 2  
April 22, 1994

an adjoining property in error. We are providing with this bill a mechanism for all potential adverse claims to be presented in one overall proceeding. Rather than 300 quiet title actions, this bill allows one proceeding to include all affected property owners.

The other major potential problem we would hope would be alleviated is that due to the bad survey, all the roads in these areas are probably outside their platted rights-of-way. This statute would allow the Municipality to assist in the resurvey and replat process by vacating rights-of-way. The alternative, which would be extremely costly to the Municipality, would be to go to court and seek prescriptive easements over the current roadway locations.

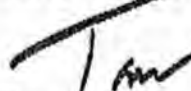
We believe that this bill needs to be passed this session because we are in the process of forming the survey improvement districts to do the resurvey on these areas. Without this legislation in place, we will have no effective remedy to propose to the residents and owners, for a solution which would allow them to market and/or develop their property.

We have suggested language which was incorporated into the legislation to insure that if property was developable prior to the resurvey and replat, it remained so afterwards, even if the changes imposed by replat would make the remainder undevelopable under the then current requirements.

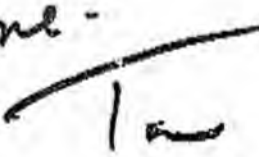
The Municipality is asking the residents of the area to pay for this work. The Municipality will provide the surveyor selection and filing and proceeding with the action in the Superior Court. We will not be asking our taxpayers to underwrite this process.

Again, I would very much appreciate all assistance you can give to helping SB 355 bill pass through your Committee in time for a House vote this session.

Sincerely,

  
Tom Fink, Mayor

genmat\mayor\vezey.gmn

Al, I've told this  
bill will solve a difficult  
- one of those to which there is  
no good answer but this is  
the best one.  


## AN OPEN LETTER TO ALASKAN LEGISLATORS

regarding

SB 355/CSSB 355

a bill purporting to address insoluble survey situations

Dear Honorable Citizen Legislator

Presently before the Alaska State Legislature is a bill which seeks to amend legislation written in the aftermath of the 1964 earthquake. Notwithstanding any merits the existing statutes (AS 09.45.800-880) may or may not have, the proposed changes are totally devoid of redeeming value. Political forces are attempting to marry the original "landslide relief" bill with a "fraudulent or incompetent survey" amendment. Proponents of this bill suggest that it provides a means of solution for some surveys in the Anchorage area that have technical problems utterly beyond resolution without it.

This is quite amazing in that, try as I might, I can find absolutely nothing in the way of relief provided by this bill that is not available under current law. Possibly the secret to supporting the bill is to not read it: of the few supporters of the bill in the technical community that I have found, those whom I have been able to ask whether they had read it responded "no". The others indicated to me through their remarks that they had not read it, for they could not say some of the things they did if they had read the bill.

Astonishing as it may seem, not every survey performed in the two or three hundred years that we have been surveying on this continent has stood up to the scrutiny of subsequent surveyors as being perfectly flawless. Sometimes in recreating the work of the original surveyor mistakes, errors, and blunders are discovered. Without being able to discuss particular instances with the parties originally involved, it is generally impossible (and of little practical import) to determine the exact cause (incompetence, fraud, broken instrument, whatever) and effort must be directed to reconciling the record and the evidence on the ground. The basis of any retracement survey is recovery of evidence to follow in the footsteps of the original surveyor. We have evolved procedures to evaluate and prioritize evidence and precedence of calls to deal with precisely this circumstance. Applying these [existing] procedures will allow a technical resolution in nearly any circumstance of survey problem. Sometimes conflicting evidence may produce a couple of alternative resolutions rather than just one clear-cut result -- then judgment/negotiation comes into play to reach an equitable solution acceptable to all. When negotiation is unable to produce a solution acceptable to all parties, one of the options (if not the only) available is initiation of a lawsuit and the ensuing enforced negotiations arbitrated by a judge. This bill does not alter that one iota.

One proud proponent of this bill observed that the search for model legislation in other states to serve as a basis for this bill produced nothing and thus Alaska was pioneering new law frontiers (hear! Hear!). Possibly, just possibly, the great necessity for this type of legislation is reflected by how much the other members of the world have needed this sort of law.

