

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8826 SENATE COMMUNITY & REGIONAL AFFAIRS



*Tom K - prepare a report on this
my sig.*

520 East 34th Avenue
Anchorage, AK 99503
(907) 561-1900
P.O. Box 101020
Anchorage, AK 99510

May 22, 1991

RECEIVED
MAY 23 1991

Mr. Ross Dunfee
Municipal Engineer
Municipality of Anchorage
P.O. Box 196650
Anchorage, AK 99519-6650

OFFICE OF THE MUNICIPAL ENGINEER
MUNICIPALITY OF ANCHORAGE

RE: Rabbit Creek Heights and Rabbit Creek View Subdivisions

Dear Mr. Dunfee:

Mr. Knox's letter of April 10, 1991 (enclosed) to AHFC regarding the survey problems in the above referenced subdivisions reflects that the Municipality has no legal right or obligation to solve the problems. Further, it is stated that all homeowners in the subdivision would have to agree to a replat.

Alaska Housing Finance Corporation as well as other lenders, investors and relocation companies in the community are extremely concerned about the effect these survey problems will have on the availability of future mortgage financing in the area as well as the financial impact to current lot and home owners in these subdivision.

In view of the serious nature of the survey deficiencies, AHFC is requesting your help in any way possible to assist in resolving this problem.

Is it possible for the Municipality to obtain a court order to replat?

Can you estimate when public water and sewer will be available to these subdivisions? And would the installation of these public utilities necessitate an accurate replat?

Will the Municipality issue building permits in these subdivisions?

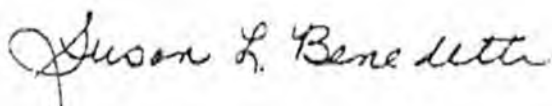
Can you ascertain at this time what percentage of lots would be affected by a replat and would only certain portions of the subdivisions be affected - i.e. say lots near the greenbelt, lots at the perimeter, etc.

Issue\sb9140

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	MAIL SER.	MAIL BACK	
SIGN	TJK.	R	
DATE	6/10/91	6/10	
ATTACHMENTS:	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	#:

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

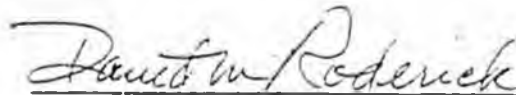
1. AS 08.48.111(2) states that "the Board may suspend, refuse to renew, or revoke the certificate of or reprimand a registrant or corporation who is found guilty of... (2) gross negligence, incompetence, or misconduct in the practice of architecture, engineering, or land surveying;"
2. AS 08.01.075(a) 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.

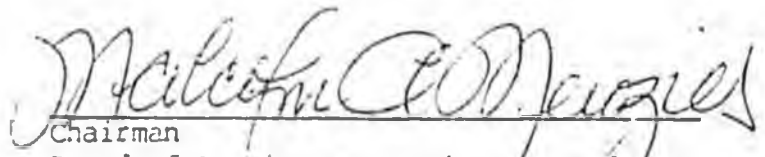


David M. Roderick
Administrative Hearing Officer

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

Municipality of Anchorage

MEMORANDUM

CONFIDENTIAL

LAWYER - CLIENT COMMUNICATION

DATE: October 15, 1985

TO: Robbie Robinson, Manager, Environmental Health Division

THRU: Patty Ginsburg, Special Assistant to the Director

FROM: Ronald L. Baird, Assistant Municipal Attorney *RLB*

SUBJECT: Opinion request of July 25, 1985 Re: Rabbit Creek Heights/View Subdivision

Your request for opinion of the above-referenced date directed to Mike Marsh has been referred to me as the Assistant Municipal Attorney dealing with land matters. The issue which you raise is which of several possible potential surveys of these subdivisions should be used for purposes of issuing on-site sewer and well permits.

It is my understanding that plats for these subdivisions were recorded in 1970. Both plats contain significant survey errors to the extent that conflicting descriptions can be given for the same lot based on either the monuments in place or the information on the survey plat and that described lot areas overlap.

It is clear that accurate descriptions of the physical location of well and septic systems can be reasonably required in connection with your permitting activities pursuant to AMC 15.55 and 15.65. Correct location of water wells and septic systems is probably critical to the safe and efficient operation of well and septic systems which is one goal of these two sections. Since we now know that the survey information in the two described subdivisions is inaccurate, the Municipality can lawfully insist upon an accurate survey before granting permits for water wells or septic systems under these two sections of the Municipal Code.

I have been unable to find any provision in ordinance or statute creating a public duty of the Municipality to survey private lands. The platting regulations appear to contemplate that any survey work done would be at the expense and direction of the subdivider. See AMC 21.75 and 21.80. While it might be argued that the Municipality incurred liability by negligently approving erroneous plats for these two subdivisions, the statute of limitations for any claims arising from such negligence is two years and has probably long since run. See A.S. § 09.10.070. Even if the statute had not run, a Municipally sponsored and financed survey would not necessarily eliminate the Municipality's exposure to claims arising from the erroneous approval of the plats.

Any new survey conducted by the Municipality or any private party will not resolve the potentially conflicting property rights of homeowners within these subdivisions. Many of these homeowners

October 15, 1985
Page 2

undoubtedly purchased property described by reference to the erroneous surveys and have owned the property pursuant to deeds utilizing these surveys for more than seven years. There is a high probability, under such circumstances, that rights to the real property have vested by virtue of adverse possession. See A.S. § 09.25.050: Frankly, given the circumstances you have described, the potential of conflicting claims among property owners within the subdivisions creates a real mess.

The solutions for the homeowners will undoubtedly involve significant expense to them. First, if all property owners within the subdivision, together with any holders of liens or encumbrances of any of the lots within property and the Municipality of Anchorage can all consent to a replat of the subdivision, then, that replat would be binding on all parties, and would certainly be a sound basis for the issue of well and septic permits. The difficulty with this procedure is that it would require the consent and cooperation of all property and lien holders. Second, the property owners could individually or collectively bring actions in the Superior Court to quiet title to their individual lots, A.S. § 09.45.010 or actions to establish boundaries, A.S. § 09.45.020 or some combination thereof. A judicial determination entered at the conclusion of such an action would finally and forever resolve issues as to lot boundaries. Third, some combination of a replat and law suit might be possible if there are "hold-outs" from participating in a replat process. Such hold-outs could be made defendants in a quiet title action brought by the other homeowners.

In summary, I believe you may lawfully insist on an accurate survey as a condition to issuance of well and septic permits pursuant to the above-referenced sections of the Anchorage Municipal Code. Given the known inaccuracies of the survey on which the existing subdivisions are based, and the grossness of errors, you need not accept as-built surveys which are based upon either the lot corners set in the field or the filed survey information. Finally, a simple resurvey of the subdivisions will not resolve questions regarding the location of the lots which will be binding on parties and therefore will not be a more accurate basis upon which to issue well and septic permits. The choice of remedy of the land owner as to how to resolve this issue is something for them to pursue among themselves with the advice of a common or individual legal counsel.

RLB:slk

Municipality of Anchorage

MEMORANDUM

JUL 26 1985

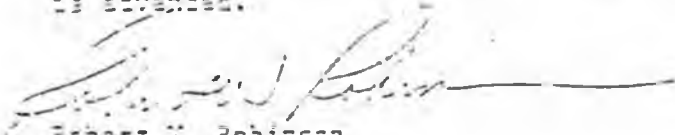
DATE: July 25, 1985
TO: Mike Marsh, Municipal Attorney
FROM: Robert W. Robinson, Division Manager, Environmental Health
THRU: Jewel Jones, Director, Department of Health and Human Services
SUBJECT: On site sewer/well permits for Rabbit Creek Heights/View Subdivision

Approximately two years ago this department became aware of certain inconsistencies in surveys for the above subdivisions. In some cases the platted survey varied from the actual survey as much as 40 to 50 feet. When this discrepancy was discovered, I immediately began requiring a new as-built survey prior to granting an on site sewer/well permit. Permits were then written for the lot area encompassed in the new survey.

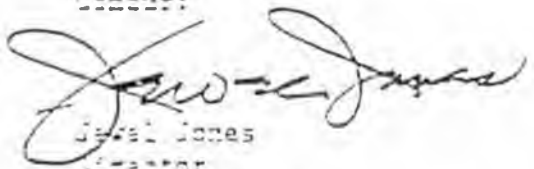
Recently we discussed this practice with the Municipal Surveyor, Ed Tucker. As you can see from the attached copy of his memo, he disagrees with our approach.

I would appreciate a legal opinion on our responsibilities in this regard and a recommendation of what survey should be used. If existing corners can be found it would be no problem to design a system within said boundaries. However, in cases where no corner markers can be found, which survey is to be used?

We are suspending issuance of permits in these subdivisions until a legal opinion is advanced.


Robert W. Robinson
Division Manager

Concurs:


Jewel Jones
Director
Department of Health and
Human Services

RWR:pat

Attached: 1

referred to Mike Marsh 9/13/85

MUNICIPALITY OF ANCHORAGE

MEMORANDUM

JUN 6 1985

RECEIVED

DATE: June 6, 1985

TO: Environmental Engineering Manager, Robert W. Robinson

FROM: DEW, Engineering Division, Municipal Surveyor,
Ed Tucker, L.S.

SUBJECT: RABBIT CREEK VIEW/HEIGHTS SUBDIVISIONS

Per our meeting of May 3, 1985 at your office on subject subdivisions and their ilk regarding acceptable plot plans or as-built surveys, I offer the following:

1. Although you or I and our respective agencies may refuse to hire or contract with Mr. William E. Johnson, until his license is suspended or revoked, we probably cannot refuse to accept his seal on work performed for private citizens. We should scrutinize it closely, however. This is probably a moot point, as I seriously doubt that he will risk showing up in these parts voluntarily.
2. Until a complete retracement of subject subdivisions is accomplished, there can be no certainty as to the location of the errors or whether they fall in one area or are distributed proportionally throughout. Therefore, ties to perimeter boundaries when in conflict with corners found on individual interior lots merely add to the confusion, as one must decide which perimeter boundary to use. Each (north, south, east, or west) boundary may place the location in a totally new and conflicting place. When existing original corners can be found, I would recommend that they be accepted in place. This satisfies the legal tenant that the buyer bought and the seller sold in good faith, based upon those corners. Also, State Statute Section 09.25.040 (1) through (6) spells out the order of importance and "rules for construing the descriptive part of a conveyance of real property when the construction is doubtful and there are no other sufficient circumstances to determine it." Basically, it says that monuments (found corners) are paramount.

Hopefully, this will help rather than confuse the continuing saga of the infamous Rabbit Creek Heights/View Subdivisions.

ET/cjk
2/ew/et38

cc: Municipal Engineer

Mike ~

This problem continues to resurface, and it is compounding itself with each lot that is sold and developed. In the last several days there have been numerous calls wanting to know why the unsuspecting owner, having purchased a lot in a Municipal approved and recorded subdivision must now spend several thousand dollars having the lot resurveyed. Yesterday, there was a permit requested for an "on-site" sewer permit, and the recent survey showed the lot corners to be approximately 40' off. These people now indicate that they are in the process of initiating a class action suit against the Municipality, Public Works, Municipal Engineer, and the Municipal Surveyor - Thought you should know

Cathy

RECEIVED

MAY 23 1985


OFFICE OF THE MUNICIPAL ENGINEER
MUNICIPALITY OF ANCHORAGE

Municipality of Anchorage

MEMORANDUM

DATE: November 28, 1984

TO: Lon Mesloh, Street Maintenance Division, Public Works

FROM: David G. Berry, Assistant Municipal Attorney 

SUBJECT: Rabbit Creek Heights & Rabbit Creek View Subdivision

Problem Background:

In 1970 subdivision plats were filed for Rabbit Creek View Subdivision and Rabbit Creek Heights Subdivision, located in a relatively remote area of south Anchorage in the foothills above Turnagain Arm. Sometime subsequent to 1970, it was discovered by property owners that the various lots and blocks as laid out and staked on the ground did not match the recorded plats. It became apparent that the surveyor, William E. Johnson, had made a number of significant errors in surveying and drafting the plats.

The two affected subdivisions are within the Rabbit Creek Limited Road Service Area. In the summer of 1984, a contractor for the Street Maintenance Division was clearing or upgrading drainage ditches along the roads in the subdivisions and was apparently stopped by a property owner who claimed a ditch was encroaching on her private property. Street Maintenance Division requested the Survey Section check to determine if the road rights-of-way were correctly located. The Survey Section began a survey of the rights-of-way, and before long discovered substantial (as much as 28 feet) discrepancies between the platted lots and rights-of-way and the actual ground locations of existing monuments and corner stakes. Because of the discrepancies, the survey crew terminated their survey. The Street Maintenance Division did not complete the drainage ditch clearing and apparently because of this, there is now a drainage problem causing hazardous glaciation across a roadway.

Discussion:

It is apparent from the above that the plats filed for the affected subdivisions do not accurately reflect the various lot lines as originally laid out by the surveyor. The problem to be resolved then is which takes precedence - the lot lines and rights-of-way as set forth in the recorded plat, or the lot lines and rights-of-way as laid out and staked on the ground?

November 28, 1984

Page 2

A plat, or plat map, is in fact a representation in map form of how a tract of land is divided into lots, blocks, etc. The plat map itself does not "create" the boundary lines which are shown on it. The purpose of the plat is to show in written, documented form what exists on the ground. Procedurally, the surveyor or subdivider initially lays out, or stakes, the pertinent boundary lines on the ground and then drafts a plat map to show what has been done. A plat map is in fact a form of written description of property. Where there is a discrepancy between the actual boundary line as laid out and the written description of it, the location of the actual line will normally prevail.

As noted in 12 Am Jur, Boundaries, § 67:

. . . monuments are the best evidence of the lines and corners actually made by a survey, and when ascertained, are satisfactory and conclusive evidence of the location of the lines as originally run whether they correspond with a plat and field notes of survey or not.

And at § 71:

Although monuments set at the time of an original survey on the ground and named or referred to in the plat are the best evidence of the true line, if there are none such, then stakes actually set by the surveyor to indicate corners of lots or blocks or the lines of streets . . . are the next best evidence.

. . . .

In the event of a subsequent controversy, the question becomes not whether the stakes were located with absolute accuracy, but whether they were planted by authority and whether the lots were purchased and taken possession of in reliance upon them. If such was the case, the rule appears to be well established that they must govern notwithstanding any errors in locating them.

November 29, 1984

Page 3

This general rule is reflected in Alaska by A.S. § 09.25.040(2) which provides:

(2) When permanent and visible or ascertained boundaries or monuments are inconsistent with the measurement, either of lines, angles, or surfaces, the boundaries or monuments are paramount.

