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SENATE

STATE

AFFAIRS

## Alaska's Crime Fighting Databases A Big Hit

By CHRIS BEHEIM AND LESLEY HAMMER

The Department of Public Safety maintains two databases that are powerful weapons in the war on crime; WIN/AAFIS, the Western Identification Network / Alaska Automated Fingerprint Information System and CODIS, the Combined DNA Index System. Unidentified latent fingerprints may be searched in AAFIS and unidentified DNA evidence may be searched in CODIS. Both of these databases have proven to be extremely effective crime fighting tools, as crime lab personnel have utilized them to generate hits on latent prints and DNA that otherwise would remain unidentified. The Scientific Crime Detection Laboratory has made the utilization of these databases a priority.

Latent fingerprints associated with a crime are first compared to suspects and persons for elimination. Remaining unidentified latent prints of sufficient quality are searched in the WIN/AAFIS system. From 1997 to 2001, the crime lab Latent Fingerprint Section averaged 24 AAFIS hits per year. The number of hits generated in 2002 went up 229% to a total of 55. Many of these hits provided investigative information, leading to the resolution of crimes, which would have otherwise re-

mained unsolved. For example, a suspect was recently generated in an unsolved homicide because one of our latent examiners decided to search the print in WIN/AAFIS in addition to comparing it to the suspects provided on the laboratory submittal. The latent print hit on a person that was not listed on the suspect list, providing a new investigative lead in the case. The trend of hits continues into 2003 with 21 hits so far this year. In the month of April alone there have been seven latent print hits; three from drug cases, two from burglary cases, and two associated with homicide cases. Later this year the crime lab will also have the capability to search latent palm impressions with the acquisition of a Palm Print Database System which is now being researched for purchase.

DNA evidence is searched in the CODIS database. CODIS blends forensic science and computer technology into an effective tool for solving a variety of different crimes. Alaska's DNA Identification System currently contains profiles from 3200 convicted offenders along with 300 forensic or crime scene DNA profiles. Over half of the forensic profiles are from "no-suspect" cases. As

DNA profiles are entered, they are searched against both the convicted offender index and the forensic index which contain profiles from crime scene evidence. The results produced by CODIS have been spectacular. In the past 16 months, the DNA database has generated 30 hits and aided 38 different investigations, making Alaska's CODIS program one of the most successful in the country on a per capita basis. Fifteen of the hits linked crime scene evidence to a convicted offender, and fifteen of the hits linked two or more cases together, indicating that the same perpetrator was involved. DNA profiles from Alaska are regularly uploaded into the National DNA Index System. NDIS enables federal, state, and local crime labs to exchange and compare DNA profiles electronically, thereby linking crimes to each other and to convicted offenders from other states. The National DNA Index System now contains over 1,200,000 DNA profiles.

Both WIN/AAFIS and CODIS are invaluable resources to crime lab personnel. Evidence that may have remained unidentified a few years ago is now being searched in these systems and leading to

(Alaska's Crime, continued on page 6)

### Alaska Crime, continued from page 5

the resolution of many serious crimes. As technology advances and Public Safety personnel become more aware of the operation and potential of these powerful crime-fighting tools, we will see even more crimes solved in the future as direct results of these database searches. If you have any questions, or if you have evidence in no-suspect cases that you would like searched, please contact the Crime Laboratory. For latent print evidence contact Lesley Hammer at 269-5760, and for questions regarding CODIS contact Chris Beheim at 269-5743. ■



# IN

## SHORT



### TOWARD CRIMINAL JUSTICE SOLUTIONS

NOV. 04

## DNA in "Minor" Crimes Yields Major Benefits in Public Safety

### THE ISSUE

Property crime offenders have high recidivism rates, their crime and violence can escalate, and property crime cases often go unsolved.<sup>1</sup> It has been estimated that each burglar in the top 10 percent of burglars commits more than 232 burglaries per year.<sup>2</sup> Several police departments in the United States are finding that they may be able to change these trends. When they analyze DNA from a burglary, they get evidence that often solves several other cases as well. And they are finding that biological evidence collected from property crime scenes can prevent future property crimes and more serious offenses.

The Miami-Dade Police Department (MDPD), Palm Beach County Sheriff's Office, and New York City Police Department (NYPD) are solving high-volume property crimes (like burglary and auto theft) and violent crimes (like sexual assault and murder) using DNA funds they received from the National Institute of Justice (NIJ). They are discovering that analyzing DNA from property crimes can have major public safety benefits.

### BACKGROUND

Biological evidence *can* be retrieved from property crime scenes. Burglars often cut themselves on broken glass as they enter a property—and blood is an obvious source of DNA evidence. Plus crime labs can get a profile from "invisible" DNA evidence police retrieve from the sweatband inside a cap, from the inside of a mask, on a cigarette butt, in chewing gum, on a drinking glass, or from a half-eaten sandwich. In New York, analysts have had great success processing this "invisible" burglary evidence from the skin cells deposited from perspiration or saliva.