The long and the short of the situation is that once a surveying/platting problem is acknowledged as existing, if the involved parties can agree to a fix then doing a replat to execute that fix is no big deal. If the affected parties choose not to agree on a solution, then doing a replat becomes a very big deal. Forcing a property owner to alter his property boundaries and property rights -- since this is what redrawing property lines (or replatting) is -- against his will is -- and, in fact, should be -- a matter not to be undertaken frivolously.

The underlying purpose of surveying and platting, especially as regards Subdivisions, is to define and determine limits of ownership. Given that a survey is done and a plat prepared for a subdivision, it is difficult to conceive of circumstances that utterly defy the performance of a retracement survey. Based on such a retracement survey, an as-built plat of any individual lot, group of lots, block, or entire subdivision could be prepared reconciling record and found information and filed under existing Record of Survey procedures. As-built dimensions may vary considerably or match closely record lot dimensions. In either event, mechanism exists to "correct" the record as regards property boundaries.

On its own face the bill is self-contradictory. The bill addresses itself to "manifestly inaccurate...and precludes resurvey and replat without the intervention of the court", and "survey that cannot be reconciled with the plat of the property, does not conform with the physical location of the property boundaries..." but then calls "to recognize the boundaries as they presently exist". If the boundaries are, in fact, existing and recognizable, then what more can be accomplished?

The hand-wringing and teeth-gnashing that I hear associated with the need for this bill does not bear rational examination. "DEC refuses to issue permits" ... Skipping over what statutory basis DEC might be able to base refusal to issue permits on, the writing that I have seen from DEC says that permit issuance was contingent merely on revised survey data being made of record. "Lots can not be bought or sold" ... Utter poppycock! Transfer of title requires willing buyer and willing seller -- that's it. Title to any lot can be transferred and the new owner now stands in the shoes of the old owner -- with the new owner now possessing the rights, privileges, obligations, and possibly confusion of the former owner. When one or both parties to the sale become unwilling: for instance an inability to agree on payment schedule, or construction concession as an inducement, etc. then the sale will not proceed. Trying to ascribe "I can't find a buyer

at my terms" to "platting errors make it impossible to sell my lot" doesn't wash. Cash sales and owner financed sales are, for all practical purposes, agency independent and require only a buyer and seller. Sales are possible. If a person at the time he became a buyer chose to not avail himself of the prudent act of determining the boundaries of his prospective purchase, it is not a survey problem that he didn't know what he was buying. Now that such a buyer is trying to become a seller, it is still not a survey problem that he cannot find a buyer equally or more imprudent than he was. When someone buys a lot and subsequently is surprised or disappointed to discover how the lot lies on the ground as opposed to what he thought he was buying, it is not anybody else's responsibility to buy him a new lot or reshape boundaries to match his mistaken expectations.

Anchorage politicians cry that at least seven subdivisions in their area must have this legislation to resolve an intolerable situation. I am aware of no corresponding cry from the technical community - is this because the technical community already know that all that is lacking for solution is budget and resolve on the part of the land owners? Some of the subdivision property owners are now beginning to form service areas to coordinate execution of as built surveys. Certainly this is a fairly rational first step, but I am forced to ponder why it has not been embarked upon sooner, since the two entries on the list of seven of which I am aware are more than twenty years old. Also, what of individual property owners or groups of property owners who have already taken steps to resolve platting problems ... are they to be forced into footing the bill for further as-built surveys in the remainder of the subdivision? Are prudent buyers who recovered their property corners and relied on established law and procedures to know what they bought now to be forced into a replat by other (presumably less prudent) buyers who have become disenchanted with their purchases? What of the legal fees, regardless of who prevails, in the inevitable battle between those owners who consider a replat in their best interest and those property owners who do not consider any given replat proposal in their best interest?

This ill-conceived and flaw-fully executed legislation does not merit seeing the light of day. Statutes that do not make a positive contribution to the body of law should be relegated to non-existence rather than incorporated into code to increase the thickness. The problems bemoaningly being ascribed to survey errors by proponents of this legislation are being poorly recognized and even more poorly addressed by this bill. If you are uncertain then I urge you to seek counsel of a practicing surveyor and ask him - line by line - what contribution this legislation makes to problem solution that is not currently available to parties who choose to use them, then reject this bill as an attempt at a political solution to a technical problem.