Thus the corner stakes of a lot, if placed by the surveyor and if intended to show the corners of the lot, will prevail over the written description or recorded map description. Price v. McIntosh, 2 Ak.Fed. 38, aff'd 121 F. 716 (9th Cir. 1903). Since the written descriptions are intended to describe the conditions on the ground, if they are incorrect, the written descriptions should be changed to accurately reflect the existing boundaries. It would be against all logic to try to change actual boundary lines to match the incorrect descriptions.

The above would indicate that, regardless of the descriptions and measurements on the recorded plat, the various lots, blocks and rights-of-way are as shown by the actual monuments and staking on the ground. Al Lahnum of the Survey Section of Public Works advises me that, to the best of his recollection, the survey work done last summer found that the roads were within the staked rights-of-way. If that is the case, then in my opinion we may properly treat the staked rights-of-way as correct. If a property owner objects, we need only to confirm that we are within the staked rights-of-way.

Even if the roads were constructed on private property, if they have been in existence for more than ten years, the public may have obtained prescriptive rights to the roads and ditches. To prevail in this instance would require information as to when the questioned roads were first constructed. I have checked with several sources, but to date have been unable to locate any records relating to the construction of these roads.

Recommendation:

In my opinion we have the right to rely on the existing ground staking to show that the roads are within the publicly dedicated rights-of-way. If a property owner wishes to challenge the location of the rights-of-way, we will defend based upon what I have stated above.

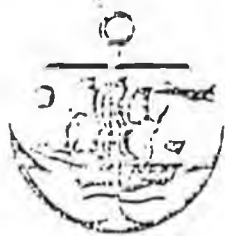
November 28, 1984
Page 4

If some of the drainage ditches are actually on private property and if some obstruction in the ditch is causing a road hazard, we should contact the property owner and demand that he correct the hazardous condition or allow us to do so. In any event, we should not ignore the hazardous condition, but should take immediate steps to remedy it.

DGR/kjw

cc: Jerry Weaver
 Platting Officer
 Al Lahnum
 Survey Section

Municipality
of
Anchorage



PHONE 9-650
ANCHORAGE, ALASKA 99502-0650
CITY 282-1111

DEPARTMENT OF HEALTH AND ENVIRONMENTAL PROTECTION

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, 1981

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



5-24-85 9:30 from Ed. J.
MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 165-83

RECEIVED
OCT 29 1983

Municipal Attorney
DM

Meeting Date: November 22, 1983

From: Jerry Wertzbaugher, Municipal Attorney
Subject: Rabbit Creek Heights and Rabbit Creek View Subdivisions

A. FACTUAL BACKGROUND

In June and December 1970, a state licensed professional surveyor named William E. Johnson, now reportedly working in Wasilla, Alaska, filed plats with the Greater Anchorage Area Borough for the Rabbit Creek Heights and Rabbit Creek View Subdivisions. The subdivisions, as platted, contain approximately three hundred forty-six (346) lots.

The owners of the subdivided tracts were George S. Wilson, William R. Wilson, Alta C. Wilson and the National Bank of Anchorage. Much of the property has since been sold to a variety of individuals. Between 1970 and 1983, approximately 72 structures have been placed in the two subdivisions. (Municipal tax records 1983). The assessed value of the buildings range from \$3,000.00 to \$134,000.00. (Municipal tax records 1983). The assessed value of the underlying lots range from \$7,700.00 to \$26,000.00. Most single lots are valued at \$8,000.00-\$9,000.00. (Municipal tax records 1983).

The subdividers currently retain title collectively to Rabbit Creek View, Block 1, Tract B, (valued at \$141,000.00). William R. Wilson owns Block 4, Lots 1, 2, 3, 5; and Block 2, Lot 6 valued at \$200,000.00, including improvements to Block 2, Lot 6. Alta Wilson holds title to Rabbit Creek View, Tract A, valued at \$152,000.00 including a structure on the property. Other relatives of the Wilsons own additional lots. (Municipal tax records 1983).

In the fall of 1982 and spring of 1983, several lot owners within the subdivisions discovered that their platted property lines did not correspond to known monuments. The facts were reported to the Municipal Engineer. The Municipal Engineer informed the Public Works, Planning and Health Departments of the existence of the alleged survey errors.¹

¹Prior to unification, individuals in the City Engineer's Office became aware of problems associated with survey work done by Mr. Johnson in various areas of the Municipality and efforts

The Municipal Health Department, upon request, issues certificates of compliance with the well and sewer ordinances prior to new construction or transfers.² As a result of reports of widespread lot line discrepancies, the Municipal Health Department began to require certified plot plans prior to issuing certificates. These individual plot plans cost approximately Three to Four Thousand Dollars (\$3,000.00-\$4,000.00) each, according to Municipal health officials.

Some of the lot owners in Rabbit Creek Heights and Rabbit Creek View want the Municipality to pay for an entire resurvey, replat and resubdivision of both subdivisions. While the cost of such a project is difficult to estimate, the Municipal Surveyor's Office suggests that the survey and replat alone would cost between \$50,000.00 and \$100,000.00. This amount does not include such contingencies as might occur from total or partial losses of one or more lots or buildings as a result of the resubdivision. Damages resulting from a resubdivision could be enormous in the event that valuable improvements must be abandoned or removed.

B. CAUSE OF THE PROBLEM

The cause of the problem is the survey conducted by William E. Johnson. Mr. Johnson performed a survey and drafted and filed a plat with the Greater Anchorage Area Borough which allegedly does not correspond to known monuments. The Wilsons, presumably with warranties of good title, then sold the lots to individuals who presumably purchased title insurance. The discrepancies appear to be significant and may affect all 346 lots in the subdivision.

C. THE MUNICIPALITY IS AN INAPPROPRIATE AGENCY TO ACCOMPLISH A RESUBDIVISION

Under existing law, the Municipality has no power to compel agreement to a new plat and is forbidden from accepting

were made to encourage the State to revoke his license. The State took no action.

²The Municipal Health Department furnishes compliance certificates for water wells and septic systems as a courtesy to financial

a replat unless all affected property owners consent. It would thus be useless to expend municipal funds for a replat unless and until all lot owners (including security interests) agreed in advance in writing to abide by the results and sign the replat. It is highly unlikely that such concurrence could be obtained given the fact that some lot owners could be severely damaged by the replatting action. If the Municipality were to volunteer to fund individual lot surveys as requested by some lot owners, the final costs could exceed one million dollars at \$3,000.00 per survey. Moreover, individual lot surveys may merely exacerbate the problem (see below). It is unlikely that the Municipality could bring a legal action, on behalf of some lot owners, for a judicial determination of lot lines. To demonstrate standing to litigate, the Municipality would be required to hold an adverse interest in each lot. State enabling legislation would be necessary to confer standing upon the Municipality or other parties having an interest in an accurate plat of the subdivision (see "Possible Remedies" below).

D. LEGAL RESPONSIBILITY FOR THE ALLEGEDLY DEFECTIVE SURVEY FILED IN 1970

The subdividers acting through William E. Johnson, filed the plats in 1970 under the laws of the Greater Anchorage Area Borough. Subdivision regulations then in effect were much less exacting than current municipal law. In fact, the "interim subdivision regulations" as they were known, did not require approvals from any particular department. Plats were accepted unless there were objections from "public agencies." Nor did the regulations compel any department to conduct inspections or compel production of survey notes and calculations of the surveyor to insure that internal dimensions and boundaries of the plat were accurately drawn. Finally, no Borough agency was funded to provide inspectors to do field checks to determine if monumentation was accurate. Under these circumstances, it is very clear that the Municipality is not legally responsible for the errors of the subdividers or their surveyor. The possible liability of the

Institutions. This practice is not required under municipal law. The Legal Department has advised that the practice may be terminated.

subdividers, their surveyor, title insurance companies and others is a matter upon which municipal officials should not speculate.

E. POSSIBLE REMEDIES

The continued practice of obtaining individual as-built or plot surveys from known monuments will enable some lot owners to gain a degree of temporary certainty about the location of their individual lots. In the long run, however, individual lot surveys may have the effect of compounding the problems of an equitable replat, since each lot surveyed will affect those on its borders, as well as outlying lots. This "ripple" effect is not addressed by individually surveyed lots, and disputes at a later time are inevitable. The better solution would be a comprehensive replat of both subdivisions imposed under judicial authority and conducted under specified standards of equity. As noted above, state-enabling legislation would be required to give Anchorage and other municipalities the power to proceed to replat properties and obtain a judicial decree imposing the replat.

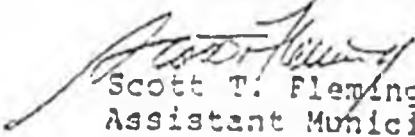
Many other states have special statutory proceedings for the ascertainment and settling of disputed boundaries. Some have provided for a summary proceeding before a court. Others have provided for commissions who are appointed upon the application of landowners. Such laws usually provide for the assessment of the cost of the work to the benefited property owners. The procedures must accord with the requirements of due process notice and the opportunity to be heard.

In 1966, the Alaska legislature passed a bill relating to the establishment of land boundaries affected by earthslides. The law authorized legal actions by municipalities to redraw lot lines to correct boundaries affected by earthquakes. After notice to lot owners and an opportunity to be heard, the Superior Court was empowered to confirm the new plat. While that law is not useful to resolving problems stemming from erroneous surveys, it does point the way to the ultimate solution. While such a law would not provide immediate relief to property owners, it is probably the only way to achieve a comprehensive solution. The Department of Law, if


Assembly Memorandum 83- _____
Page 3

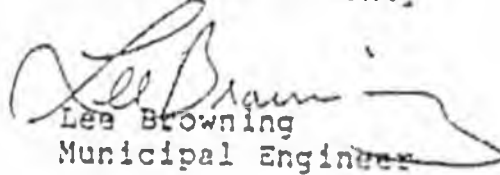
requested by the Assembly, could undertake the task of drafting a bill to be introduced to the legislature. While considerable resources would have to be devoted to drafting and lobbying this legislation and ultimately, in applying it to affected subdivisions, it would at least provide a framework for dealing with further problems in other areas unknown to be affected by facility surveys.

RECOMMENDED BY:

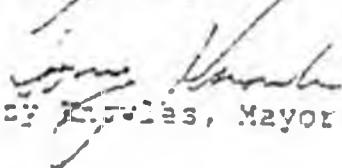

Scott T. Fleming
Assistant Municipal Attorney

CONCURRENCE:


Jerry Wertzbaugher
Municipal Attorney


Lee Browning
Municipal Engineer

Respectfully submitted,


Dory Morales, Mayor

WYMAN
& HAYES
ENGINEERS / PLANNERS / SURVEYORS

0000.0

January 28, 1974

City of Anchorage
P. O. Box 400
Anchorage, Alaska 99510

ATTN: Jack Stanley
City Surveyor

Dear Jack:

It has come to my attention that the City of Anchorage is in the process of recommending censure of William Johnson, surveyor, on the grounds of improper platting procedures.

I would like to bring to your attention some problems this firm has encountered in the past year. These problems are on the ground as well as in the plats.

William Johnson surveyed and platted Wynter Park Subdivision, in the Peters Creek area. The Borough recorded the plat and the owner retained this firm to locate and flag the street rights-of-way for clearing. In the process of accomplishing the work we discovered gross discrepancies between the plat and the ground survey.

The plat will not close, dimensions are missing and in error and the boundary is improperly delineated. The corners on the ground were as much as 30 feet in error and lot corners in some blocks were improperly marked or non-existent.

The above errors resulted in the entire subdivision being replatted and surveyed at considerable expense to the owner.

We had occasion to work in the portion of Hamilton Park replatted by Mr. Johnson near the New Seward Highway. The plat is in error and the ground dimensions differ by as much as 2 feet from the plat. The owner again had to spend considerable money to reconcile the problems.

TRYCK
NYMAN
& HAYES

Mr. Jack Stanley
January 28, 1974
0000.0

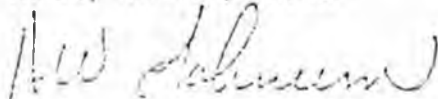
- 2 -

This firm is now refusing all requests for work in subdivisions done by Mr. Johnson because of the potential liability involved and the possibility of court action by the owners.

It is my opinion that involvement of Tryck, Nyman & Hayes in this type of action is not in the best interests of the firm or the clients. Furthermore, I feel the public agencies responsible for enforcement of the laws of the State and local government should take appropriate action to protect the public from improper actions and inform Mr. Johnson that he must comply with the professional requirements as established and for which he is licensed.

Very truly yours,

TRYCK, NYMAN & HAYES



A. W. Johnson
Chief of Surveys

AWJ:dec



TELECOPY COVER SHEET
Anchorage Legislative Information Office
Office - (907) 561-7007 Fax - (907) 562-4376

TO: Senator Jorgenson, Chair (S) C+RA

ATTN: _____ FAX: _____ PHONE: _____

FROM: Anch L10 - Written testimony PHONE: _____

INSTRUCTIONS: from Bob Kean who advised to
hear bill passed out.

SENT: Date 4/19 Time _____

DISPOSAL OF ORIGINAL: Discard _____ Hold for Pickup _____

NUMBER OF PAGES: 2 (counting cover sheet)

TRANSMITTED BY: Jen

RECEIVED
APR 19 1995
Ans'd.....

SENTEC

Surveying, Engineering and Planning
7801 E 36 th Ave, Suite A
Anchorage, Ak 99504

(907) 333-6881
Fax (907) 333-1085

April 17, 1995

Senator Steve Reiger
State Capital
Juneau, AK 99801

Re: SB 79- An Act relating to errors in surveys of land

Dear Senator Reiger,

I am a registered Land Surveyor, located in Anchorage and wish to inform you that I support your bill. I was a member of the ASPLS committee formed to review and comment on the original version of the Bill. I am also the ASPLS legislative committee chair. This letter represents my own views and not necessarily those of ASPLS.

As surveyors we are well aware of the problems associated with defective surveys. In many cases the existing Laws and Regulations are sufficient to allow a problem survey or subdivision to be corrected. This bill is designed to assist in the situation where the implementation of existing Laws would create more problems than solutions. This bill is an improvement over the initial bill, as it is removed from the confusion of the Earth Slide relief Act and also this draft clearly out lines the steps and procedures necessary to implement the bill. There are several areas in this draft which still require clarification. The first is in regards to the recordation of the replat. It is assumed that the Court through a judgment will instruct the local platting authority to accept the plat and record it. Secondly there is some confusion over the definition of Municipality, as used in this bill

Thank you for the opportunity to speak to this bill

SENTEC

Surveying, Engineering and Planning
7801 E 36 th Ave. Suite A
Anchorage, Ak 99504

(907) 333-6881
Fax (907) 333-1085

April 19, 1995

Senator Steve Rieger
State Capital
Juneau, AK 99801

Re: SB 79- An Act relating to errors in surveys of land

Dear Senator Rieger,

On April 17, 1995 I submitted a letter to your office in support of SB 79. In this letter I indicated two items that I felt needed clarification. Yesterday afternoon I spoke with Ann Ringstad with your office and reviewed my concerns. It appears that my questions are in fact answered in the content of the Bill.