Mark Dale, crime lab director at the NYPD, said that in his experience, when DNA from a no-suspect murder scene is checked against records in the Combined DNA Index System (CODIS)<sup>3</sup>, it often matches DNA from a no-suspect burglary. Review of the State's first 1,000 hits showed that the vast majority were linked to crimes like homicide and rape, but of these, 82 percent of the offenders were already in the databank as a result of a prior conviction for a "lesser" crime such as burglary or drugs.<sup>4</sup> According to a Florida State study, 52 percent of database hits against murder and sexual assault cases matched individuals who had prior convictions for burglary.<sup>5</sup>

With NIJ support, the crime labs in Miami-Dade, Palm Beach, and New York City have achieved dramatic results by analyzing biological evidence collected from property crime scenes.

**The Numbers.** In New York, biological evidence from 201 burglaries yielded 86 CODIS-acceptable DNA profiles. On the basis of these numbers, the lab has thus far been able to identify several "pattern" burglaries. One profile uncovered a five-burglary serial offender. Most of New York's DNA profiles resulted in forensic hits to multiple unsolved cases. Three were linked to more serious, violent crimes such as sexual assault and robbery. In all, 37 burglary profiles have been linked through CODIS to other unsolved cases; 31 of the newly analyzed cases were matched through CODIS to convicted offenders and are now being investigated; arrests are pending.

DNA in blood stains collected at the scenes of four household burglaries in Miami-Dade linked all cases to the same offender, who turned out to be a previously convicted burglar. DNA evidence also linked three different no-suspect vehicle and residential burglaries and identified the perpetrator—he, too, turned out to be a previously convicted burglar.

Overall, in Miami-Dade, 526 no-suspect DNA profiles produced 271 hits; in Palm Beach, 229 profiles produced 91 hits. Of the 362 CODIS hits, 56 percent came from evidence collected at burglary scenes.

**The Cost.** The cost of DNA testing depends on several factors: the number of samples tested per case, the type of DNA testing needed (nuclear or mitochondrial), and the cost to have police collect biological evidence at property crime scenes and pursue investigative leads generated by CODIS hits.

But the cost of DNA analysis must be weighed against the losses from crime incurred by the public. The Bureau of Justice Statistics estimates the average property loss from burglary is \$1,500.<sup>6</sup> Bud Stuver, who heads the DNA testing program at the MDPD, looks at affordability from the broad perspective of the costs to the justice system as a whole. "It is much more expeditious to employ DNA testing than to pay investigators."

## THE BOTTOM LINE

"We move quickly when profiles are needed for the high-priority crimes of murder and rape," says Cecilia Crouse, who supervises the DNA section of the Palm Beach County Sheriff's Office crime lab. The crime labs in New York City, Miami-Dade, and Palm Beach have shown that DNA can go a long way toward solving property crimes as well as violent crimes. Law enforcement agencies can clear even more cases when they collect biological evidence not just from the scenes of major crimes, but also from high-volume crimes, such as burglary.

Bud Stuver, who has trained many officers in the MDPD to collect DNA at property crimes, shows them "it's worth the time and effort."

Mark Dale, in the NYPD, noted his lab is "now gathering data to investigate the links between recidivism, lesser offenses, and more serious crimes." If forthcoming data can show the links, then it may be possible in some instances to prevent murder by solving burglaries.

## FOR MORE INFORMATION

Visit <http://www.dna.gov>.

## NOTES

1. Langan, P.A., and D.J. Levin, *Recidivism of Prisoners Released in 1994*, Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2002 (NCJ 193427): 1, 8; *Crime in the United States 2002*: 221, 223. Burglary had the lowest clearance rate of any Index crime. (Violent crimes are often more rigorously investigated, which explains why their clearance rate is higher than for property crimes.)
2. Chaiken, J.M. and M.R. Chaiken, *Varieties of Criminal Behavior*, Washington, DC: U.S. Department of Justice, National Institute of Justice, 1982 (NCJ 87680): 44.
3. CODIS is an FBI-distributed database that allows Federal, State, and local crime labs to exchange and compare DNA profiles.
4. Source: <http://criminaljustice.state.ny.us/forensic/dnabrochure.htm>.
5. Source: Florida Department of Law Enforcement State DNA Database Statistics, Tallahassee, Florida.
6. Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics, 2000*, Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2001 (NCJ 190251): 304.



### III. STANDARD OF REVIEW

Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment should be granted if there is no genuine dispute as to material facts and if the moving party is entitled to judgment as a matter of law. The moving party has the burden of showing that there is no genuine dispute as to material fact.<sup>2</sup> The moving party need not present evidence; it need only point out the lack of any genuine dispute as to material fact.<sup>3</sup> Once the moving party has met this burden, the nonmoving party must set forth evidence of specific facts showing the existence of a genuine issue for trial.<sup>4</sup> All evidence presented by the non-movant must be believed for purposes of summary judgment, and all justifiable inferences must be drawn in favor of the non-movant.<sup>5</sup> However, the nonmoving party may not rest upon mere allegations or denials, but must show that there is sufficient evidence supporting the claimed factual dispute to require a fact-finder to resolve the parties' differing versions of the truth at trial.<sup>6</sup>

### IV. DISCUSSION

#### A. Totality of Circumstances

In support of the motion at docket 38, Tandeske contends that because the Ninth Circuit vacated the Ninth Circuit panel's decision in *United States v. Kincade*,<sup>7</sup> "there is no longer a sufficient legal basis for continuing the injunction."<sup>8</sup> The court disagrees. Applying a totality of circumstances analysis, the Ninth Circuit, sitting *en banc*, held that persons on conditional release from prison may lawfully be required to provide a DNA sample for inclusion in a national database, even in the absence of

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<sup>2</sup>*Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

<sup>3</sup>*Id.* at 323-25.