Lovingly submitted by [REDACTED]

AL - SOMETHING LIKE THIS MAY OR MAY NOT BE EXPECTED TO APPEAR IN THE ALASKA PROFESSIONAL DESIGN COUNCIL NEWS LETTER

KEN

**S B**

**3 5 7**

(7)  
Date Referred: April 27, 1994

HOUSE COMMITTEE REPORT  
FURTHER REFERRALS:

Finance

Date of Committee Action: 5-6-94

The STATE AFFAIRS Committee considered:

CSSB 357(FIN)

CS FOR SENATE BILL NO. 357(FIN)

REQUIRED REPORTS OF STATE AGENCIES

"An Act relating to certain study, publication, and reporting requirements by and to state agencies; relating to certain fees for reports; and providing for an effective date."

RECOMMENDATIONS: NC SCSSB - 357 (STA)  the same title  
be replaced with NC SCSSB - 357 (STA)  a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

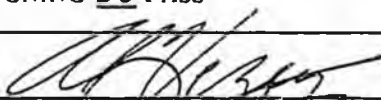
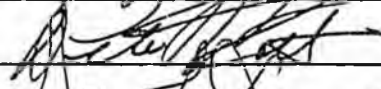
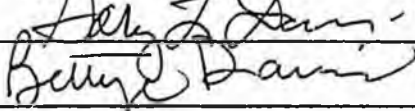
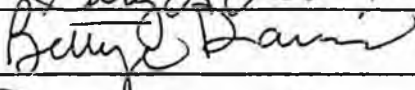
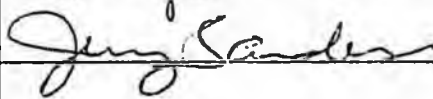
APPROVES PREVIOUS: (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) CD 617(2), PSED, APN(6), DOT, ONR, GOV, REV

zero fiscal note \_\_\_\_\_

zero fiscal note(s) DEC, PUB SAF(2) MVA, D&E

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
	X	Haley Olvera		✓	
	X	F. Ulmer		✓	
	X				
	X				
	✓				

  
CHAIRMAN'S SIGNATURE

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

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

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

MEMORANDUM

May 5, 1994

**SUBJECT:** Studies, Reports, and Publications (HCS CSSB 357(STA);  
version J)

**TO:** Representative Al Vezey  
ATTN: Joe Ryan

**FROM:** Terri Lauterbach *TML*  
Legislative Counsel

Enclosed is the State Affairs draft you requested for this bill.

I have added a two sections you did not request, sections 10 and 37. Section 10 parallels the changes that are made in secs. 17 - 21 of the draft, including the new sec. 19 that you asked for. Since you added sec. 19 for consistency's sake, it seemed to me that you would probably want to add section 10 as well. Section 37 is merely the contingency provision for section 10. (CSSB 225(HES) has been passed by the legislature and is currently awaiting the governor's signature.)

Please let me know if I can be of further assistance on this matter.

TML:gc  
94-321.glc

Enclosure

8-GS2006N  
Lauterbach  
5/5/94

HOUSE CS FOR CS FOR SENATE BILL NO. 357(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to certain study, publication, and reporting requirements by and  
2 to state agencies; relating to certain fees for reports; and providing for an  
3 effective date."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 \* Section 1. AS 10.06.955(a) is amended to read:

6 (a) This chapter applies to a domestic corporation organized under former  
7 AS 10.05 (the Alaska Business Corporation Act), and to the extent provided in  
8 AS 10.06.010, 10.06.020, [10.06.160,] 10.06.233, 10.06.433(g), 10.06.435,  
9 10.06.450(d), and 10.06.705 - 10.06.870 to a foreign corporation authorized to do or  
10 doing business in this state.

11 \* Sec. 2. AS 14.36.010(b) is amended to read:

12 (b) It is the intent of the legislature that

13 (1) a program of community school grants be established to provide  
14 assistance to local communities in the initial development, implementation, and

1 operation of community school programs;

2 (2) technical assistance, monitoring, training, and coordination of  
3 statewide efforts to develop and operate community school programs be provided by  
4 the department;

5 (3) the community school program will become fully operational once  
6 a plan of operation has been approved by the commissioner; and

7 (4) evaluation of the approved plan of operation for a community  
8 school program shall be conducted by the department in cooperation with the school  
9 district at least once every four years [; A REPORT OF THE COMMUNITY  
10 SCHOOL PROGRAMS EVALUATED IN THE PRECEDING YEAR SHALL BE  
11 PRESENTED BY THE COMMISSIONER TO THE LEGISLATURE BEFORE THE  
12 15TH DAY OF EACH REGULAR SESSION OF THE LEGISLATURE].