With this I would like to offer my support to your bill. As I mentioned in my earlier letter I believe that this bill is necessary for the extreme case's where the implementation of existing Laws would create more problems than solutions.

Thank you for the opportunity to speak to this bill and I would be available for any questions you may have.

If you have any other questions please contact me.

Sincerely



Mike Home P.L.S



Alaska Section
AMERICAN CONGRESS ON SURVEYING AND MAPPING

Patrick H. Kalen, PLS
1041 Chena Ridge Rd.
Fairbanks, AK 99709

April 18, 1995

Ref: HB NO. 80
Hon. John Torgerson
State Capitol
Juneau, Alaska

Dear Senator Torgerson:

We are in general support of the concept of this legislation, as it is a subject on which the American Congress on Surveying and Mapping worked long and hard with other professional societies and affected state agencies over several years, 1988 to 1992.

We have come down to a problem over the definition of the word "subdivision" in the past. A bill in the 17th Legislature (SB 81, 4/5/81) was sponsored by a working group called the State Surveying and Mapping Advisory Board. The bill was held in 1992 at our request due to uncertainty over the meaning and application of this word. We have sought separate legislation to address the problem. (SB 211 in the 18th legislature.)

So it with some dismay, if not surprise, that we see attempts to make special new definitions for the word "subdivision" for the unorganized borough. Exemptions have crept into the definition. They apply to entities that do not enjoy exemptions in any platting jurisdiction in the rest of the state where the vast majority of platting activity takes place.

We do not believe that any exemptions are in order. Suggestions made by Ron Swanson in a letter to you dated April 7 go a long way toward alleviating our concern. It does contain an exemption for common carriers. Although we would like to see a uniform definition, we understand that the common carriers are things like the Tesoro pipeline and the Alyeska pipeline. They do not fall under the intent of subdivision ordinances, and have not been subject to platting jurisdictions they pass through. We endorse the bill strongly if the changes suggested by Mr. Swanson can be incorporated.

Sincerely,

A handwritten signature in dark ink, appearing to read "Patrick Kalen", is written over a horizontal line.

Patrick Kalen, Chairman of Legislative Affairs for ACSM

MUNICIPALITY OF ANCHORAGE
DEPARTMENT OF PUBLIC WORKS

FAX TRANSMISSION

IMPORTANT

DATE: 4/19/95

TO: ANN RINGSTAD
SENATOR RIESSER'S OFF.

FAX # 465-2069

FROM: TOM KNOX, MUNICIPAL SUPERVISOR
MUNICIPALITY OF ANCHORAGE

FAX # 562-5762

SUBJECT: SB 79 - MATSU BROUGH COMMENTS

COMMENTS: ANN SEE MY COMMENTS IN MARGINS

Total Pages (including cover sheet) 7

Sent by: Tom Knox

Phone No: 786-8116

RECEIVER: PLEASE DELIVER THIS FACSIMILE TRANSMISSION TO THE ABOVE ADDRESSEE. IF YOU DO NOT RECEIVE ALL OF THE PAGES IN GOOD CONDITION, PLEASE ADVISE THE SENDER AT YOUR EARLIEST CONVENIENCE. THANK YOU FOR YOUR ASSISTANCE.



MATANUSKA-SUSITNA BOROUGH

PUBLIC WORKS DEPARTMENT

350 East Delta Avenue, Palmer, Alaska 99645-8488

PHONE (907) 745-8801 * FAX (907) 745-8825

MEMORANDUM

*4/19/95
COMMENTS WRITTEN BY TOM KNOWLTON
MUNICIPALITY OF ANCHORAGE
MUNICIPAL SURVEYOR
TALK.*

DATE: April 14, 1995

TO: Alaska State Senate
Community and Regional Affairs Committee

FROM: George Strother, Engineering Division Manager *ged*

SUBJECT: CS SB79 Testimony
From April 12, 1995, 2:15 p.m.

At the end of my testimony the committee chairman requested a transcript of my comments. A tape was not made of my comments and the following is a paraphrasing of my comments on April 12th:

I am George Strother, the Engineering Division Manager of the Matanuska-Susitna Borough. I am a registered, professional civil engineer in Alaska and a registered, professional land surveyor. I have been practicing engineering about 25 years in Alaska and have been with the Matanuska-Susitna Borough in my current position for six years. I have been involved in the review of Senate Bill 79 since it came up to the Alaska Society of Professional Land Surveyors annual meeting in February of this year. The committee substitute is much better than the original bill, and I strongly urge that the original bill be trashed and forgotten. I understand that Anchorage has severe problems with Rabbit Creek Heights and Rabbit Creek Subdivisions. The Matanuska-Susitna Borough also has had problems with several erroneous plats within the Borough. We have many subdivisions with

anywhere from five to fifty foot errors that cannot be resolved on the paper plat, much less on the ground. We realize that Anchorage wants to have additional legislation specifically set up for two subdivisions in Anchorage, but everybody must realize that this is a statute that applies statewide and can effect all areas of the state and is not just for Anchorage. Comments on the previous version by the State Department of Natural Resources noted that AS 09.45.020 allows for quiet title court action for relief of disputed property lines. One of the comments made during the previous testimony was that the current statute does not easily allow for multiple property owner action. I suggest that a minor modification of the existing statute, that would allow easy class action law suit, could be an appropriate remedy rather than an entire new statute as is currently presented. In the Matanuska-Susitna Valley, the local survey chapter attempted to have a special assessment district formed for the Willwaw Subdivision and the Alaska Estates #2 Subdivisions in the early mid-1980s. The majority of property owners at that time would not sign a petition and the proposed survey plat correction died due to a lack of interest by the affected property owners. Current regulations allow local improvement districts to be formed without additional legislation. Special service areas are allowed to be set up to take on additional powers of authorities not granted to existing municipalities. This has happened often in the Matanuska-Susitna Borough for road powers, erosion powers, and fire service powers that are not currently assigned to this second class borough. The Cottonwood Shores Subdivision, between Palmer and Wasilla, is one example of an error subdivision where the original surveyor was released by the developer prior to completing the field survey, and unlicensed surveyors performed the final surveys much cheaper than the original licensed surveyor, but many of those corners were erroneously set. I did a survey while I was in the private sector for Representative Vlo Kuehnering and one of the lots that had errors of several and I recommended that he keep his

LEGISLATION
WISHES THIS
WAS COMPLETE
THAT

BEAUTY OF OUR
TOWN INSURES
AFFAIRS OF
BY OWNERS APPROVE
ASSESSMENT DISTRICT
BE A CLASS ACTION
TAKE PLACE

IS THE
ERN? (COURT)
ASSESSMENT DISTRICT
BT TAKE AN
IDUALS PRESENT
HTS AWAY?

ARE SEVERAL
 ITEMS HERE:
 THE ADJACENT
 OWNERS DON'T
 WANT TO SIGN QUIT
 DEEDS?
 IS THIS A PROTECTIVE
 MEASURE TO PARTIES
 DON'T
 CREATE IN ANY
 REPLAT?
 TO LAND LEFT IN
 ORIGINAL LOTS
 REAP OWNERS MAY
 BE OBTAINING A
 E OF PAPER.

houses in the middle of the lot. Many of the property owners in this subdivision have filed for replats of several grouped lots. Not all property owners have agreed to this but local, small replats have resolved portions of the plat. The Snyder Subdivision on the north side of Lake Lucille in Wasilla was a plat originally recorded by a mining surveyor in 1948. The paper plat cannot be mathematically closed as there is not enough bearings or distances on the face of the plat to compute where the lot should even be. We had a partial replat in the center of this plat. I had the adjacent property owners sign the quit claim deeds agreeing to the boundary lines of the replat. Then the people within the plat all signed the face of the plat, and quick claim deeds to each other to raise property lines in the best known location. This was done with concurrence with all parties under the existing statutes.

LEGISLATION DOES
 EXCLUDE ANY REAP. OWNERS
 IN REPLATTING
 LANGUAGE IS SET UP
 CROSS SURVEY
 ARE IN AREAS
 ESTABLISHED BY
 BUREAU.

As to getting to specifics in CS SB79: Page 1, Line 5, requires that the error subdivision be within a municipality. There are many subdivisions in this state outside of municipalities. Current statutes require the State Department of Natural Resources be the platting authority for plat amendments. The best wording be added to allow the majority of property owners to replat erroneous plats outside of municipalities with plat reviews still to be allowed by State Department of Natural Resources.

"GROSS" AND
 "DEFECTIVE" ARE DEFINED
 IN DICTIONARY.

Page 1, Lines 8 and 9 state that a subdivision must be manifestly defective so to create sufficient uncertainty to enjoy quiet enjoyment of property. What is "uncertainty"? On many large parcel subdivisions (20+ acres) in the Matanuska-Susitna Borough there are twenty to fifty feet floating around. So long as all owners are aware of this and can build their houses in the center of the lots, they are satisfied even though they may not know exactly where they can build fence lines. A five

THEIR IS A PERCEPTION THAT THIS LEGISLATION IS EASY TO BRING AGAINST OWNERS. IF READ & UNDERSTOOD ONE WILL REALIZE THIS IS A REMEDY OF LAST RESORT AND THE COURT HAS THE AUTHORITY TO REJECT THIS TYPE OF ACTION IF IT CANNOT BE SHOWN THAT SUFFICIENT REASON EXISTS TO BRING THIS ACTION AGAINST ALL PROP. OWNERS IN A SUBDIVISION.

EVIDENCE OF DEFECTIVE SURVEY SPELLS OUT THE CRITERIA THAT IS REQUIRED TO BE PRESENTED TO THE COURT IN ORDER TO BE CONSIDERED FOR ANY JUDICIAL ACTION. THE SAME STANDS ARE THERE IN THE BILL.

WHICH ARE NECESSARY ELEMENTS IN REPAYMENT OF COSTS. LINE 10 ALLOWS AN INDIVIDUAL THE OPPORTUNITY TO BE TREATED FAIRLY BY THE BOARD OF A SURVEY. IN THIS CASE BY THE COURT.

foot error downtown Anchorage, 4th Avenue, with the zero lot line high rise commercial buildings, would be a severe error creating extremely costly lawsuits if a high rise building wall was built over a property line. This same problem continues onto Page 5, Line 4, under the defective survey where it says "gross uncertainty". Gross is not defined adequately and would probably have various meanings to various people. In any subdivision, anywhere, if someone wants to put up a fence and an adjacent owner disputes the line location, people become very defensive when it becomes property that they think they own. In many places, even a one or two foot error on a fence line in a normal subdivision could be considered a gross error by the offended neighbor. "Manifestly defective" and "gross uncertainty" must be better defined. Maybe a committee assigned by the State Department of Natural Resources or appointed by the Board of Registration for Architects, Engineers, and Land Surveyors could be a disinterested third party to define if a plat is sufficiently erroneous as to fall under this proposed statute. Existing quiet title statutes would allow any plat, whether the error is small or manifestly erroneous, to be resolved through court action.

Page 1, Line 10, allows an owner of the land within the subdivision to object to the results of a resurvey or a replat. The problem with this wording is that the resurvey or the replat has already been done and under later sections of this proposed statute, the cost has already been set. The owner may not know what he is getting into until the survey has been done, but a replat is not final until it is recorded. People who originally thought they were in favor of replating a subdivision may not like the final findings of the survey. I must agree with Mr. Craig Savage who previously testified that the cost of one of these special assessment districts would be unknown upon entering into the project.

Page 4, line 21 allows the court to assess the costs of action to the special assessment district. A

SIMPLY SAIRED: YOUR LITIGATED IF YOU DO AND YOUR DAMAGED IF YOU DON'T COST ESTIMATES ARE NOT POSSIBLE TO CALCULATE - SURVEYORS PROVIDE LUMP SUM COST ESTIMATES ON A DAILY BASIS.

THIS HAS ALREADY BEEN ADDRESSED. YES - LEGIS. CAN CHANGE RULES.

surveyor may be able to give a cost estimate to start the project, but until the field survey has been started, all problems will not be know, and coming up with a solution that can be agreed to by a majority of the property owners may be very difficult. Once the surveyor drafts his best guess on a plat and all the property owners have a chance to object, the legal problems will not be known nor will the legal fee estimates. Depending on the objection level and the wealth of the objecting parties, the court costs will be completely unknown. One of the potential costs of the special assessment district would be to pay for damage or to buy out people that have property that could become unusable in a replat. Page 4, Line 19, states it cannot make a parcel ineligible for use for which the parcel was originally eligible, but if a parcel, such as on the outside boundary of Rabbit Creek Heights, was largely outside of the original subdivider's area, who will make that party whole? This may be another unknown cost to the special assessment district. As all the costs cannot be know going into the district formation, the residents could be subjecting themselves to unlimited liability. It is possible that the assessments could exceed the value of unimproved lots, which could then be foreclosed on by the municipality, and the general tax payers would end up being liable for the vacant lot's assessment.

Page 3, Line 1, states that public notice will be as per Alaska rule of Civil Procedures. I am not an attorney, but can the state legislature amend civil procedure rules which, I believe, are normally changed at the discretion of the State Supreme Court? I recommend a modification to this line that states that "notices will be sent to all parties of record in the affected area by certified mail at least 45 days prior to action being taken in formation of a special assessment district". This should require a title report on every individual property so that all parties who are not listed on tax roles would be

ASSESSMENT DISTRICT PROCESS HAS ALREADY TAKEN CARE TO INSURE ALL PROPERTY OWNERS OF RECORD ARE NOTIFIED PRIOR TO ANY ACTION.