<sup>4</sup>*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986).

<sup>5</sup>*Id.* at 255.

<sup>6</sup>*Id.* at 248-49.

<sup>7</sup>345 F.3d 1095 (9th Cir. 2003).

<sup>8</sup>Doc. 38 at 3.

individualized suspicion that they had committed additional crimes. The Ninth Circuit reasoned that:

In light of conditional releasees' *substantially* diminished expectations of privacy, the minimal intrusion occasioned by blood sampling, and the overwhelming societal interests so clearly furthered by the collection of DNA information from convicted offenders, we must conclude that compulsory DNA profiling of qualified federal offenders is reasonable under the totality of circumstances.<sup>9</sup>

The narrow issue decided by the *en banc* court in *Kincade* was whether a person subject to conditional release may be compelled to provide a DNA sample in the absence of individualized suspicion of criminal activity. The Ninth Circuit did not address whether a person previously subject to conditional release, who has successfully completed the terms of his incarceration and conditional release, may be compelled to provide a DNA sample absent individualized suspicion of wrongdoing. As Tandeske notes, the present case "involves the application of Alaska's DNA collection statute to persons who are neither incarcerated nor on probation or parole."<sup>10</sup> The narrow holding in *Kincade* offers no direct support for Tandeske's contention that the State may, without individualized suspicion of wrongdoing, compel the taking of a DNA sample from a person whose period of conditional release has expired. Perhaps cognizant of this shortcoming, Tandeske asserts that persons who have been unconditionally discharged from their convictions, but who are nevertheless required to register as sex offenders, "are sufficiently similar to the conditional releasees in *Kincade* that *Kincade* conclusively resolves the claim of the class."<sup>11</sup>

In support of his position, Tandeske points out that the convicted sex offenders who make up the class in this case are required, despite their unconditional discharge, to register with the state and periodically verify and update their registration information.

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<sup>9</sup>*United States v. Kincade*, 379 F.3d 813 (9th Cir. 2004) (emphasis added).

<sup>10</sup>Doc. 38 at 7.

<sup>11</sup>Doc. 38 at 7.

Thus, "the rights of class members are restricted," because they lack the "full panoply of rights and protections possessed by the general public."<sup>12</sup> Furthermore, Tandeske contends that "[l]ike the conditional releasees in *Kincade*, the class members, by virtue of their sex offense convictions, permanently lose their right of privacy in their identity."<sup>13</sup>

Tandeske's arguments are based on accurate facts, but the conclusion he draws from those facts is not correct. To begin with, the holding in *Kincade* makes clear that loss of the right to privacy is not the loss of all constitutional protections:

Let us be clear: Our holding in no way intimates that conditional releasees' diminished expectations of privacy serve to extinguish their ability to invoke the protections of the Fourth Amendment's guarantee against unreasonable searches and seizures. Where a given search or class of searches cannot satisfy the traditional totality of the circumstances test, a conditional releasee may lay claim to constitutional relief - just like any other citizen.<sup>14</sup>

Moreover, defendants' contention that conditional release is analogous to Alaska's sex offender registry was rejected by the United States Supreme Court in *Smith v. Doe*:<sup>15</sup>

This argument [that Alaska's sex offender registration system is parallel to probation or supervised release] has some force, but, after due consideration, we reject it. Probation and supervised release entail a series of mandatory conditions and allow the supervising officer to seek the revocation of probation or release in case of infraction. By contrast, offenders subject to the Alaska statute are free to move where they wish and to live and work as other citizens, with no supervision . . . A sex offender who fails to comply with the reporting requirement may be subjected to a criminal prosecution for that failure, but any prosecution is a proceeding separate from the individual's original offense.<sup>16</sup>

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<sup>12</sup>*Id.*

<sup>13</sup>*Id.* at 8.

<sup>14</sup>*Kincade*, 379 F.3d at 835.

<sup>15</sup>538 U.S. 84 (2003).

<sup>16</sup>*Smith v. Doe*, 538 U.S. 84, 101-2 (2003).

The distinction between conditional release and mandatory sex offender registration is well illustrated by *Kincade's* description of conditional release as something which "dramatically alter[s] the relationship between the releasee and the government."<sup>17</sup> Conditional releasees have "severely constricted expectations of privacy relative to the general citizenry."<sup>18</sup> The same simply cannot be said of the class members. They are members of the general citizenry, subject to a particular registration requirement, but not subject to the invasive interests of a government which is engaged in supervising their return to society after finishing a term of imprisonment. They have passed beyond that stage and back into society.

Tandeske also argues that the class members have a sharply reduced expectation of privacy because as sex offenders they must "periodically verify their registration information" and "provide a photograph and full set of fingerprints."<sup>19</sup> The court notes that similar indignities are routinely imposed upon citizens wishing to receive a driver's licence from the Alaska Department of Motor Vehicles, and upon attorneys wishing to join the Alaska Bar Association.