13 \* Sec. 3. AS 14.40.190 is amended to read:

14 Sec. 14.40.190. REPORT TO LEGISLATURE. The Board of Regents shall  
15 make a written report to the legislature at the beginning of each first [ITS] regular  
16 session [SESSIONS] of the condition of the university property, of all receipts and  
17 expenditures, including [BUT NOT LIMITED TO] the administration and disposition  
18 of appropriated and restricted funds, and of the educational and other work performed  
19 during the preceding two fiscal years.

20 \* Sec. 4. AS 15.13.040(f) is amended to read:

21 (f) During each year in which an election occurs, all businesses, persons, or  
22 groups that [WHICH] furnish any of the following services, facilities, or supplies to  
23 a candidate or group shall maintain a record of each transaction: newspapers, radio,  
24 television, advertising, advertising agency services, accounting, billboards, printing,  
25 secretarial, public opinion polls, or research and professional campaign consultation  
26 or management, media production or preparation, or computer services. The records  
27 shall be maintained on the forms provided and in the manner required by the  
28 commission. Within 30 days after each election, the [THE] supplier shall file with  
29 the commission a report of the complete record of each transaction with all candidates  
30 or groups to whom the supplier provides services, facilities or supplies in excess of  
31 \$250 in the aggregate [IN ACCORDANCE WITH AS 15.13.110]. All records shall

1 be available for public inspection.

2 \* Sec. 5. AS 15.13.125 is amended to read:

3 Sec. 15.13.125. CIVIL PENALTY: LATE FILING OF REQUIRED  
4 REPORTS. A person who fails to file a properly completed and certified report within  
5 the time required by AS 15.13.040(f) or 15.13.110(a)(1), (3), or (4)  
6 [AS 15.13.110(a)(1), (3), (4) OR 15.13.110(d)] is subject to a civil penalty of not more  
7 than \$10 a day for each day the delinquency continues as determined by the  
8 commission subject to right of appeal to the superior court. A person who fails to file  
9 a properly completed and certified report within the time required by  
10 AS 15.13.110(a)(2) or 15.13.110(b) is subject to a civil penalty of not more than \$50  
11 a day for each day the delinquency continues as determined by the commission subject  
12 to right of appeal to the superior court. An affidavit stating facts in mitigation may  
13 be submitted to the commission by a person against whom a civil penalty is assessed.  
14 However, the imposition of the penalties prescribed in this section or in AS 15.13.120  
15 does not excuse that person from filing reports required by this chapter.

16 \* Sec. 6. AS 16.05.130(b) is amended to read:

17 (b) Money accruing to the state from waterfowl conservation tag fees from  
18 hunters may not be diverted to a purpose other than (1) the conservation and  
19 enhancement of waterfowl; (2) the acquisition, by lease or otherwise, of wetlands that  
20 are important for waterfowl and public use of waterfowl in the state; (3) waterfowl  
21 related projects approved by the commissioner; (4) the administration of the waterfowl  
22 conservation program; and (5) emergencies in the state as determined by the governor.  
23 The department shall maintain a state waterfowl tag fee account within the fish and  
24 game fund to permit separate accounting records for the receipt and expenditure of  
25 money derived from the sale of waterfowl tags. The department shall report before  
26 [PRIOR TO] April 15 of each even-numbered year [ANNUALLY] to the public and  
27 the legislature on the use of money derived from waterfowl conservation tags and  
28 limited edition prints.

29 \* Sec. 7. AS 16.05.825(c) is amended to read:

30 (c) The department shall employ a method of tagging game birds released  
31 under this section and [,] compile harvest statistics [, AND REPORT ITS RESULTS

1 AND FINDINGS TO THE LEGISLATURE ANNUALLY].

2 \* Sec. 8. AS 18.65.260(a) is amended to read:

3 (a) The council may accept donations of property, both real and personal, and  
4 grants of money from a governmental unit or public agency, or from an institution or  
5 person. [AN ARRANGEMENT MADE UNDER THIS SECTION SHALL BE  
6 DETAILED IN THE ANNUAL REPORT OF THE COUNCIL. THE REPORT MUST  
7 INCLUDE THE IDENTITY OF THE DONOR, THE NATURE OF THE  
8 TRANSACTION, AND THE CONDITIONS OF THE GRANT, IF ANY.] All money  
9 received by the council under this section shall be deposited in the state treasury to the  
10 account of the council.