TELECOPY COVER SHEET
Fairbanks Legislative Information Office

Office - (907) 452-4448

Fax - (907) 456-3346

TO: Senate CIRA FAX: _____ PHONE: _____
Serg. Sergeant, Chair

FROM: Hut 210 PHONE: _____

INSTRUCTIONS: Written testimony for SB79
teleconference 4/19

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SENT BY: Fur

Alaska Society of Professional Land Surveyors

AFFILIATE OF AMERICAN CONGRESS ON SURVEYING AND MAPPING
AFFILIATE OF NATIONAL SOCIETY OF PROFESSIONAL SURVEYORS
MEMBER OF WESTERN FEDERATION OF PROFESSIONAL SURVEYORS

P.O. BOX 101465
ANCHORAGE, ALASKA 99510



Senate Community & Regional Affairs Committee
Room 427
State Capitol
Juneau, AK 99801-1182
Attn: Senator John Torgerson, Chair
Faxed to 465-4779

April 18, 1995

Re: SB 79

Dear Senator Torgerson,

I testified on behalf of our Society with regard to SB 79 at the April 12th C&RA Committee hearing. My testimony focused on the original bill which proposed to amend AS 09.45.800 Earthslide Relief Act to include a procedure for dealing with defective surveys.

I testified that ASPLS had reviewed SB 79 and in conjunction with the Municipality of Anchorage, offered revised wording for procedural and clarification purposes. Versions of this bill were sent out to our chapters presidents, board of directors and members for comments. Recognizing the controversial potential of this bill, I maintained close contact with our members and requested that they decide whether ASPLS would support or oppose the general concept of a legislative solution to defective surveys. A poll of the voting members of our board resulted in a 6/6 split. Given that 3 of the votes in support were from our chapters, I elected to testify that ASPLS was generally in support of a legislative solution. However, this support was to be considered fairly weak.

The day before the hearing, I was notified that the legislation had been redrafted and separated from the Earthslide Relief Act in order to allow it to sunset in 3 years. Although you have offered to take testimony on this bill up till April, 19th, I will be unable to distribute the redrafted bill to our membership and solicit comments in that time frame. I have received verbal comments from a few of our members and they are generally in support.

I believe that ASPLS can also offer support of this redrafted bill for the following reasons:

1. Previous member comments included a suggestion to sunset the bill in 2-3 years. Some who felt the legislation was being rushed or procedurally faulty wanted the sunset provision to rid the books of the law if it was found to be poorly thought out or unable to meet the goals envisioned by its authors.
2. The redraft appears to be more focused towards the Municipality of Anchorage.

SB 79

-2-

April 18, 1995

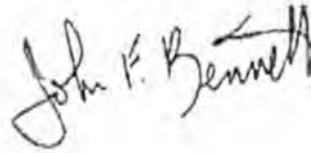
Although some members found examples of other surveys throughout the state that might benefit from this kind of legislation, many would have found it more palatable if it were limited to the Rabbit Creek subdivision or to Anchorage.

- 3 The proposed legislation appears to be sufficiently rigorous as to limit its use as a last resort to solving defective survey problems.

In a perfect world, I would be offering a unified response on behalf of our Society. Unfortunately, that is not the case and this redrafted bill will not likely resolve the concerns of some of our members who believe that this legislation is unnecessary and potentially damaging to individual rights.

If I can be of further assistance, I can be contacted at 474-2413 Ph or 474-2411 Fax.

Sincerely,



John F. Bennett, PLS
President

April 14, 1995

HOUSE BILL #176 - SENATE BILL #79

The bill should be passed. It has been written in such a way that the land owners have to say their boundaries are in such a state that this is the only law that will work to fix the boundary problems. This bill is also written so that to use this law, there must be major errors in a large area.

I am one of the trustees on three lots in a subdivision that this law would apply to. I am also a Registered Professional Land Surveyor in the State of Alaska. I have worked on the committee that helped write this legislation. I believe that this legislation has a lot going for it. It is a win -- win piece of legislation. The land owners affected have to vote to set up a special assessment district to pay for the problem and if they don't want to pay to fix the problem, they can vote down the special assessment district. This legislation also has a Sunset clause in it so that it can be revised or canceled. And the passing of this legislation will not do harm to anyone.

Under section 1 (2)(A)(ii) on the last draft that I have the special assessment district is established by AS 29.46.010 - 29.46.140 or under municipal ordinance. Up until this draft, the special assessment district was established by the land owners that may be affected. I would like to see that the land owners still remain in control of this special assessment district. They are the ones affected and they are also the ones that have to pay for it.

Yours truly

Bryan E. Cooper PLS

MUNICIPALITY OF ANCHORAGE

MEMORANDUM

DATE: April 13, 1995
TO: George Newsham, Assistant Municipal Attorney
Thru: Lee Browning, PE, Municipal Engineer *LB*
FROM: Tom Knox, PLS, Municipal Surveyor *T.K.*
SUBJECT: Senate Bill 79/House Bill 176

As you know, I have been working for several years on the Rabbit Creek Heights Subdivision and Rabbit Creek View Subdivision survey problems. The current companion bills are the result of that work. The type and magnitude of survey problems affecting the property owners within these two subdivisions illustrate the need for this particular legislation. I have included highlighted examples of some of the problems which randomly affect both subdivisions.

It has become necessary to provide a legal mechanism for a majority of consenting owners of property within the boundaries of a defective survey to be able to correct their survey and record an accurate description of their properties. This legislation provides a mechanism which identifies the funding source, binds the property owners to a solution and provides the legal authority to ensure equitability and quiet title to all the property owners.

I wholly support passage of a bill which would accomplish this need.

F cl.

cc: Jim Fero, Director of Public Works

House Bill 176a

Perceived Subdivision
Survey Problem

Do Nothing

Land Becomes
difficult/impossible
to transfer/develop
using conventional
financing methods.
This is essentially
a problem of title
company/banking
lack of confidence.

Effectuated Landowners Hold
a meeting. The majority votes
to pursue problem resolution
via HB176 and for an
Assessment District.

MUNICIPALITY OR
BOROUGH W/PLATTING
AUTHORITY

Governing Body
Passes Resolution
supporting the action
and an assessment
District is formed.
The assessment
district covers all
land owners in the
affected area

Consultant is hired to gather facts.
Corners are recovered, improvements
located.
Surveyor develops an equitable replat
for the consideration of the court.

Complaint: Filed with the court
describing persons w/ interest in
the affected property, the type of
interest they have, facts about the
problem and the proposed replat.

Notice of the Action is Posted

Answer: Interested parties now have the
opportunity to address the court.

Judgment: The court may accept, modify,
or direct the surveyor to modify the proposed
replat.

9.45.865 Protects land owners from losing,
as a result of the judgment, previously
established development rights.

The Replat is recorded

Land is more easily
transferred and
financed.

S B

8 7

THE FOLLOWING DOCUMENT
HAS NOT BEEN FILMED
BUT IS AVAILABLE IN THE
ORIGINAL FILE

ALCOHOLIC BEVERAGES

ALASKA STATUTES (TITLE 4)
(AS AMENDED THROUGH 1994)

&

**REGULATIONS
(TITLE 15 ALASKA
ADMINISTRATIVE CODE,
CHAPTER 104)**
(AS AMENDED THROUGH 6/94)

ALCOHOLIC BEVERAGE CONTROL BOARD
550 W. Seventh Avenue
Anchorage, Alaska 99501
(907) 277-8638

6/94

1994 REVISOR'S CHANGES

In 1994, the Legislative Affairs Agency revisor of statutes used his general powers to make minor editing changes throughout AS 04, to move AS 04.11.700, and to reorganize AS 04.11.150, 04.11.400, and 04.11.450. The changes to AS 04.11.400 affect other provisions of statutes and regulations that reference those subsections.¹ For the new designations, refer to the chart below.

OLD	NEW
04.11.150(g)	04.11.150(i)
(h)	(g)
(i)	(h)
04.11.400(d)	04.11.400(k)
(e)	(l)
(f)	(l)
(g)	(d)
(h)	(e)
(i)	(l)
(j)	(g)
(k)	(h)
04.11.450(c)	04.11.450(f)
(d)	(c)
(e)	(d)
(f)	(e)
04.11.700	04.21.055

¹ AS 04.11.330(a)(4) and (9); 04.11.340(10); 04.11.360(11); internal subsection references in 04.11.400; 15 AAC 104.135(e); 15 AAC 104.175(c); 15 AAC 104.325(a), (d), and (e); 15 AAC 104.335(a) and (b); 15 AAC 104.905(c).

03/08/95 15:00:28 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1120
MESSAGE FROM: LIOCBJT IN BARROW JNU

RE TCN: 50370 SCHEDULED FOR:03/08/95 13:30 TO 15:00
SPONSOR: SENATE COMMUNITY & REGIONAL AFFAIRS PURPOSE: PUBLIC HEARING

MESSAGE TEXT: KAREN HEGYI, BARROWCITYATTORNEYISPRESNT.

03/08/95 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150
13:31:40 PARTICIPANT LIST (ALL PARTICIPANTS) BY:BAR
TCN:50370 SCHEDULED FOR:03/08/95 13:30 TO 15:00 FOR:BAR
PUBLIC HEARING SENATE COMMUNITY & REGIONAL AFFAIRS

LOCATION:BARROW
SB 37 MAYOR DON LONG CITY OF BARROW TESTIFY

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 2/14/95

FURTHER: Judiciary
Finance

Date of 5-Day Notice: 3/2/95
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3/20/95

CRA Committee considered SENATE BILL NO. 87

Community local options for control of alcoholic beverages; relating to the control of alcoholic beverages; relating to the definition of 'alcoholic beverage'; relating to purchase and sale of alcoholic beverages; relating to alcohol server education courses; efd.

and recommends:

- be replaced with _____ CS SENATE BILL 87 (CRA)
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill: same title
- new title
- House Bill: technical change
- new: SCR* _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Tim Kelly</i>	X				
<i>John Hill</i>					
<i>(Peter S. Hill)</i>	✓				
CHAIR: <i>John Hill</i>	X				

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
REVENUE	3/3/5		5-0

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

RECEIVED
MAR 23 1995
Ans'd.....

TO: The Senate Judiciary Committee

DATE: March 22, 1995

SUBJ: CS For Senate Bill No. 87 "An Act relating to community local options for control of alcoholic beverages

Mr. Chairman and Distinguished Members of the Judiciary Committee,

My name is James Wood. I am a Captain of the North Slope Borough. Department of Public Safety. I reside in Barrow, Alaska.

On March 17th, I presented oral testimony before you urging that the illicit possession of alcoholic beverages in a local option community that has banned possession should be made a crime, and that the penalty for illicit possession should parallel the current mandatory sentencing for the crime of driving while intoxicated. I repeat my plea here, supported by the resolve of the many here in Barrow who have suffered so long and who wholly support these amendments. And, I wish to offer the following points of clarification:

[NEW WORDING APPEARS IN BRACKETS]

Proposed language change to Sec 34, AS 04.16.200(e), beginning at line 19 through line 27 on page 23 of the draft legislation should have read :

"(e) A person who sends, transports, or brings into [, or who possesses an alcoholic beverage within] a municipality or established village in violation of AS 04.11.499 [or AS 04.11.501 or an ordinance adopted under AS 04.11.501] is, upon conviction.

(1) guilty of a class A misdemeanor if the quantity imported [or possessed] is [9 liters or less of distilled spirits, 9 liters or less of wine, or 1.8 gallons or less of malt beverages].

(2) guilty of a class C felony if the quantity imported [or possessed] is [more than 9 liters of distilled spirits, more than 9 liters of wine, or more than 1.8 gallons of malt beverages]."

** The significance of these amounts is that 9 liters or 1.8 gallons each comprise a typical commercially packaged case of beverages. The division, then, is that one case or less of any one or a combination of alcoholic beverages will be a misdemeanor, while more than one case will be a felony. Using the typical commercial sales scheme appears to be the most logical point of division for sanctions.

By adoption of this proposed language, Sec 35, AS 04.16.205(a), beginning at line 28

through line 31 on page 23, and beginning at line 1 through line 6 on page 24 is void and may be deleted.

By adoption of this proposed language, Sec 42, AS04.16.220(a) beginning at line 10 through line 13 should be amended by deleting the language "...except for alcoholic beverages possessed in violation of AS 04.11.501 or an ordinance adopted under AS 04.11.501, property seized under this paragraph may not be held over 48 hours or until and order for forfeiture is issued by the court, whichever is 3 days confinement for the first offense, 10 days of confinement for a second offense, and 30 days of confinement for a third and subsequent offenses. It should be no less for the illicit importation or possession of alcoholic beverages in a local option community.

A mandatory imposition of sentence for importation or possession is recommended for misdemeanor importation or possession. For driving while intoxicated, the mandatory imposition is 3 days confinement for the first offense, 10 days confinement for a second offense, and 30 days confinement for a third and subsequent offenses. It should be no less for the illicit importation or possession of alcoholic beverages in a local option community.

Further, I want to add to my testimony the following suggestions for inclusion in this law:

Delete Sec 2, AS 04.11.010(c), beginning at line 9 through line 15 on page 2 of the draft legislation. This language in the law is useless in fact. The concept applied here is one that is refuted by prosecutors and judges throughout Alaska. Possession of the specified amounts, or of any amount, alone is simply not adequate as a "presumption" of possession for sales by Alaska's jurists. Once the amount of supporting evidence now required by our judicial system is collected by law enforcement sufficient to prove illicit sales of alcohol, the "presumption" of possession for sales is moot.

Assets seized under provisions of this law should be forfeited to the municipality that made the seizure. And, there should be a requirement that forfeited assets or their proceeds can only be used by enforcement agencies to develop and employ drug abuse prevention strategies.

Mail and other forms of distance ordering involving mailed or wire transfer payments for alcoholic beverages should be made illegal under the law. Alcoholic beverages should only be sold in person to the consumer at point of sale. Third party sales (allowing one to buy for another) should also be illegal.

The alcohol related crimes of furnishing liquor to a minor and driving while intoxicated should be made felonies in local option communities.

This law should provide an option for a municipality or community to go from "dry" (ban on possession, importation and sales of alcoholic beverages) to "damp" (ban on only the sales of alcoholic beverages) without having to go from "dry" to "wet" (allowing the possession, importation and sales of alcoholic beverages), then to

"damp".

Thank you for considering these amendments to SB 87.