The Fourth Amendment to the United States Constitution provides, in pertinent part, that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." "A search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing."<sup>20</sup> As the Ninth Circuit has said:

The gathering of fingerprint evidence from "free persons" constitutes a sufficiently significant interference with individual expectations of privacy that law enforcement officials are required to demonstrate that they have probable cause, or at least an articulable suspicion, to believe that the person committed a

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<sup>17</sup>*Kincade*, 379 F.3d at 834.

<sup>18</sup>*Id.*

<sup>19</sup>Doc. 38 at 8-9.

<sup>20</sup>*Chandler v. Miller*, 520 U.S. 305, 308 (1997).

criminal offense and that the fingerprinting will establish or negate the person's connection to the offense."<sup>21</sup>

Class members like Doe who have completed their terms of incarceration and conditional release, and who have paid their debt to society are properly considered "free persons." The fact that such persons must register as sex offenders and periodically update that registration does not so diminish the expectation of privacy that they are "sufficiently similar" to the conditional releasees in *Kincade* to be treated the same way. Rather, the class members are free persons, members of the general citizenry, whose interests are protected by the Fourth Amendment. Absent individualized suspicion, their homes and bodies are not subject to invasion by the state.

#### B. Special Needs Doctrine

Alternatively, Tandeske argues that the compelled extraction of DNA from persons who have completed their terms of incarceration and conditional release is constitutionally permissible under the Supreme Court's "special-needs" doctrine. Although the Fourth Amendment generally requires individualized suspicion of wrongdoing for a search or seizure to be reasonable, a search unsupported by probable cause may be constitutional "when special needs, *beyond the normal need for law enforcement*, make the warrant and probable-cause requirement impracticable."<sup>22</sup> In *City of Indianapolis v. Edmond*, the Supreme Court rejected the application of the special-needs doctrine to vehicular check-points whose primary purpose was related to law enforcement,<sup>23</sup> noting that it was "particularly reluctant to recognize exceptions to the general rule of individualized suspicion where governmental authorities primarily pursue their general crime control ends."<sup>24</sup> The dissent in *Kincade* notes that "[n]ever

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<sup>21</sup>*Kincade*, 379 F.3d at 836, fn 31.

<sup>22</sup>*Vernonia School Dist. 47J v. Acton*, 115 S.Ct. 2386, 2391 (1995) (citing *Griffin v. Wisconsin*, 483 U.S. 868, 873 (1987) (emphasis added)).

<sup>23</sup>531 U.S. 32, 44 (2000).

<sup>24</sup>*Id.* at 43.

once in over two hundred years of history has the Supreme Court approved of a suspicionless search designed to produce ordinary evidence of criminal wrongdoing for use by the police."<sup>25</sup>

As noted by Tandeske, "[t]he explicit purpose of AS 44.41.035 is to provide a system that will assist in solving crimes, detecting repeat offenders, exonerating innocent persons, locating missing persons, and identifying unknown human remains."<sup>26</sup> The primary purposes of AS 44.41.035 are largely indistinguishable from the government's general interests in crime control. It follows that the special needs doctrine cannot support the relief Tandeske seeks.

### C. Plaintiff's Cross-Motion at Docket 40

Plaintiff's response at docket 40 includes a request that "summary judgment should be entered in favor of the class."<sup>27</sup> While the failure to formally designate the papers at docket 40 as a response and cross-motion did deprive plaintiff of a chance to file a reply memo, Tandeske had an opportunity to and did fully respond to the arguments in the papers at docket 40 both in writing and at oral argument. Furthermore, the very reasons which the court has found to require that it deny the relief Tandeske seeks also adequately support entry of judgment as a matter of law in favor of plaintiff. Accordingly, the court elects to treat docket 40 as both a response and a cross-motion. For the reasons given in the preceding sections, it is a violation of the Constitution to extract a DNA sample from any member of the certified class without individualized suspicion. It follows that plaintiff is entitled to summary judgment.

### V. CONCLUSION AND ORDER FOR LODGING ADDITIONAL DOCUMENTS

For the reasons stated above, defendants' motion to dissolve the preliminary injunction and for summary judgment at docket 38 is **DENIED**, and plaintiff's (deemed) cross-motion for summary judgment at docket 40 is **GRANTED**.

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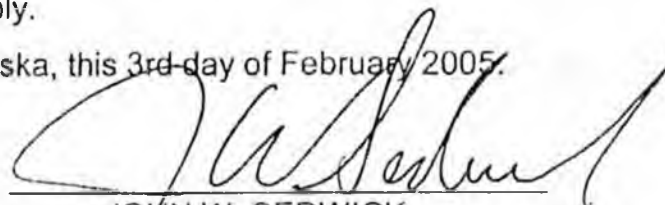
<sup>25</sup>*Kincade*, 379 F.3d at 854 (Reinhardt, J., dissenting).

<sup>26</sup>Doc. 33 at 20.

<sup>27</sup>Doc. 40 at 4.

Based on this order, plaintiff shall prepare and submit a judgment and permanent injunction for the court's consideration. The proposed judgment and permanent injunction should be served and lodged within 30 days from the date of this order. Tandeske shall have 20 days from the service of such proposal to serve and file a response directed at the form (but not at plaintiff's right to the issuance) of the judgment and permanent injunction. Plaintiff shall have 10 days from the service of Tandeske's response to file a reply.