11 \* Sec. 9. AS 18.67.170 is amended to read:

12 Sec. 18.67.170. REPORTS. The board shall prepare and transmit to the  
13 governor and legislature, in each odd-numbered year, a biennial [ANNUALLY A]  
14 report of its activities under this chapter including a brief description of the facts in  
15 each case and the amount of compensation awarded during the preceding two-year  
16 period.

17 \* Sec. 10. AS 21.89.070(b) is amended to read:

18 (b) [BY SEPTEMBER 30 OF EACH YEAR, THE DEPARTMENT OF  
19 COMMERCE AND ECONOMIC DEVELOPMENT SHALL REPORT TO THE  
20 LEGISLATIVE BUDGET AND AUDIT COMMITTEE ON THE CREDITS TAKEN  
21 DURING THE PRECEDING STATE FISCAL YEAR UNDER THIS SECTION.]  
22 Each public college and university shall include in its annual operating budget request  
23 contributions received and how the contributions were used.

24 \* Sec. 11. AS 24.45.031(a) is amended to read:

25 (a) In addition to its other duties under this chapter, the commission shall  
26 (1) prescribe the forms for registration, reports, statements, notices, and  
27 other documents required by this chapter;  
28 (2) prepare and publish instructions setting out the methods of  
29 accounting, bookkeeping, and preservation of records required to facilitate compliance  
30 with and enforcement of this chapter and explaining the duties of persons subject to  
31 the provisions of this chapter; the instructions shall be updated periodically;

1 (3) provide assistance to persons in complying with the provisions of  
2 this chapter;

3 (4) prepare and publish a biennial [AN ANNUAL] report of its  
4 activities, findings, and recommendations under this chapter, which shall be made  
5 available to the governor, legislature, and to the public by February 1 of each odd-  
6 numbered calendar year;

7 (5) report suspected violations of this chapter to the attorney general.

8 \* Sec. 12. AS 26.10.010 is amended to read:

9 Sec. 26.10.010. REGULATIONS [AND REPORTS]. The Department of  
10 Military and Veterans' Affairs shall adopt regulations necessary to carry out the  
11 purposes of this chapter. [THE DEPARTMENT SHALL SUBMIT A REPORT OF  
12 ITS ACTIVITIES RELATING TO VETERANS SERVICES FOR THE PRECEDING  
13 YEAR TO THE GOVERNOR BEFORE JANUARY 15 OF EACH YEAR.]

14 \* Sec. 13. AS 37.05.210 is amended to read:

15 Sec. 37.05.210. FISCAL REPORTING AND STATISTICS. The Department  
16 of Administration shall

17 (1) [REPEALED

18 (2)] file with the governor and with the legislative auditor before  
19 December [OCTOBER] 16 a report of the financial transactions of the preceding fiscal  
20 year and of the financial condition of the state as of the end of that year, prepared in  
21 accordance with generally accepted accounting principles and audited by the  
22 legislative auditor in accordance with generally accepted audit standards, with  
23 comments and supplementary data that the Department of Administration [IT]  
24 considers necessary; this report shall be printed for the information of the legislature  
25 and the public;

26 (2) [(3)] compile statistics necessary for the budget and other statistics  
27 required by the governor.

28 \* Sec. 14. AS 37.17.090(j) is amended to read:

29 (j) The board of directors shall provide a written report of its activities and  
30 finances for the previous state fiscal year to the governor and the legislature no later  
31 than December 16 [JANUARY 30] each year.

1 \* Sec. 15. AS 39.25.195(h) is amended to read:

2 (h) [THE DIRECTOR SHALL PRESENT A REPORT ON  
3 NONPERMANENT AND EMERGENCY HIRE PRACTICES IN STATE  
4 GOVERNMENT TO THE LEGISLATURE WITHIN THE FIRST 10 DAYS OF  
5 EACH REGULAR LEGISLATIVE SESSION.] A hiring department or agency shall  
6 certify to the director within 15 working days following the appointment its reasons  
7 for appointing an emergency employee. [THE REPORT SHALL INCLUDE  
8 INFORMATION ON THE NUMBER OF NONPERMANENT EMPLOYEES  
9 AUTHORIZED UNDER THIS SECTION AND THE NUMBER OF EMERGENCY  
10 EMPLOYEES HIRED IN EACH DEPARTMENT, A DESCRIPTION OF THE  
11 PROCEDURES USED IN AUTHORIZING THE HIRING OF NONPERMANENT  
12 EMPLOYEES, AND ANY RECOMMENDATIONS FOR LEGISLATION REQUIRED  
13 TO IMPLEMENT THE INTENT OF THIS SECTION.]