F A X T R A N S M I S S I O N
to follow

From: Senator John Torgerson, Alaska State Legislature
Phone: (907) 465-2828 Fax: (907) 465-4779

To: LEGISLATIVE LEGAL FAX#: 2029

Attn: MIKE FORD

Date: 3-17-95 Pages, including this cover sheet: 4 5

Memoranda: THIS AFTERNOON THE SENATE COMMUNITY & REGIONAL AFFAIRS
COMMITTEE PASSED OUT SB 87 WITH SEVERAL AMENDMENTS
I'M FAXING THE AMENDMENTS THAT WERE ADOPTED - HOWEVER
THE AMENDMENT BY HOFFMAN (9-150673\A.2) WAS
DRAFTED TO THE ORIGINAL BILL BUT COMMITTEE DID
ADOPT THE AMENDMENT AND REQUESTED THAT DRAFTER
(YOU!) MAKE IT CORRESPOND TO DRAFT @S
(9-150673\C). AMENDMENT @.1 WAS ALSO ADOPTED

A TECHNICAL AMENDMENT WAS MADE TO PAGE 4, LINE 17
OF DRAFT @S:

AFTER THE WORD "WITH" DELETE ["a"] AND INSERT
THE WORD "EACH" AND

AFTER THE WORD "LICENSE" DELETE ["EACH"] AND
REPLACE WITH "a"

TO PAGE 21, LINES 9-10: REPLACE ["ONCE IN A
12-MONTH PERIOD"] WITH "ONCE IN AN 18 MONTH
PERIOD"

ANY QUESTIONS, CALL ME MONDAY A.M.

Telephone Contact: 465-4989 SANDY

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR HOFFMAN

TO: SB 87

1 Page 21, after line 24:

2 Insert a new bill section to read:

3 ** Sec. 29. AS 04.16.090(a) is amended to read:

4 (a) A person may not maintain a place in which alcohol beverages are
5 received or kept, or to which alcoholic beverages are brought, for consumption by
6 members of the public or by members of a club, corporation, or association [,] unless
7 the person is

8 (1) in an area that has prohibited the sale of an alcoholic beverage
9 under AS 04.11.490 and the place is a club, corporation, or association that was
10 in existence at least two years before the prohibition against the sale of an
11 alcoholic beverage under AS 04.11.490 was adopted; or

12 (2) authorized to do so under this title."

13 Renumber the following bill sections accordingly.

14 Page 33, line 9:

15 Delete "sec. 69"

16 Insert "sec. 70"

17 Page 33, line 17:

18 Delete "sec. 29"

19 Insert "sec. 30"

20 Page 33, line 18:

21 Delete "66 and 68"

1

Insert "67 and 69"

1 Insert "72"

2 Page 34, line 31:

3 Delete "68 and 70"

4 Insert "69 and 71"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 87() Work Draft 9-LS0673C

1 Page 21, after line 10:

2 Insert a new subsection to read:

3 "(g) Notwithstanding AS 29.26.140(a), after a petition has been certified as
4 sufficient to meet the requirements of (b) or (c) of this section, another petition may
5 not be filed or certified until after the question presented in the first petition has been
6 voted on. Only one local option question may be presented in an election."

7 Page 31, lines 3 - 6:

8 Delete "not containing any part of an incorporated city or another established
9 village, that has a perimeter clearly designated on a map by the local governing body
10 or the board in the absence of a local governing body"

11 Insert "that does not contain any part of an incorporated city or another
12 established village"

13 Page 33, after line 28:

14 Insert a new bill section to read:

15 "* Sec. 65. TRANSITION: EXISTING LOCAL OPTION PETITIONS. A petition to
16 adopt or remove a local option on file with a municipality or the lieutenant governor on the
17 effective date of this section that has not been voted on is void and may not be placed on an
18 election ballot."

19 Renumber the following bill sections accordingly.

20 Page 34, line 22:

21 Delete "71"

**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

March 18, 1995

SUBJECT: CSSB 87(CRA)

TO: Senator John Torgerson, Chair
Senate Community & Regional Affairs Committee
ATTN: Sandy

FROM: Pamela Finley *PF*
Assistant Revisor of Statutes

Enclosed is CSSB 87(CRA), as you requested. I note that bill sec. 73 appears to assume that sec. 70 is an effective date provision. It is not. We could add a bill section making sec. 70 effective immediately, which is what the Department of Law usually prefers for sections giving an agency or board transitional authority to adopt regulations.

Since this bill has passed out, it would probably be simplest to send this memo on to the next committee of referral, which I believe is the Judiciary Committee. Please give me a call if you have any questions.

PF:glc
95-245.glc

Enclosure

*3/20/95
Given to sponsor to
PASS ONTO S JUD
FOR THEIR CONSIDERATION*

Alaska State Legislature

Chairman,
Judiciary Committee

Vice Chairman,
Transportation Committee

Member
Resources Committee
Western Legislative Forestry Task Force



Senator Robin L. Taylor

State Capitol
Juneau, Alaska 99801-1182
Phone: 907-465-3873
Fax: 907-465-3922

52 Front Street
Ketchikan, Alaska 99901
Phone: 907-225-8088
Fax: 907-225-0713

Recommended Changes in Draft CS

Senate Bill 87



<u>SB 87</u>			<u>Committee Substitute</u>	
deletion appears on:			corrections appears on:	
Page	Line		Page	Line
1	8	delete "if the person is"	1	8
3	4	delete "is being transferred" insert "was issued"	3	27
3	5	delete (f) insert (g)	3	28
11	11	delete "under AS 04.11.395" insert "by the board"	12	3
12	3 & 6	delete "under AS 04.11.395" insert "by the board"	12	26 & 29
28	25	delete "community"	29	17
29	22	delete "No more"	31	4
29	23	delete "than 10 miles in diameter"	31	5

Alaska State Legislature

Chairman,
Judiciary Committee

Vice Chairman,
Transportation Committee

Member,
Resources Committee
Western Legislative Forestry Task Force



RECEIVED

FEB 28 1995

Ans'd.....

Senator Robin L. Taylor

State Capitol
Juneau, Alaska 99801-1182
Phone: (907) 465-3873
Fax: (907) 465-3922

352 Front Street
Ketchikan, Alaska 99901
Phone: (907) 225-8088
Fax: (907) 225-0713

MEMORANDUM

TO: Senator John Torgerson, Chairman
Senate Community & Regional Affairs Committee

Attention: Sandy Nusbaum

FROM: Joe Ambrose *JA*

DATE: 2/28/95

REF: SB 87 Amendment

The ABC board has asked that Senator Torgerson consider the attached "housekeeping" changes to SB 87 to correct drafting errors.

Pat Sharrock can explain the changes in detail, but as near as I can tell they make no substantive changes and are in line with the bill the Senate passed last year.

Let me know if you want to do a CS or would prefer to wait and we can do it in JUD.

Thanks!

ps.....I'd suggest you set aside at least an hour to hear this thing. It takes about that long to walk through it!

ALCOHOLIC BEVERAGE CONTROL BOARD
Proposed Corrections to SB 87
February 23, 1995

Page	Line	
1	8	delete "if the person is" - person does not have to be in the area
3	4	delete "is being transferred" and insert "was issued" - transfer is not the issue here
3	5	delete "(f)" and insert "(g)" - this is former (j) which is now (g)
5	25	delete the first "a" and insert "each"
11	11	delete "under AS 04.11.395" and insert "by the board" - this allows for current conditions imposed to remain in force
12	3&6	delete "under AS 04.11.395" and insert "by the board"
28	25	delete "community" - no more community licenses
29	22	delete "no more"
	23	delete "than 10 miles in diameter" - village boundary may be different than a 5-mile radius

9-LS0673NC
Ford
3/1/95

CS FOR SENATE BILL NO. 87()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): THE SENATE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to community local options for control of alcoholic beverages;
2 relating to the control of alcoholic beverages; relating to the definition of
3 'alcoholic beverage'; relating to purchase and sale of alcoholic beverages; relating
4 to alcohol server education courses; and providing for an effective date."

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

6 * Section 1. AS 04.11.010(b) is amended to read:

7 (b) Except as provided in this subsection, a [A] person may not solicit or
8 receive orders for the delivery of an alcoholic beverage in an area that has adopted
9 a local option under AS 04.11.491. If the area has adopted a local option under
10 AS 04.11.491(a)(1), (2), or (3), or (b)(1) or (2), a package store licensee outside of
11 that local option area may receive orders as provided under AS 04.11.150 but may
12 not solicit in that area or receive orders through an agent or employee in that
13 area. This subsection does not apply to a package store licensee who operates a
14 package store in an area that has adopted a local option under

1 AS 04.11.491(a)(2)(C) or (3)(C) or (b)(2)(C) [WHERE THE RESULTS OF A
2 LOCAL OPTION ELECTION HAVE, UNDER AS 04.11.490 - 04.11.500,
3 PROHIBITED THE BOARD FROM ISSUING, RENEWING, OR TRANSFERRING
4 ONE OR MORE TYPES OF LICENSES OR PERMITS UNDER THIS TITLE,
5 UNLESS THE PERSON IS LICENSED UNDER THIS TITLE AND THE ORDER
6 IS ACTUALLY RECEIVED BY THAT PERSON FROM THE PURCHASER OF
7 THE ALCOHOLIC BEVERAGE]. A person who violates this subsection is
8 punishable upon conviction as provided under AS 04.16.200(a) or (b).

9 * Sec. 2. AS 04.11.010(c) is amended to read:

10 (c) In a criminal prosecution for possession of alcoholic beverages for sale in
11 violation of (a) of this section, the fact that a person possessed more than 12 liters of
12 distilled spirits, 24 liters or more of wine, or 12 gallons [45 LITERS] or more of malt
13 beverages in an area where the sale of alcoholic beverages is restricted or prohibited
14 under AS 04.11.491 [AS 04.11.490, 04.11.492, 04.11.496, OR 04.11.500] creates a
15 presumption that the person possessed the alcoholic beverages for sale.

16 * Sec. 3. AS 04.11.080 is amended to read:

17 Sec. 04.11.080. TYPES OF LICENSES AND PERMITS. Licenses and
18 permits issued under this title are as follows:

- 19 (1) beverage dispensary license;
- 20 (2) duplicate beverage dispensary license for additional rooms;
- 21 (3) restaurant or eating place license;
- 22 (4) club license;
- 23 (5) bottling works license;
- 24 (6) brewery license;
- 25 (7) package store license;
- 26 (8) general wholesale license;
- 27 (9) wholesale malt beverage and wine license;
- 28 (10) distillery license;
- 29 (11) common carrier dispensary license;
- 30 (12) retail stock sale license;
- 31 (13) recreational site license;

- 1 (14) [COMMUNITY LIQUOR LICENSE;
2 (15)] pub license;
3 (15) [(16)] winery license;
4 (16) [(17)] caterer's permit;
5 (17) [(18)] special events permit;
6 (18) [(19)] conditional contractor's permit;
7 (19) [(20)] brewpub license.

8 * Sec. 4. AS 04.11.100 is amended by adding a new subsection to read:

9 (f) Notwithstanding the provisions of (b) and (e) of this section, upon written
10 application and approval of the local governing body, the board may issue or reissue
11 a restaurant or eating place license and exempt the licensee from the requirements of
12 (b) and (e) of this section. A licensee exempt as provided in this subsection shall
13 provide food items for sale on the premises as shown on a menu approved by the
14 board and available to patrons. The board may not

15 (1) issue or reissue a license as provided under this subsection if

16 (A) the issuance or reissuance would result in more than one
17 exempt restaurant or eating place license for every 10 restaurant or eating place
18 licenses allowed under the provisions of AS 04.11.400(a)(2) or (3);

19 (B) the premises would be located in a building having a public
20 entrance within 200 feet of the boundary line of a school or a church
21 building in which religious services are being regularly conducted; for purposes
22 of this subparagraph, the 200-foot prohibition is measured from the outer
23 boundary line of the school or the public entrance of the church building by the
24 shortest pedestrian route to the nearest public entrance of the restaurant or
25 eating place;

26 (2) reissue a restaurant or eating place license as exempt as provided
27 under the provisions of this subsection if the license was issued under the provisions
28 of AS 04.11.400(g); or

29 (3) transfer an exempt license issued under this subsection to another
30 person.

31 * Sec. 5. AS 04.11.135(a) is amended to read:

1 (a) A brewpub license authorizes the holder of a beverage dispensary license
2 to

3 (1) manufacture on premises licensed under the beverage dispensary
4 license not more than 75,000 [16,000] gallons of beer in a calendar year; and

5 (2) sell beer manufactured on premises licensed under the beverage
6 dispensary license for consumption only on the licensed premises.

7 * Sec. 6. AS 04.11.135(b) is amended to read:

8 (b) Except as provided under AS 04.11.360(10) [AS 04.11.360(12)], the
9 brewpub license is not transferable, shall remain the property of the state, and is not
10 subject to any form of alienation.

11 * Sec. 7. AS 04.11.150(a) is repealed and reenacted to read:

12 (a) Except as provided under (g) of this section, a package store license
13 authorizes the licensee to sell alcoholic beverages to a person present on the licensed
14 premises or to a person known to the licensee who makes a written solicitation to that
15 licensee for shipment. A licensee, agent, or employee may only ship alcoholic
16 beverages to the purchaser. Before commencing the practice of shipping alcoholic
17 beverages, and with ^{each} a subsequent application to renew the license, [each] ^(d) licensee shall
18 notify the board in writing of the licensee's intention to ship alcoholic beverages in
19 response to a written solicitation. The package store licensee, agent, or employee shall
20 include written information on fetal alcohol syndrome and fetal alcohol effects
21 resulting from a woman consuming alcohol during pregnancy in a shipment of
22 alcoholic beverages sold in response to a written solicitation.

23 * Sec. 8. AS 04.11.150(g) is repealed and reenacted to read:

24 (g) If a shipment is to an area that has restricted the sale of alcoholic
25 beverages under AS 04.11.491(a)(1), (2), or (3) or (b)(1) or (2), a package store
26 licensee, agent, or employee may not ship to a purchaser more than 12 liters of
27 distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages in
28 a calendar month.

29 * Sec. 9. AS 04.11.160 is amended by adding new subsections to read:

30 (f) A person who applies for issuance or renewal of a license under this
31 section shall file, on forms provided by the board, the following information regarding

1 each brand of alcoholic beverage that the person intends to purchase, offer for sale, or
2 sell: (1) the full and correct brand or trade name; (2) the nature and type of the brand;
3 (3) the name of the distiller, brewer, vintner, or importer of the brand; and (4) a
4 certification by the distiller, brewer, vintner, or importer of the brand that the person
5 is a primary source of supply for the brand. In addition to the fees imposed under (a)
6 and (b) of this section, a person filing under this subsection shall pay a biennial filing
7 fee of \$50 for each brand of alcoholic beverage the person intends to purchase, offer
8 for sale, or sell. In this subsection, "distiller, brewer, vintner, or importer" includes
9 an exclusive agent of the distiller, brewer, vintner, or importer if the agent's name
10 appears on the label of the brand approved by the Federal Bureau of Alcohol, Tobacco
11 and Firearms.

12 (g) A person licensed under this section shall notify the board within 10 days
13 of a change in a primary source of supply designation required under (f) of this
14 section.