DATED at Anchorage, Alaska, this 3rd day of February 2005.



JOHN W. SEDWICK  
UNITED STATES DISTRICT JUDGE

A03-0231--CV (JWS)

2-7-05

R. ROSENSTEIN (AG-STR-308)  
D. THOMPSON

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 95  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Corrections  
 Title "An act relating to the collection of, and the use RDU Institutional Facilities  
of reasonable force to collect, a deoxyribonucleic acid sample" Component Institution Director's Office  
 Sponsor Senator Bunde  
 Requester State Affairs, Judiciary Component No. 524

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

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

Passage of this legislation will not have a measurable fiscal impact on the Department of Corrections

Prepared by: Sharleen Griffin, Acting Director Phone 465-4641  
 Division: Administrative Services Date/Time 2/18/05 9:48 AM  
 Approved by: Portia Parker, Deputy Commissioner Date 2/18/2005  
 Agency: Department of Corrections

Alaska State Legislature


Senator Con Bunde  
District P

Vice Chair: Senate Finance Committee  
Chair: Senate Labor & Commerce Committee

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State Capitol  
Juneau, AK 99801-1182  
(907) 465-4843

During Interim:  
716 W. Fourth Avenue  
Anchorage, AK 99501-2133  
(907) 269-0181

**MEMORANDUM**

DATE: February 21, 2005  
TO: Senator Therriault  
FROM: Senator Con Bunde   
RE: Senate Bill 95 Hearing Request

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Senator Therriault:

Attached please find the bill packet for SB 95. I respectfully request a hearing in the Senate State Affairs Committee as soon as possible.

Thank you for your consideration. If you have any questions or would like more information, please call my office at x 4843.

Sincerely,  
Senator Con Bunde

**SB**

**101**

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
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Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

February 22, 2005

**SUBJECT:** SB 101 -- 2005 Revisor's Bill (Work Order No. 24-LS0195\G)

**TO:** Senator Gene Therriault  
Attn: Heather Brakes

**FROM:** James P. Crawford   
Assistant Revisor

Senate Bill 101, the Revisor's Bill, is scheduled for hearing in the Senate State Affairs Committee on Thursday, February 24, 2005. Enclosed, please find the following:

1. A sectional analysis for the bill;
2. A blank amendment containing some suggested changes to the bill; and.
3. A memo explaining the changes in the blank amendment.

If you have any questions, please let me know.

JPC:jad  
05-110.jad

Enclosures

# LEGAL SERVICES

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

## MEMORANDUM

February 22, 2005

**SUBJECT:** Blank Amendment to SB 101 -- 2005 Revisor's Bill  
(Work Order No. 24-LS0195\G.1)

**TO:** Senator Gene Theriault  
Attn: Heather Brakes

**FROM:** James P. Crawford   
Assistant Revisor

The first amendment is to AS 13.26.332, which is already being amended in bill sec. 21. This amendment corrects another oversight in the section. As currently written, one part of the section provides that the agent that is being granted a power of attorney may exercise the powers that the principal has "checked below," and a list of specific powers follows. This is not correct. In actuality, the remainder of the section operates in such a way that to give the enumerated powers to the agent in question, the principal does nothing. The powers are conferred automatically. On the other hand, to keep a given power from the agent, the principal must line out the power and initial next to it. In any event, nothing is ever "checked." Accordingly, this change reflects the way that the section actually operates.

The second amendment is to AS 16.43.460(b), which is already being amended in bill sec. 35. This amendment conforms language in the section to reflect the repeal of two sections cited in the section, which is also what the existing amendment does.

The third amendment removes bill sec. 68, relating to AS 45.63.080(a)(11), from the revisor's bill entirely. This amendment attempted to correct what appeared to be oversight arising last year in HB 51 when the paragraph was changed in the Senate Labor and Commerce Committee. Basically, there appeared to be a discrepancy between the language changes made to the paragraph and the committee's intended policy choice for the paragraph. The amendment attempted to correct that discrepancy. However, for an amendment to correct the language of a section to reflect the policy choice made for the section, the policy choice must be clear. If the policy choice is ambiguous, there is a risk that the language change misses the legislature's intent and actually changes the section to reflect what is, in effect, a new policy choice. This should not take place in a revisor's bill. Further review of last year's changes to paragraph (a)(11) reveals that the intended policy choice for the paragraph is not clear. In order to avoid the risk of changing the section in a manner that was not intended, this bill section and its amendment is being removed from the bill.

JPC:jad  
05-109.jad

# LEGAL SERVICES

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
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## MEMORANDUM

February 22, 2005

**SUBJECT:** 2005 Revisor's Bill (Work Order No. 24-LS0195\G)

**TO:** Senator Gene Therriault  
Attn: Heather Brakes

**FROM:** James P. Crawford   
Assistant Revisor

The following is a sectional analysis of a draft of the 2005 revisor's bill. The bill is prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of any portion of the statute law of this state.

To assist the reader in understanding the bill, I have summarized the contents by listing sections that have similar purposes or effects.

**Sections that delete, repeal, or update obsolete provisions:** Sections 25, 26, 28, 29, 30, 32, 33, 34, 35, 41, 42, 43, 47, 57, 58, 59, 60, 61, 62, 63, 64, 65, 67, 81, and 95 amend or repeal provisions that have become obsolete in whole or in part.