DELETED

14 \* Sec. 16. AS 41.15.240 is amended to read:

15 Sec. 41.15.240. RECORDS OF FIRE SUPPRESSION FUND. The department  
16 shall maintain accounting records showing the income and expenses of the fire  
17 suppression fund. [THE DEPARTMENT SHALL SUBMIT A REPORT ON THE  
18 OPERATION OF THE FUND TO THE GOVERNOR AND THE LEGISLATURE NO  
19 LATER THAN THE 10TH DAY OF EACH REGULAR SESSION OF THE  
20 LEGISLATURE.]

21 \* Sec. 17. AS 43.20.014(c) is amended to read:

22 (c) [BY SEPTEMBER 30 OF EACH YEAR, THE DEPARTMENT SHALL  
23 REPORT TO THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE ON THE  
24 CREDITS TAKEN UNDER THIS SECTION.] Each public college and university  
25 shall include in its annual operating budget request contributions received and how the  
26 contributions were used.

27 \* Sec. 18. AS 43.55.019(c) is amended to read:

28 (c) [BY SEPTEMBER 30 OF EACH YEAR, THE DEPARTMENT OF  
29 REVENUE SHALL REPORT TO THE LEGISLATIVE BUDGET AND AUDIT  
30 COMMITTEE ON THE CREDITS TAKEN UNDER THIS SECTION.] Each public  
31 college and university shall include in its annual operating budget request contributions

1 received and how the contributions were used.

2 \* Sec. 19. AS 43.56.018(c) is amended to read:

3 (c) [BY SEPTEMBER 30 OF EACH YEAR, THE DEPARTMENT SHALL  
4 REPORT TO THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE ON THE  
5 CREDITS TAKEN UNDER THIS SECTION.] Each public college and university  
6 shall include in its annual operating budget request contributions received and how the  
7 contributions were used.

8 \* Sec. 20. AS 43.65.018(c) is amended to read:

9 (c) [BY SEPTEMBER 30 OF EACH YEAR, THE DEPARTMENT SHALL  
10 REPORT TO THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE ON THE  
11 CREDITS TAKEN UNDER THIS SECTION.] Each public college and university  
12 shall include in its annual operating budget request contributions received and how the  
13 contributions were used.

14 \* Sec. 21. AS 43.75.018(c) is amended to read:

15 (c) [BY SEPTEMBER 30 OF EACH YEAR, THE DEPARTMENT SHALL  
16 REPORT TO THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE ON THE  
17 CREDITS TAKEN UNDER THIS SECTION.] Each public college and university  
18 shall include in its annual operating budget request contributions received and how the  
19 contributions were used.

20 \* Sec. 22. AS 44.19.035 is amended to read:

21 Sec. 44.19.035. JONES ACT REPEAL. The governor shall use best efforts  
22 and all appropriate means to persuade the United States Congress to repeal 46 U.S.C.  
23 861, et seq., known as the Jones Act. [UNTIL THAT ACT IS REPEALED, THE  
24 GOVERNOR SHALL PUBLISH AN ANNUAL REPORT DOCUMENTING THE  
25 HARMFUL EFFECTS OF THE ACT ON ALASKA COMMERCE, AND PROGRESS  
26 MADE TOWARDS ITS REPEAL. THE REPORT SHALL BE SUBMITTED TO  
27 THE LEGISLATURE NO LATER THAN ITS CONVENING EACH YEAR.]

28 \* Sec. 23. AS 44.19.185 is amended to read:

29 Sec. 44.19.185. ADMINISTRATION. The chairman shall call meetings of the  
30 commission and formulate rules of procedure for the meetings. The chairman may  
31 request the governor to delegate to administrative departments of the state the duties

1 and functions necessary or desirable in the gathering and compilation of information  
2 for the commission, for the implementation of resolutions adopted by the commission,  
3 and for the other purposes consistent with the intent of AS 44.19.181 - 44.19.187  
4 [AS 44.19.181 - 44.19.188].