15 * Sec. 10. AS 04.16 is amended by adding a new section to read:

16 Sec. 04.16.172. RESTRICTIONS ON PURCHASE AND SALE OF
17 ALCOHOLIC BEVERAGES. A person licensed under AS 04.11.090, 04.11.100,
18 04.11.110, or 04.11.150 may not purchase, sell, or offer for sale an alcoholic beverage
19 unless the alcoholic beverage being purchased, sold, or offered for sale was obtained
20 from a person licensed under

21 (1) AS 04.11.160 as a primary source of supply for the alcoholic
22 beverage being purchased, sold, or offered for sale; or

23 (2) AS 04.11.130, 04.11.140, or 04.11.170.

24 * Sec. 11. AS 04.11.270(b) is amended to read:

25 (b) A license shall be renewed as follows:

26 (1) on or before November 1 [OF EACH YEAR], the director shall
27 mail a renewal application to each licensee whose license, unless renewed, will expire
28 on December 31 of that year; the application shall be mailed to the licensee at the
29 licensed premises or at a mailing address furnished by the licensee;

30 (2) the licensee shall submit the completed renewal application and the
31 biennial license fee to the director before January 1 [ON OR BEFORE

1 DECEMBER 31];

2 (3) a renewal application filed after December 31 is delinquent and
3 must be accompanied by a \$500 [\$200] penalty fee;

4 (4) if December 31 falls on a weekend or a state holiday, the deadline
5 is extended to the first business day following December 31.

6 * Sec. 12. AS 04.11.320 is amended to read:

7 Sec. 04.11.320. DENIAL OF NEW LICENSES AND PERMITS. (a) An
8 application requesting issuance of a new license shall be denied if

9 (1) the board finds, after review of all relevant information, that
10 issuance of the license would not be in the best interests of the public;

11 (2) issuance of the license is prohibited by AS 04.11.390, relating to
12 residency, or AS 04.11.410, relating to location of premises near churches and schools;

13 (3) the application has not been completed in accordance with
14 AS 04.11.260;

15 (4) issuance of the license would violate the restrictions pertaining to
16 the particular license imposed under this title;

17 (5) issuance of the license is prohibited under this title as a result of
18 an election conducted under AS 04.11.507 [IN ACCORDANCE WITH
19 AS 04.11.502];

20 (6) the requirements of AS 04.11.420 - 04.11.450 relating to zoning,
21 ownership and location of the license, and the identity and financing of a licensee have
22 not been met;

23 (7) [THE LICENSED PREMISES ARE TO BE LOCATED IN A
24 MUNICIPALITY, THE TYPE OF LICENSE SOUGHT IS A BEVERAGE
25 DISPENSARY OR PACKAGE STORE LICENSE, AND THAT TYPE OF LICENSE
26 IS ALREADY IN EFFECT IN THE MUNICIPALITY UNDER A COMMUNITY
27 LIQUOR LICENSE, UNLESS THE NEW LICENSE IS TO BECOME EFFECTIVE
28 AFTER THE COMMUNITY LIQUOR LICENSE IS NO LONGER EFFECTIVE,
29 WHETHER AS THE RESULT OF A LOCAL OPTION ELECTION OR
30 OTHERWISE;

31 (8) THE AUTHORITY SOUGHT IS AUTHORITY TO OPERATE A

1 BEVERAGE DISPENSARY OR PACKAGE STORE UNDER A COMMUNITY
2 LIQUOR LICENSE FOR PREMISES TO BE LOCATED IN A MUNICIPALITY
3 WHERE THE AUTHORITY SOUGHT IS ALREADY HELD BY A PRIVATE
4 LICENSEE UNDER A BEVERAGE DISPENSARY OR PACKAGE STORE
5 LICENSE, UNLESS THE COMMUNITY LIQUOR LICENSE IS TO BECOME
6 EFFECTIVE AFTER THE PRIVATELY HELD LICENSE IS NO LONGER
7 EFFECTIVE, WHETHER AS THE RESULT OF A LOCAL OPTION ELECTION OR
8 OTHERWISE:

9 (9) issuance of the license is prohibited under AS 04.11.400(a) or
10 prohibition of issuance of the license is found necessary under AS 04.11.400(b);

11 (8) [(10)] the application contains false statements of material fact;

12 (9) [(11)] the license is sought for the sale of alcoholic beverages in a
13 first or second class city where [IN WHICH] there are no licensed premises at the
14 time of application unless a majority of the voters have voted not to approve [IN] a
15 local option to restrict or prohibit the sale of alcoholic beverages under
16 AS 04.11.491, have voted to approve a local option to allow the type of premises
17 under AS 04.11.491(a)(2) or (3), or have voted to remove a restriction or
18 prohibition on the sale of alcoholic beverages under AS 04.11.495 [ELECTION
19 CONDUCTED IN ACCORDANCE WITH AS 04.11.502 HAVE VOTED "NO" ON
20 THE QUESTION SET OUT IN AS 04.11.490, OR HAVE VOTED "YES" ON A
21 QUESTION SET OUT IN AS 04.11.492 OR 04.11.500]; or

22 (10) [(12)] the license is sought for the sale of alcoholic beverages in
23 an established village where [IN WHICH] there are no licensed premises at the time
24 of application unless a majority of the voters have voted not to approve [IN] a local
25 option to restrict or prohibit the sale of alcoholic beverages under AS 04.11.491,
26 have voted to approve a local option to allow the type of premises under
27 AS 04.11.491(b)(2), or have voted to remove a restriction or prohibition on the
28 sale of alcoholic beverages under AS 04.11.495 [ELECTION CONDUCTED IN
29 ACCORDANCE WITH AS 04.11.502 HAVE VOTED "NO" ON THE QUESTION
30 SET OUT IN AS 04.11.490 OR HAVE VOTED "YES" ON THE QUESTION SET
31 OUT IN AS 04.11.500].

1 (b) An application requesting issuance of a new permit shall be denied if

2 (1) the board finds, after review of all relevant information, that
3 issuance of the permit would not be in the best interests of the public;

4 (2) the board finds that any of the statements made in the application
5 are untrue;

6 (3) the application has not been completed in accordance with
7 AS 04.11.260; or

8 (4) the permit is sought for the sale of alcoholic beverages in a first or
9 second class city or established village where [IN WHICH] there are no licensed
10 premises at the time of application unless a majority of the voters have voted not to
11 approve [IN] a local option to restrict or prohibit the sale of alcoholic beverages
12 under AS 04.11.491. have voted to approve a local option to allow the type of
13 permit under AS 04.11.491(a)(2) or (b)(2), or have voted to remove a restriction
14 or prohibition on the sale of alcoholic beverages under AS 04.11.495 [ELECTION
15 CONDUCTED IN ACCORDANCE WITH AS 04.11.502 HAVE VOTED "NO" ON
16 THE QUESTION SET OUT IN AS 04.11.490].

17 * Sec. 13. AS 04.11.330(a) is amended to read:

18 (a) An application requesting renewal of a license shall be denied if

19 (1) the board finds, after review of all relevant information, that
20 renewal of the license would not be in the best interests of the public;

21 (2) the license has been revoked for any cause;

22 (3) the applicant has not operated the licensed premises for at least 30
23 eight-hour days during each of the two preceding calendar years, unless the board
24 determines that the licensed premises are under construction or cannot be operated
25 through no fault of the applicant;

26 (4) the board finds that issuance of an existing license under
27 AS 04.11.400(d) has not encouraged tourist trade;

28 (5) the requirements of AS 04.11.420 - 04.11.450 relating to zoning,
29 ownership of the license, and financing of the licensee have not been met;

30 (6) renewal of the license would violate the restrictions pertaining to
31 the particular license under this title or the license has been operated in violation of

1 a condition or restriction imposed by the board;

2 (7) renewal of the license is prohibited under this title as a result of an
3 election conducted under AS 04.11.507 [IN ACCORDANCE WITH AS 04.11.502];

4 (8) the application has not been completed in accordance with
5 AS 04.11.270; or

6 (9) the license was issued under AS 04.11.400(g), and the board finds
7 that the public convenience does not require renewal.

8 * Sec. 14. AS 04.11.340 is amended to read:

9 Sec. 04.11.340. DENIAL OF REQUEST FOR RELOCATION. An application
10 requesting approval for the relocation of licensed premises shall be denied if

11 (1) the board finds, after review of all relevant information, that
12 relocation of the license would not be in the best interests of the public;

13 (2) the relocation is prohibited under AS 04.11.400(a) or (b);

14 (3) the license would be relocated out of the established village,
15 incorporated city, unified municipality, or population area established under
16 AS 04.11.400(a) within which it is located;

17 (4) transfer of ownership is to be made concurrently with the relocation
18 of the licensed premises and a ground for denial of the transfer of ownership under
19 AS 04.11.360 is presented;

20 (5) the application has not been completed in accordance with
21 AS 04.11.290;

22 (6) relocation of the license would result in violation of a local zoning
23 law;

24 (7) relocation of the license would violate the restrictions pertaining to
25 the particular license imposed by this title;

26 (8) relocation of the license is prohibited under this title as a result of
27 an election conducted under AS 04.11.507 [IN ACCORDANCE WITH
28 AS 04.11.502]; or

29 (9) [THE LICENSED PREMISES ARE TO BE LOCATED IN A
30 MUNICIPALITY, THE TYPE OF LICENSE SOUGHT TO BE RELOCATED IS A
31 BEVERAGE DISPENSARY OR PACKAGE STORE LICENSE, AND THAT TYPE

1 OF LICENSE IS ALREADY IN EFFECT IN THE MUNICIPALITY UNDER A
2 COMMUNITY LIQUOR LICENSE, UNLESS THE RELOCATION IS TO BECOME
3 EFFECTIVE AFTER THE COMMUNITY LIQUOR LICENSE IS NO LONGER
4 EFFECTIVE, WHETHER AS THE RESULT OF A LOCAL OPTION ELECTION OR
5 OTHERWISE;

6 (10)] the license was issued under AS 04.11.400(d), (e), or (g).

7 * Sec. 15. AS 04.11.360 is amended to read:

8 Sec. 04.11.360. DENIAL OF TRANSFER OF A LICENSE TO ANOTHER
9 PERSON. An application requesting approval of a transfer of a license to another
10 person under this title shall be denied if

11 (1) the board finds, after review of all relevant information, that transfer
12 of a license to another person would not be in the best interests of the public;

13 (2) the application has not been completed in accordance with
14 AS 04.11.280;

15 (3) the application contains false statements of material fact;

16 (4) the transferor has not paid all debts or taxes arising from the
17 conduct of the business licensed under this title unless

18 (A) the transferor gives security for the payment of the debts
19 or taxes satisfactory to the creditor or taxing authority; or

20 (B) the transfer is pursuant to a promise given as collateral by
21 the transferor to the transferee in the course of an earlier transfer of the license
22 under which promise the transferor is obliged to transfer the license back to the
23 transferee in the event of default in payment for property conveyed as part of
24 the earlier transfer of the license;

25 (5) transfer of the license to another person would result in violation
26 of the provisions of this title relating to identity of licensees and financing of licensees;

27 (6) transfer of the license to another person would violate the
28 restrictions pertaining to the particular license under this title;

29 (7) transfer of the license to another person is prohibited under the
30 provisions of this title as a result of an election conducted under AS 04.11.507 [IN
31 ACCORDANCE WITH AS 04.11.502];

1 (8) the prospective transferee does not have the qualifications required
2 under this title of an original applicant;

3 (9) [THE LICENSED PREMISES ARE LOCATED IN A
4 MUNICIPALITY, THE TYPE OF LICENSE SOUGHT TO BE TRANSFERRED IS
5 A BEVERAGE DISPENSARY OR PACKAGE STORE LICENSE, AND THAT TYPE
6 OF LICENSE IS ALREADY IN EFFECT IN THE MUNICIPALITY UNDER A
7 COMMUNITY LIQUOR LICENSE, UNLESS THE TRANSFER IS TO BECOME
8 EFFECTIVE AFTER THE COMMUNITY LIQUOR LICENSE IS NO LONGER
9 EFFECTIVE, WHETHER AS THE RESULT OF A LOCAL OPTION ELECTION OR
10 OTHERWISE;

11 (10) THE AUTHORITY SOUGHT IS AUTHORITY TO OPERATE
12 A BEVERAGE DISPENSARY OR PACKAGE STORE UNDER A COMMUNITY
13 LIQUOR LICENSE FOR PREMISES TO BE LOCATED IN A MUNICIPALITY
14 WHERE THE AUTHORITY SOUGHT IS ALREADY HELD BY A PRIVATE
15 LICENSEE UNDER A BEVERAGE DISPENSARY OR PACKAGE STORE
16 LICENSE, UNLESS THE TRANSFER IS TO BECOME EFFECTIVE AFTER THE
17 PRIVATELY HELD LICENSE IS NO LONGER EFFECTIVE, WHETHER AS THE
18 RESULT OF A LOCAL OPTION ELECTION OR OTHERWISE;

19 (11) the license was issued under AS 04.11.100(f) or 04.11.400(e); or

20 (10) [AS 04.11.400(g); (12)] the license was issued under
21 AS 04.11.135, unless the transferor is also applying to transfer the beverage dispensary
22 license required under AS 04.11.135 to the same transferee.

23 * Sec. 16. AS 04.11.370 is amended to read:

24 Sec. 04.11.370. SUSPENSION AND REVOCATION OF LICENSES AND
25 PERMITS. A license or permit shall be suspended or revoked if the board finds
26 [THAT ONE OR MORE OF THE FOLLOWING GROUNDS EXISTS:]

27 (1) misrepresentation of a material fact on an application made under
28 this title or a regulation adopted under this title [FOR A LICENSE OR PERMIT];

29 (2) continuation of the manufacture, sale, or service of alcoholic
30 beverages by the licensee or permittee [ACTIVITIES AUTHORIZED UNDER A
31 LICENSE OR PERMIT] would be contrary to the best interests of the public;

1 (3) failure on the part of the licensee to correct a defect [DEFECTS]
2 that constitutes a violation [CONSTITUTE VIOLATIONS] of this title, a condition
3 or restriction imposed by the board, a regulation [REGULATIONS] adopted under
4 this title, or other laws [WITHIN A PRESCRIBED TIME] after receipt of notice
5 issued by the board or its agent;

6 (4) conviction of a licensee of a violation of [A PROVISION OF] this
7 title, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010;

8 (5) conviction of an [THE] agent or employee of a licensee of a
9 violation of this title, a regulation adopted under this title, or an ordinance adopted
10 under AS 04.21.010, if the licensee is found by the board to have either knowingly
11 allowed the violation or to have recklessly or with criminal negligence failed to act in
12 accordance with the duty prescribed under AS 04.21.030 with the result that the [AN]
13 agent or employee violates a law, regulation, or ordinance;

14 (6) failure of the licensee to comply with the public health, fire, or
15 safety laws and regulations [PERTAINING TO PUBLIC HEALTH] in the state;

16 (7) use of the licensed premises as a resort for illegal possessors or
17 users of narcotics, prostitutes, or promoters of prostitution; in addition to any other
18 legally competent evidence, the character of the premises may be proved by the
19 general reputation of the premises in the community as a resort for illegal possessors
20 or users of narcotics, prostitutes, or promoters of prostitution;

21 (8) occurrence of illegal gambling within the limits of the licensed
22 premises;

23 (9) the licensee permitted a [PERMITTING ANY] public offense
24 involving moral turpitude to occur on the licensed premises;

25 (10) violation by a licensee of this title, a condition or restriction
26 imposed by the board, a regulation adopted under this title, or an ordinance adopted
27 under AS 04.21.010; or

28 (11) violation by an agent or employee of a licensee of a provision of
29 this title, a condition or restriction imposed by the board, a regulation adopted
30 under this title, or an ordinance adopted under AS 04.21.010, if the licensee is found
31 by the board to have either knowingly allowed the violation or to have recklessly or

1 with criminal negligence failed to act in accordance with the duty prescribed under
2 AS 04.21.030 with the result that the agent or employee violates the law, condition
3 or restriction, regulation, or ordinance.