**Sections that correct errors or oversights:** Sections 2, 20, 21, 36, 38, 39, 48, 54, and 68 correct errors or oversights.

**Sections that improve the form or substance of the law:** Sections 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 27, 31, 37, 40, 44, 45, 46, 49, 50, 51, 52, 53, 55, 56, 66, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, and 94 propose amendments to improve the form or substance of the statutory law of Alaska.

## SECTIONAL ANALYSIS

Bill section 1 improves the form of 5 04.11.210(c). The term "includes" incorporates the concept of "is not limited to" under AS 01.10.040(b) and is the preferred usage for legal drafting in this situation.

Bill section 2 corrects an error in AS 06.50.020(a)(2)(C). As originally set out in sec. 3, ch. 116, SLA 2004, the term "convictions" modified all the items in sub-subparagraphs (i)-(iii). Following the bill's enactment, the Office of Legal Services, the Department of Law, and the administration personnel who administer this area noted that, strictly speaking, the concept of convictions did not fit correctly with the items in (ii) or (iii). The term is moved to (i), where the concept of corrections is most appropriate.

Bill section 3 improves the form of AS 10.06.960(a) in its reference to the Alaska Native Claims Settlement Act ("ANCSA"). At present, ANCSA proper actually consists of sections 1691 - 1629h, which comprise chapter 33 in title 43 of the U.S. Code. The last section, 1629h, was added in 2000. Like many statutes, AS 10.06.960(a)'s citation of the Act includes a spanned reference. However, every time another section is added to the Act, Alaska statutes that cite to it with a spanned reference become incorrect, necessitating their amendment.

An alternate way of referring to the Act avoids this necessity by citing to the first section, which does not change, followed by "et seq." This is the abbreviation for "*et sequentes*", which means "and the following." This citation form, when used in association with the Act, will automatically incorporate new additions to the Act as they occur and will obviate the need for amending each statute citing the Act after each addition.

Accordingly, all statutes in which the legislative intent appears to have been to refer to the Alaska Native Claims Settlement Act are amended to reflect this automatically inclusive citation form.

Bill sections 4, 5, 6, 7, 8, 9, 10, and 11 improve the form of AS 10.06.960(b), (c), (e), (f), (g), (h), (i), and (k), respectively, by capitalizing the first letter of "Act," which is the abbreviated version of the Alaska Native Claims Settlement Act. This is the preferred usage for legal drafting.

Bill section 12 improves the form of AS 10.06.960(n) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 13 improves the form of AS 10.06.960(o) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 14 improves the form of AS 10.06.960(p) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3. It also improves the form of AS 10.06.960(p) by changing the abbreviated reference to that Act to the preferred usage for legal drafting for the reason described in the explanation of bill secs. 4-11.

Bill section 15 improves the form of AS 10.06.961(a) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

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Bill section 16 improves the form of AS 10.20.007 in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 17 improves the form of AS 13.12.102(b) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 18 improves the form of AS 13.16.705(a) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 19 improves the form of AS 13.16.705(g) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 20 corrects an error in AS 13.26.210, which was repealed and reenacted by sec. 21, ch. 84, SLA 2004. The court system pointed out that the language "incapacitated person" in subsection (g) was not the correct term for use with conservators, that "protected person" was the correct term, and that a substitution should be made. The court system's observation is supported by usage in AS 13.26. Specifically, AS 13.26.090 - 13.26.155, entitled "Article 3. Guardians of Incapacitated Persons," links guardians to "incapacitated persons," as the title of the article suggests. Additionally, AS 13.26.165 - 13.26.320, entitled "Article 4. Protection of the Property of Persons under Disability and Minors," links conservators with "protected persons."

Moreover, the phrasing of this section's other subsections, specifically (d) and (f), which were repealed and reenacted in the same bill as subsection (g), suggest that the "incapacitated person" language was used mistakenly and also support the change from "incapacitated person" to "protected person."

Bill section 21 corrects an oversight in AS 13.26.332, the statutory form power of attorney. The amendment removes the language "and the power to make your health care decisions" in the form's preamble, which generally describes what powers the form may grant to the agent who holds the power of attorney.

Last year, statutory provisions relating to health care decision were consolidated and moved to AS 13.52 by HB 25, enacted as Chapter 83, SLA 2004. As part of this consolidation, HB 25 repealed the specific paragraph in this form relating to the power to make decisions regarding "health care services" and transplanted it to the new chapter. Sec AS 13.52.010 and 13.52.300. However, the bill neglected to address the corresponding reference to the repealed paragraph in the introductory material. That oversight is corrected here.

Bill section 22 improves the form of AS 13.26.344(c) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 23 improves the form of AS 13.46.085(a) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 24 improves the form of AS 13.46.085(f) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 25 deletes an obsolete reference to the Bureau of Indian Affairs in AS 14.07.030(2). The Office of Legal Services confirmed with the Department of Law that the reference in paragraph (2) is outdated and should be removed because, as a general matter, the Bureau of Indian Affairs no longer operates or administers schools in Alaska.

Bill section 26 deletes an obsolete reference to the Bureau of Indian Affairs in AS 14.08.101(2) for the reasons set out in the explanation of bill sec. 25.