5 \* Sec. 24. AS 44.19.187 is amended to read:

6 Sec. 44.19.187. EXPENDITURES. The commission may expend appropriated  
7 funds for any purpose not inconsistent with the intent of AS 44.19.181 - 44.19.187  
8 [AS 44.19.181 - 44.19.188], including [, BUT NOT LIMITED TO,] expenditures for  
9 feasibility studies by private firms.

10 \* Sec. 25. AS 44.21.315(c) is amended to read:

11 (c) The department shall study, plan, and develop integrated instructional  
12 telecommunications services for all residents of the state [, AND SHALL ANNUALLY  
13 REPORT ON INSTRUCTIONAL TELECOMMUNICATIONS ACTIVITIES FOR  
14 THE CURRENT AND PREVIOUS FISCAL YEAR] and, after public hearings, submit  
15 to the governor and the legislature an annually updated long-term development plan  
16 prepared in consultation with the Department of Education, the University of Alaska,  
17 local school districts, and other local and regional education areas.

18 \* Sec. 26. AS 44.21.320(e) is amended to read:

19 (e) Nothing in AS 44.21.305 - 44.21.330 prohibits a state agency from  
20 developing telecommunications systems within its own agency if the agency is in  
21 compliance with the state information systems plan adopted by the  
22 Telecommunications Information Council and with the agency's own information  
23 systems plan and if the commissioner gives written authorization for the agency to  
24 engage in its own design, development, management, or operation. The commissioner  
25 may authorize independent development only upon a showing of necessity. [A  
26 DESCRIPTION OF ALL AUTHORIZATION UNDER THIS SUBSECTION MUST  
27 BE INCLUDED IN THE BIENNIAL REPORT REQUIRED UNDER  
28 AS 44.21.310(a)(2).]

29 \* Sec. 27. AS 44.42.065(a) is amended to read:

30 (a) The department shall, as soon as practicable after July 1, 1980, and at least  
31 once every seven years thereafter, perform an energy audit of each public building.

1 [A REPORT OF THE RESULTS OF THE ENERGY AUDITS PERFORMED  
2 DURING THE PRECEDING YEAR SHALL BE SUBMITTED TO THE  
3 LEGISLATURE NOT LATER THAN FEBRUARY 1 OF EACH YEAR.]

4 \* Sec. 28. AS 44.42.065(b) is amended to read:

5 (b) The department shall include in each energy audit [THE REPORT]  
6 required by [IN] (a) of this section recommendations for corrective measures to  
7 improve the energy efficiency and to minimize the life-cycle cost of the public  
8 building [BUILDINGS] surveyed. These measures may include (1) energy  
9 conservation measures, (2) measures involving solar technology and other alternative  
10 energy systems, (3) energy management, and (4) maintenance and operating procedures  
11 and energy-related modifications. In recommending the corrective measures, the  
12 department shall give priority to changes in maintenance and operating procedures over  
13 measures requiring substantial structural modification or installation of equipment.

14 \* Sec. 29. AS 44.68.240 is amended to read:

15 Sec. 44.68.240. RECORDS OF FUND. The Department of Transportation and  
16 Public Facilities shall maintain cost accounting records showing the income and  
17 expenses of the highways equipment working capital fund. [THE DEPARTMENT  
18 SHALL SUBMIT A REPORT ON THE OPERATION OF THE FUND TO THE  
19 GOVERNOR AND THE LEGISLATURE AT THE TIME OF SUBMISSION OF THE  
20 DEPARTMENTAL BUDGET.]

21 \* Sec. 30. AS 46.03.020(11) is amended to read:

22 (11) after consultation with other state agencies and local government  
23 officials, identify and propose for addition or deletion, by regulation, other licenses,  
24 permits, or authorizations for which the provisions of AS 46.35 are applicable [, AND  
25 REPORT ANNUALLY TO THE LEGISLATURE THE PERMITS THAT HAVE  
26 BEEN INCLUDED OR DELETED];

27 \* Sec. 31. AS 46.03.032(k) is amended to read:

28 (k) The department shall prepare reports required by the federal government  
29 in conjunction with federal capitalization grant award conditions. The department shall  
30 also provide the Alaska legislature with a biennial [AN ANNUAL] report on the  
31 Alaska clean water fund on or before the first day of each first regular