4 * Sec. 17. AS 04.11 is amended by adding a new section to read:

5 Sec. 04.11.395. BOARD IMPOSED CONDITIONS OR RESTRICTIONS.

6 The board may, in the best interests of the public, impose conditions or restrictions on
7 a license or permit issued under this chapter.

8 * Sec. 18. AS 04.11.400(a) is amended to read:

9 (a) Except as provided in (d) - (h) of this section, a new license may not be
10 issued and the board may prohibit relocation of an existing license

11 (1) outside an established village, incorporated city, unified
12 municipality, or organized borough if after the issuance or relocation there would be
13 (A) more than one restaurant or eating place license for each 1,500 population or
14 fraction of that [1,500] population, or (B) more than one license of each other type,
15 including licenses that have been issued under (d) or (e) of this section, for each 3,000
16 population or fraction of that [3,000] population, in a radius of five miles of the
17 licensed premises [OR LOCATION OF PREMISES SOUGHT TO BE LICENSED],
18 excluding the populations of established villages, incorporated cities, unified
19 municipalities, and organized boroughs that are wholly or partly included within the
20 radius;

21 (2) inside an established village, incorporated city, or unified
22 municipality if after the issuance or relocation there would be inside the established
23 village, incorporated city, or unified municipality

24 (A) more than one restaurant or eating place license for each
25 1,500 population or fraction of that [1,500] population; or

26 (B) more than one license of each other type, including licenses
27 that have been issued under (d) or (e) of this section, for each 3,000 population
28 or fraction of that [3,000] population [INSIDE THE ESTABLISHED
29 VILLAGE, INCORPORATED CITY, OR UNIFIED MUNICIPALITY];

30 (3) inside an organized borough but outside an established village or
31 incorporated city located within the borough, if after the issuance or relocation there

1 would be inside the borough, but outside the established villages and incorporated
2 cities located within the borough,

3 (A) more than one restaurant or eating place license for each
4 1,500 population or fraction of that [1,500] population; or

5 (B) more than one license of each other type, including licenses
6 that have been issued under (d) or (e) of this section, for each 3,000 population
7 or fraction of that [3,000] population [INSIDE THE BOROUGH,] excluding
8 the population of those established villages that have adopted a local option
9 under AS 04.11.491(b)(1), (3), or (4) [CONDUCTED AN ELECTION ON A
10 QUESTION SET OUT IN AS 04.11.490, 04.11.496, OR 04.11.500], and
11 excluding the population of incorporated cities located within the organized
12 borough.

13 * Sec. 19. AS 04.11.480(a) is amended to read:

14 (a) A [IF A] local governing body may [WISHES TO] protest the issuance,
15 renewal, relocation, [TRANSFER OF LOCATION,] or transfer to another person of
16 a license by sending [, IT SHALL FURNISH] the board and the applicant [WITH] a
17 protest and the reasons for the protest within 30 days of receipt from the board of
18 notice of filing of the application. The local governing body may protest the
19 continued operation of a license during the second year of the biennial license
20 period by sending the board and the licensee a protest and the reasons for the
21 protest by January 31 of the second year of the license. The procedures for
22 action on a protest of continued operation of a license are the same as the
23 procedures for action on a protest of a renewal application. The board shall
24 consider a protest and testimony received at a hearing conducted under
25 AS 04.11.510(b)(2) or (4) when it considers the application or continued operation,
26 and the protest and the record of the hearing conducted under AS 04.11.510(b)(2) or
27 (4) shall be kept [RETAINED] as part of the board's permanent record of its review
28 [OF THE APPLICATION]. If an application or continued operation is protested, the
29 board shall deny [MAY NOT APPROVE] the application or continued operation
30 unless the board finds that the protest is arbitrary, capricious, and unreasonable.

31 * Sec. 20. AS 04.11 is amended by adding a new section to read:

1 Sec. 04.11.491. LOCAL OPTIONS. (a) If a majority of the persons voting
2 on the question vote to approve the option, a municipality shall adopt a local option
3 to prohibit

4 (1) the sale of alcoholic beverages;

5 (2) the sale of alcoholic beverages except by one or more of the
6 following listed on the ballot:

7 (A) a restaurant or eating place licensee;

8 (B) a beverage dispensary licensee;

9 (C) a package store licensee; or

10 (D) a caterer holding a permit under AS 04.11.230 to sell
11 alcoholic beverages at a site within the municipality who is also licensed under
12 a beverage dispensary license for premises outside of the municipality;

13 (3) the sale of alcoholic beverages except on premises operated by the
14 municipality and under a type of licensed premises listed on the ballot, that may
15 include one or more of the following:

16 (A) a restaurant or eating place license;

17 (B) a beverage dispensary license; or

18 (C) a package store license;

19 (4) the sale and importation of alcoholic beverages; or

20 (5) the sale, importation, and possession of alcoholic beverages.

21 (b) If a majority of the persons voting on the question vote to approve the
22 option, an established village shall exercise a local option to prohibit

23 (1) the sale of alcoholic beverages;

24 (2) the sale of alcoholic beverages except by one or more of the
25 following listed on the ballot:

26 (A) a restaurant or eating place licensee;

27 (B) a beverage dispensary licensee;

28 (C) a package store licensee; or

29 (D) a caterer holding a permit under AS 04.11.230 to sell
30 alcoholic beverages at a site within the established village who is also licensed
31 under a beverage dispensary license for premises outside of the established

1 village;

2 (3) the sale and importation of alcoholic beverages; or

3 (4) the sale, importation, and possession of alcoholic beverages.

4 (c) A ballot question to adopt a local option under this section must at least
5 contain language substantially similar to: "Shall (name of municipality or village)
6 adopt a local option to prohibit (local option under (a) or (b) of this section)? (yes or
7 no)."

8 (d) The ballot for an election on the option set out in (a)(2)(A), (a)(3)(A), or
9 (b)(2)(A) of this section must include an explanation of the authority to sell alcoholic
10 beverages given to a restaurant or eating place. The ballot for an election on the
11 option set out in (a)(2)(B) or (D), (a)(3)(B), or (b)(2)(B) or (D) of this section must
12 include a statement that a beverage dispensary license is commonly known as a "bar"
13 and an explanation of the authority to sell alcoholic beverages given to a beverage
14 dispensary licensee. The ballot for an election on the option set out in (a)(2)(C),
15 (a)(3)(C), or (b)(2)(C) of this section must include a statement that a package store
16 license is commonly known as a "liquor store" and an explanation of the authority to
17 sell alcoholic beverages given to a package store licensee.

18 (e) If a municipality dissolves under AS 29.06.450(a) or (b), a local option
19 adopted by the municipality under (a) of this section shall continue in effect as the
20 corresponding local option under (b) of this section for an established village having
21 the same perimeter as the previous boundaries of the municipality. A license for
22 premises operated by the municipality under AS 04.11.505 expires when the
23 municipality dissolves.

24 (f) A municipality or established village that has adopted a local option under
25 (a)(1), (2), or (3) or (b)(1) or (2) of this section may designate a site for the delivery
26 of alcoholic beverages to individuals in the area or a site for a person to bring
27 alcoholic beverages if the alcoholic beverages are imported into the area. This
28 subsection does not apply to the delivery or importation of

29 (1) one liter or less of distilled spirits, two liters or less of wine, or one
30 gallon or less of malt beverages; or

31 (2) alcoholic beverages to a premises licensed under (a)(2) - (3) or

1 (b)(2) of this section.

2 * Sec. 21. AS 04.11 is amended by adding new sections to read:

3 Sec. 04.11.493. CHANGE OF LOCAL OPTION. (a) If a majority of persons
4 voting on the question vote to approve a different local option, a municipality or
5 established village shall change a local option previously adopted under AS 04.11.491
6 to the different approved option.

7 (b) A ballot question to change a local option under this section must at least
8 contain language substantially similar to: "Shall (name of municipality or village)
9 change the local option currently in effect, that prohibits (current local option under
10 AS 04.11.491), and adopt in its place a local option to prohibit (proposed local option
11 under AS 04.11.491)? (yes or no)."

12 Sec. 04.11.495. REMOVAL OF LOCAL OPTION. (a) If a majority of the
13 persons voting on the question vote to remove the option, a municipality or established
14 village shall remove a local option previously adopted under AS 04.11.491. The
15 option is repealed effective the first day of the month following certification of the
16 results of the election.

17 (b) A ballot question to remove a local option under this section must at least
18 contain language substantially similar to: "Shall (name of municipality or village)
19 remove the local option currently in effect, that prohibits (current local option under
20 AS 04.11.491), so that there is no longer any local option in effect? (yes or no)."

21 (c) When issuing a license in the area that has removed a local option, the
22 board shall give priority to an applicant who was formerly licensed and whose license
23 was not renewed because of the results of the previous local option election. However,
24 an applicant described in this subsection does not have a legal right to a license and
25 the board is not required to approve the application.

26 * Sec. 22. AS 04.11 is amended by adding a new section to read:

27 Sec. 04.11.497. EFFECT ON LICENSES OF PROHIBITION OF SALE. If
28 a majority of voters vote to prohibit the sale of alcoholic beverages under
29 AS 04.11.491(a)(1), (a)(4) or (5), (b)(1), or (b)(3) or (4), the board may not issue,
30 renew, or transfer, between persons or locations, a license for premises located within
31 the boundaries of the municipality and in unincorporated areas within five miles of the

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boundaries of the municipality or within the perimeter of the established village. A license that may not be renewed because of a local option election held under this section is void 90 days after the results of the election are certified. A license that expires during the 90 days after the results of a local option election are certified may be extended, until it is void under this section, by payment of a prorated portion of the biennial license fee.

* Sec. 23. AS 04.11 is amended by adding a new section to read:

Sec. 04.11.499. PROHIBITION OF IMPORTATION AFTER ELECTION. If a majority of the voters vote to prohibit the importation of alcoholic beverages under AS 04.11.491(a)(4) or (5) or (b)(3) or (4), a person, beginning on the first day of the month following certification of the results of the election, may not knowingly send, transport, or bring an alcoholic beverage into the municipality or established village, unless the alcoholic beverage is sacramental wine to be used for bona fide religious purposes based on tenets or teachings of a church or religious body is limited in quantity to the amount necessary for religious purposes, and is dispensed only for religious purposes by a person authorized by the church or religious body to dispense the sacramental wine.

* Sec. 24. AS 04.11 is amended by adding a new section to read:

Sec. 04.11.501. PROHIBITION OF POSSESSION AFTER ELECTION. (a) If a majority of the voters vote to prohibit the possession of alcoholic beverages under AS 04.11.491(a)(5) or (b)(4), a person may not knowingly possess an alcoholic beverage in the municipality or established village, unless the alcoholic beverage is sacramental wine to be used for bona fide religious purposes based on tenets or teachings of a church or religious body, is limited in quantity to the amount necessary for religious purposes, and is dispensed only for religious purposes, by a person recognized by the church or religious body as authorized to dispense the wine.

(b) If there are licensed premises within the municipality or established village, the prohibition on possession is effective beginning 90 days after the results of the election are certified. If there are no licensed premises within the municipality or established village, the prohibition on possession is effective beginning 60 days after the results of the election are certified.

1 (c) Upon the adoption by a municipality of a local option under
2 AS 04.11.491(a)(5), an ordinance is adopted containing the provisions of this section.

3 (d) In this section, "possession" means having physical possession of or
4 exercising dominion or control over an alcoholic beverage, but does not include having
5 an alcoholic beverage within the digestive system of a person.

6 * Sec. 25. AS 04.11 is amended by adding a new section to read:

7 Sec. 04.11.503. EFFECT ON LICENSES OF RESTRICTION ON SALE. If
8 a majority of the voters vote under AS 04.11.491(a)(2) or (b)(2) to prohibit sale of
9 alcoholic beverages except by the type or types of licensees or permit holders listed
10 on the ballot, the board may not issue, renew, or transfer between persons or locations
11 a license for premises located within the boundaries of the municipality and in
12 unincorporated areas within five miles of the boundaries of the municipality or within
13 the perimeter of the established village, except the type or types of licenses listed on
14 the ballot. A license in effect within the boundaries of the municipality or perimeter
15 of the established village, and in unincorporated areas within five miles of the
16 boundaries of the municipality, except the type of license listed on the ballot, is void
17 90 days after the results of the election are certified. A license that expires during the
18 90 days after the results of a local option election are certified may be extended, until
19 it is void under this section, by payment of a prorated portion of the biennial license
20 fee.

21 * Sec. 26. AS 04.11 is amended by adding a new section to read:

22 Sec. 04.11.505. LICENSING AFTER PROHIBITION ON SALE EXCEPT IN
23 PREMISES OPERATED BY MUNICIPALITY. (a) If a majority of the voters vote
24 under AS 04.11.491(a)(3) to prohibit the sale of alcoholic beverages except on
25 premises operated by the municipality, the board may not issue, renew, or transfer
26 between persons or locations a license for premises located within the boundaries of
27 a municipality and in unincorporated areas within five miles of the boundaries of the
28 municipality, with the exception of the type of license listed on the ballot and operated
29 under a license held by the municipality. A license in effect is void 90 days after the
30 results of the election are certified. A license that expires during the 90 days after the
31 results of a local option election are certified may be extended, until it is void under

1 this subsection, by payment of a prorated portion of the biennial license fee.