Bill section 27 improves the form of AS 14.57.210(a) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 28 deletes obsolete language relating to the Bureau of Indian Affairs in AS 14.60.010(6) for the reasons set out in bill sec. 25.

Bill section 29 updates AS 16.05.835(b)'s reference to hair crab. The Department of Law requested this change because the scientific classifying group I.T.I.S., which is the entity used by federal agencies, including the Department of Agriculture, has dropped "Korean" from the species name. This amendment makes the same change.

Bill section 30 deletes obsolete language in AS 16.10.520(e) relating to outdated date references.

Bill section 31 improves the form of AS 16.20.032(b) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 32 deletes obsolete language in AS 16.20.310(c) relating to the Agricultural Development Authority. This section was enacted in 1979, and the act did not create, define, or even otherwise refer to an "Agricultural Development Authority." It does not now exist or ever appear to have existed in statute. The reference to it is removed.

Bill section 33 updates AS 16.43.450(a)'s reference to hair crab. The scientific classifying group I.T.I.S., which is the entity used by federal agencies, including the Department of Agriculture, has dropped "Korean" from the species name. This amendment makes the same change at the Department of Law's request.

Bill section 34 updates AS 16.43.450(b)'s reference to hair crab for the reason set out in the explanation of bill sec. 33.

Bill section 35 updates AS 16.43.460(b) to reflect the repeal of AS 16.43.901 in 1996 and of AS 16.43.906 in 1997.

Bill section 36 corrects an apparent oversight in AS 17.20.330. This section relates to certain entities that disseminate an advertisement of another entity's product that is false.

In particular, the section provides that the disseminating entity is not liable for the dissemination of the false advertising unless the disseminating entity refuses to provide certain identification information about the other entity to the commissioner of health and social services. At the time this section was enacted, the commissioner of health and social services was responsible for the enforcement of the prohibition on the dissemination of false advertising, set out in AS 17.20.290(a)(5).

However, responsibility for enforcing the prohibition on dissemination of false advertising was split last year between two commissioners. See secs. 2 and 3, ch. 151, SLA 2004. The commissioner of health and social services remains responsible for the enforcement of false advertising relating to "drugs or devices" under AS 17.20.290(c). However, the commissioner of commerce, community, and economic development is now responsible for the enforcement of false advertising relating to "food or cosmetics" under AS 17.20.290(b).

Because the commissioner of commerce, community, and economic development now has been given enforcement responsibility, a corresponding reference to the commissioner should have been added as a part of the 2004 amendments to this chapter. It was not. This change corrects that omission.

Bill section 37 improves the form of AS 18.56.097 in its reference to one section of the Alaska Native Claims Settlement Act, which is changed to reflect the codified section number. It also improves the form of the section's reference to the Act generally for the reasons set out in the explanation of bill sec. 3.

Bill section 38 corrects an error in AS 21.34.170(a). This subsection relates to reporting requirements concerning, among other things, allocations of aggregate tax in the surplus lines insurance context. The Department of Law brought to our attention that AS 21.34.150, which is referenced in subsection (a), relates to the different issues of originating or accepting surplus lines insurance. The Department of Law recommended AS 21.34.180, which does relate to surplus lines tax, as the correct cite. We agree.

Bill section 39 corrects an error in AS 21.34.180(a) in its description of a tax that is imposed under AS 21.09.210. Subsection (a) refers to the tax imposed by AS 21.09.210 as a "premium receipts tax." In fact, AS 21.09.210 describes the tax imposed under its terms simply as a "premium tax." Accordingly, subsection (a)'s reference to this tax is corrected to reflect that.

In other sections, the use of "premium receipts tax" appears correct. "Premium receipts tax" is the description given to the tax imposed under AS 21.33.055(a) and under AS 21.33.061(c). These descriptions of the tax have been unchanged since the sections

were enacted 1968. Accordingly, these occurrences of the "premium receipts tax" terminology are left unchanged.

Bill section 40 improves the form of AS 22.10.025(a) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 41 deletes obsolete provisions in AS 24.20.271 to reflect the repeal of AS 44.66.020 and 44.66.030 in this bill's repeal section.

Bill section 42 deletes an obsolete reference to AS 26.05.260(c) in AS 26.05.330 to reflect the 1981 repeal of AS 26.05.260(c).

Bill section 43 updates AS 26.10.060(a) to reflect the repeal of federal law cited in the subsection. Specifically, subsections (b)-(h) of 50 U.S.C. App. 459, cited in the section, have been repealed by Act of Dec. 3, 1974, as shown in the notes relating to the 1974 amendments in the "History; Ancillary Laws and Directives" section following the text of section 459 in the U.S.C.S. volumes. These repealed subsections contained the re-employment provisions mentioned in the material being deleted. The Department of Law recommends that the section be amended as shown, in light of the federal repeal.

Bill section 44 improves the form of AS 29.45.050(m) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 45 improves the form of AS 34.15.075(b) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 46 improves the form of AS 34.45.760(10) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 47 updates AS 36.30.170(b)(4) to reflect the repeal of the old Uniform Partnership Act, AS 32.05, by sec. 8, ch. 115, SLA 2000 and its replacement in sec. 6 of the same act by AS 32.06, the new Partnership Act.