2 (b) The local governing body of a municipality shall apply for a license to
3 operate the type of licensed premises listed on the ballot under AS 04.11.491(a)(3) and
4 approved by a majority of the voters. The municipality shall operate the premises
5 subject to the conditions and fees applicable to the type of license. Nothing in this
6 section precludes a municipality from applying to be a licensee under other provisions
7 of this title.

8 * Sec. 27. AS 04.11 is amended by adding new sections to read:

9 Sec. 04.11.507. PROCEDURE FOR LOCAL OPTION ELECTIONS. (a)
10 Elections to adopt a local option under AS 04.11.491, change a local option under
11 AS 04.11.493, or remove a local option under AS 04.11.495, shall be conducted as
12 required in this section.

13 (b) Upon receipt of a petition of a number of registered voters equal to 35
14 percent or more of the number of votes cast at the last regular municipal election, the
15 local governing body of a municipality shall place upon a separate ballot at the next
16 regular election, or at a special election, whichever local option, change in local option,
17 or removal of local option constitutes the subject of the petition. The local governing
18 body shall conduct the election under the election ordinance of the municipality.

19 (c) Upon receipt of a petition of 35 percent or more of the registered voters
20 residing within an established village, the lieutenant governor shall place upon a
21 separate ballot at a special election the local option, change in local option, or removal
22 of local option that constitutes the subject of the petition. The lieutenant governor
23 shall conduct the election under AS 15.

24 (d) A petition filed with the local governing body of a municipality under (b)
25 of this section, that places on the ballot the option set out in AS 04.11.491(a)(5),
26 constitutes a proposed ordinance of the municipality.

27 (e) AS 29.26.110 - 29.26.160 apply to a petition under (b) of this section in
28 a general law municipality except the

29 (1) number of required signatures is determined under (b) of this
30 section rather than under AS 29.26.130;

31 (2) application filed under AS 29.26.110 must at least contain language

1 substantially similar to the questions set out under AS 04.11.491 - 04.11.495 rather
2 than containing an ordinance or resolution;

3 (3) petition must at least contain language substantially similar to the
4 questions set out under AS 04.11.491 - 04.11.495 rather than material required under
5 AS 29.26.120(a)(1) and (2).

6 (f) Notwithstanding any other provisions of law, an election under (b) or (c)
7 of this section to remove a local option or to change to a less restrictive option than
8 the local option previously adopted under AS 04.11.491 may not be conducted during
9 the first 12 months after the local option was adopted or more than once in a 12-month
10 period.

11 Sec. 04.11.509. NOTICE OF THE RESULTS OF A LOCAL OPTION
12 ELECTION. (a) If a majority of the voters vote to prohibit, change, or remove a
13 local option under AS 04.11.491 - 04.11.495, the clerk of the municipality, or, if the
14 election is in an established village, the lieutenant governor shall notify the board of
15 the results of the election immediately after the results are certified. The board shall
16 immediately notify the Department of Law and the Department of Public Safety of the
17 results of the election.

18 (b) If a majority of the voters vote to prohibit the importation or possession
19 of alcoholic beverages under AS 04.11.491(a)(4) or (5) or (b)(3) or (4), the following
20 actions in addition to those prescribed in (a) of this section shall be taken before the
21 date the prohibition becomes effective:

22 (1) the board shall notify, by certified mail, all package store licensees
23 who sell alcoholic beverages in response to a written solicitation of the local option;
24 and

25 (2) the municipality or established village shall post public notice of
26 the prohibition in a central location in the municipality or village.

27 * Sec. 28. AS 04.11.540 is amended to read:

28 Sec. 04.11.540. LICENSE RENEWAL AND EXPIRATION. Notwithstanding
29 AS 04.11.680, an application for renewal of a license issued for the two calendar years
30 [YEAR] ending December 31 or of a seasonal license issued for parts of those
31 calendar years [A SIX-MONTH PERIOD ENDING IN THE PREVIOUS YEAR] may

1 be submitted up until the next February 28 [, BUT THE AUTHORITY GRANTED
2 UNDER THE LICENSE MAY NOT BE EXERCISED UNTIL THE LICENSE IS
3 RENEWED]. If a complete [THE] application for renewal has [AND APPLICABLE
4 AFFIDAVITS HAVE] not been filed by February 28 or the required fees and the
5 penalty fees have not been paid by that date, the license expires at 12:00 midnight
6 February 28. A new license may not be issued to the holder of an expired license for
7 the same premises except on proof satisfactory to the board of good cause for the
8 failure to file and pay.

9 * Sec. 29. AS 04.11.680(a) is amended to read:

10 (a) Upon application and payment of one-half [ONE-QUARTER] of the
11 biennial fee, the board may issue a seasonal license under this title that is [WILL BE]
12 effective for the intervals stated on the license. A seasonal license may not be
13 effective for more than 12 months in a two-year period [A CONTINUOUS SIX-
14 MONTH PERIOD]. Otherwise, all licenses issued under this title other than a retail
15 stock sale license are effective for the two calendar years ending December 31, unless
16 a shorter period is prescribed by the board or by law.

17 * Sec. 30. AS 04.16.110 is repealed and reenacted to read:

18 Sec. 04.16.110. SALE OF CERTAIN ALCOHOLIC BEVERAGES
19 PROHIBITED. A person may not sell an alcoholic beverage if it

- 20 (1) is intended for human consumption and is in powdered form; or
21 (2) contains more than 76 percent alcohol by volume.

22 * Sec. 31. AS 04.16.125(a) is amended to read:

23 (a) A person may not use a common carrier to transport alcoholic beverages
24 into an area that has restricted the sale of alcoholic beverages under
25 AS 04.11.491(a)(1), (2), or (3) or (b)(1) or (2) [AS 04.11.490, 04.11.492, OR
26 04.11.500] unless

27 (1) the shipping container holding the alcoholic beverages is clearly
28 labeled as containing alcoholic beverages with letters that contrast in color to the
29 shipping container and that are at least two inches in height; and

30 (2) an itemized invoice showing the quantity and purchase value of
31 distilled spirits, of wine, and of malt [THE ALCOHOLIC] beverages is attached to

1 fine not to exceed \$1,000 and shall forfeit the seized alcoholic beverages. When a
2 peace officer stops or contacts a person concerning a violation of AS 04.11.501
3 [AS 04.11.498] or an ordinance adopted [ENACTED] under AS 04.11.501
4 [AS 04.11.498], the peace officer shall seize the alcoholic beverages and may [, IN
5 THE OFFICER'S DISCRETION,] issue a citation to the person as provided in
6 AS 12.25.180.

7 * Sec. 36. AS 04.16.205(b) is amended to read:

8 (b) A person cited for a violation of AS 04.11.501 [AS 04.11.498] or an
9 ordinance adopted under AS 04.11.501 [AS 04.11.498] for which a bail amount has
10 been established under (c) of this section may, within 30 days after the date the
11 citation is issued,

12 (1) mail or personally deliver to the clerk of the court in which the
13 citation is filed by the peace officer the amount of bail indicated on the citation and
14 a copy of the citation indicating that the right to an appearance is waived, a plea of no
15 contest is entered, and the bail and all alcoholic beverages seized are forfeited; or

16 (2) perform community work in lieu of payment of the fine or a portion
17 of the fine as provided in (d) of this section.

18 * Sec. 37. AS 04.16.205(c) is amended to read:

19 (c) The supreme court shall establish by rule or order a schedule of bail
20 amounts that may be forfeited without a court appearance for a violation of
21 AS 04.11.501 [AS 04.11.498] or an ordinance adopted under AS 04.11.501
22 [AS 04.11.498]. In establishing the bail schedule the supreme court may consider the
23 quantity of alcoholic beverages possessed and the number of prior violations of the
24 person cited. Before establishing or amending the schedule of bail amounts required
25 by this subsection, the supreme court shall appoint and consult with an advisory
26 committee consisting of the following seven persons: one superior court judge, one
27 magistrate from each judicial district in the state, a representative of the Department
28 of Law, and a representative of the Public Defender Agency. The maximum bail
29 amount may not exceed \$1,000, and the issuing officer shall write on the citation the
30 amount of bail applicable to the violation.

31 * Sec. 38. AS 04.16.205(d) is amended to read:

1 (d) Community work shall be performed at the direction of the local governing
2 body of the municipality or the local governing body of the established village. In the
3 absence of a local governing body for an established village, community work
4 shall be performed at the direction of the body that has traditionally performed
5 public functions on behalf of the entire community. The value of community work
6 in lieu of a fine is \$5.00 per hour. When the community work is completed, the
7 person cited for the violation shall mail or personally deliver to the clerk of the court
8 in which the citation is filed by the peace officer

9 (1) a form, prescribed by the administrative director of the Alaska
10 Court System, indicating completion of the community work; and

11 (2) a copy of the citation, indicating that the right to an appearance is
12 waived, a plea of no contest is entered, and that the bail is forfeited or community
13 work has been performed and that all alcoholic beverages seized are forfeited.

14 * Sec. 39. AS 04.16.205(g) is amended to read:

15 (g) Notwithstanding other provisions of law, if a person cited for a violation
16 of AS 04.11.501 [AS 04.11.498] or an ordinance adopted under AS 04.11.501
17 [AS 04.11.498] for which a bail amount has been established under (c) of this section
18 appears in court and is found guilty, the penalty that is imposed for the offense may
19 not exceed the bail amount for that offense established under (c) of this section.

20 * Sec. 40. AS 04.16.205(h) is amended to read:

21 (h) A violation of AS 04.11.501 [AS 04.11.498] or an ordinance adopted under
22 AS 04.11.501 [AS 04.11.498] may not be considered a criminal offense and may not
23 result in imprisonment, nor is a fine imposed for a violation considered criminal
24 punishment. A person cited for a violation does not have a right to a jury trial or
25 court appointed counsel.

26 * Sec. 41. AS 04.16.220(a) is amended to read:

27 (a) The following are subject to forfeiture:

28 (1) alcoholic beverages manufactured, sold, offered for sale or
29 possessed for sale, bartered or exchanged for goods and services in this state in
30 violation of AS 04.11.010; alcoholic beverages possessed, stocked, warehoused, or
31 otherwise stored in violation of AS 04.21.060; alcoholic beverages sold, or offered for

1 sale in violation [IN AN AREA WHERE THE RESULTS] of a local option adopted
2 under AS 04.11.491 [ELECTION HAVE, UNDER AS 04.11.490 - 04.11.500,
3 PROHIBITED THE POSSESSION OF ALCOHOLIC BEVERAGES OR
4 PROHIBITED THE BOARD FROM ISSUING, RENEWING, OR TRANSFERRING
5 ONE OR MORE LICENSES OR PERMITS UNDER THIS TITLE IN THE AREA];
6 alcoholic beverages transported into the state and sold to persons not licensed under
7 this chapter in violation of AS 04.16.170(b);

8 (2) materials and equipment used in the manufacture, sale, offering for
9 sale, possession for sale, barter or exchange of alcoholic beverages for goods and
10 services in this state in violation of AS 04.11.010; materials and equipment used in the
11 stocking, warehousing, or storage of alcoholic beverages in violation of AS 04.21.060;
12 materials and equipment used in the sale or offering for sale of an alcoholic beverage
13 in an area in violation [WHERE THE RESULTS] of a local option adopted under
14 AS 04.11.491 [ELECTION HAVE, UNDER AS 04.11.490 - 04.11.500, PROHIBITED
15 THE BOARD FROM ISSUING, RENEWING, OR TRANSFERRING ONE OR
16 MORE LICENSES OR PERMITS UNDER THIS TITLE IN THE AREA];

17 (3) aircraft, vehicles, or vessels used to transport, or facilitate the
18 transportation of

19 (A) alcoholic beverages manufactured, sold, offered for sale or
20 possessed for sale, bartered or exchanged for goods and services in this state
21 in violation of AS 04.11.010;

22 (B) property stocked, warehoused, or otherwise stored in
23 violation of AS 04.21.060;

24 (C) alcoholic beverages imported into a municipality or
25 established village in violation of AS 04.11.499 [AS 04.11.496];

26 (4) alcoholic beverages found on licensed premises that do not bear
27 federal excise stamps if excise stamps are required under federal law;

28 (5) alcoholic beverages, materials or equipment used in violation of
29 AS 04.16.175.

30 * Sec. 42. AS 04.16.220(b) is amended to read:

31 (b) Property subject to forfeiture under this section may be actually or

1 constructively seized under an order issued by the superior court upon a showing of
2 probable cause that the property is subject to forfeiture under this section. Constructive
3 seizure is effected upon posting a signed notice of seizure on the item to be forfeited,
4 stating the violation and the date and place of seizure. Seizure without a court order
5 may be made if

6 (1) the seizure is incident to a valid arrest or search;

7 (2) the property subject to seizure is the subject of a prior judgment in
8 favor of the state; or

9 (3) there is probable cause to believe that the property is subject to
10 forfeiture under (a) of this section; except for alcoholic beverages possessed on
11 violation of AS 04.11.501 [AS 04.11.498] or an ordinance adopted under AS 04.11.501
12 [AS 04.11.498], property seized under this paragraph may not be held over 48 hours
13 or until an order of forfeiture is issued by the court, whichever is earlier.

14 * Sec. 43. AS 04.16.220(d) is amended to read:

15 (d) Property subject to forfeiture under (a) of this section may be forfeited

16 (1) upon conviction of a person for a violation of [UNDER]
17 AS 04.11.010, 04.11.499, [04.11.496(b), OR] AS 04.21.060, or AS 04.11.501 [UPON
18 ENTRY OF JUDGMENT UNDER AS 04.11.498] or an ordinance adopted under
19 AS 04.11.501 [AS 04.11.498]; or

20 (2) upon judgment by the superior court in a proceeding in rem that the
21 property was used in a manner subjecting it to forfeiture under (a) of this section.

22 * Sec. 44. AS 04.16.220(g) is amended to read:

23 (g) It is no defense in an in rem forfeiture proceeding brought under (d)(2) of
24 this section that a criminal proceeding is pending or has resulted in conviction or
25 acquittal of a person charged with violating AS 04.11.010, 04.11.499 [04.11.496(b)],
26 or AS 04.21.060.

27 * Sec. 45. AS 04.21.010(a) is amended to read:

28 (a) A municipality may adopt ordinances governing the importation, barter,
29 sale, and consumption of alcoholic beverages within the municipality and may ban
30 possession of alcoholic beverages under AS 04.11.491(a)(5) [AS 04.11.498(d) OR (e)].
31 An ordinance adopted under this section may not be inconsistent with this title or