Bill section 48 corrects an oversight in AS 37.14.410(a) relating to the prohibition on crediting certain funds to oil and hazardous substance ("OHS") release mitigation accounts. Currently, subsection (a) restricts certain money from being credited to "the oil and hazardous substance release mitigation account under AS 46.04.010 or to an account established in AS 46.08.020 or 46.08.025." (Emphasis added.)

Problematically, AS 46.04.010 does not encompass one such account; it encompasses two. One is the OHS *release prevention* mitigation account, which is established in AS 46.08.020. The other is the OHS *release response* mitigation account, which is established in AS 46.08.025. It appears that the restriction was intended to apply to both OHS release mitigation accounts encompassed by 46.04.010, and this amendment, changing "the" to "an," makes that clear.

As originally enacted by sec. 1, ch. 1, FSSLA 1992, this subsection directed the crediting prohibition to "the oil and hazardous substance **release** mitigation account under AS 46.04.010 or AS 46.08.020." At that time there was only one such account. The account was described in AS 37.14.410(a) and in AS 46.04.010 as the "OHS **release** mitigation account," but it was referenced as OHS **release prevention** mitigation account in AS 46.08.020. In any event, because there was only one OHS release mitigation account in existence at the time, the "the" in AS 37.14.410(a) was correct.

However, in 1994 another OHS **release** mitigation account was established. Section 26, ch. 128, SLA 1994 enacted AS 46.08.025, which established the OHS **release response** mitigation account. In the same bill, sec. 19 changed the reference to "OHS **release** mitigation account" in AS 46.04.010 by adding "prevention" so that the reference read the "OHS **release prevention** mitigation account." This change conformed the existing reference in AS 46.04.010 to the reference in AS 46.08.020.

In addition to this change to AS 46.04.010, sec. 19 also inserted a new reference in the section to the "OHS **release response** mitigation account" that elsewhere had been established in AS 46.08.025. Thus, after these changes, AS 46.04.010 encompassed not one but two OHS **release** mitigation accounts. The "the" in 37.14.410(a) became incorrect.

Chapter 128's addition of the new OHS **release** mitigation account was only partially reflected in AS 37.14.410(a). Section 12 added to subsection (a)'s crediting prohibition the reference to accounts in AS 46.08.025 that exists today. This addition shows an intent that the account established there -- the OHS **release response** mitigation account -- was intended to be included in subsection (a)'s crediting restriction along with the OHS **release prevention** mitigation account in AS 46.08.020. Unfortunately, the corollary change -- turning the "the" preceding the reference to AS 46.04.010 to an "an" to reflect that that section now referenced both such accounts, was not made. That oversight is corrected here.

Bill section 49 improves the form of AS 38.05.073(c) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 50 improves the form of AS 38.95.050 in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 51 improves the form of AS 41.17.041(b) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 52 improves the form of AS 41.17.900(f) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

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Bill section 53 improves the form of AS 41.21.025(b) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3. It also improves the form of the subsection by capitalizing references to "Native," which is the preferred usage for legal drafting.

Bill section 54 corrects an error in AS 43.50.460(d)(1). This paragraph refers to AS 43.50.530 in the context of a requirement that certain tobacco product manufacturers appoint registered agents.

However, this referenced section, AS 43.50.530, does not relate in any way to providing notice of the appointment of registered agents. It instead relates to sales of cigarette tax stamps by the Department of Revenue. The correct reference is to AS 43.50.475, which does relate to notice of appointments, and paragraph (d)(1) is amended to reflect this.

Bill section 55 improves the form of AS 43.98.015(a) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3. It also improves the form of the subsection by capitalizing a reference to "Native," which is the preferred usage for legal drafting.

Bill section 56 improves the form of AS 43.98.015(b) in the subsection's reference to a particular subsection of the Alaska Native Claims Settlement Act ("ANCSA"), which is changed to reflect the codified version.

Bill section 57 deletes obsolete language in AS 44.27.056 relating to an outdated date reference.

Bill section 58 updates AS 44.29.210(a) to reflect the repeal of federal provisions cited in the subsection and to incorporate the federal provisions that replace the repealed provisions. Subsequent to this section's enactment, the Act of July 10, 1992 repealed 42 U.S.C. sec. 300x-4a and 42 U.S.C. sec. 300x-2. That same act enacted 42 U.S.C. 300x-25, which allows the secretary of the Department of Health and Human Services to make grants to the state if the state sets up a certain type of revolving loan fund relating to alcohol or drug abuse. This is similar to the subject matter of AS 44.29.210 and of repealed 42 U.S.C. 300x-4a, and 42 U.S.C. 300x-25 appears to have been intended as the replacement for repealed sec. 300x-4a.

Although 42 U.S.C. 300x-2 has been repealed by the same act that repealed 300x-4, there is still a 300x-2 in the federal code because, unlike Alaska, the federal code re-uses section numbers. However, the current 300x-2 relates to "children with serious emotional disturbances" and thus does not appear to have been intended as a replacement for repealed 300x-2. On the other hand, sec. 300x-25 itself cites 42 U.S.C. 300x-21, which was also enacted by the same federal act that repealed 300x-2 and 300x-4 and enacted 300x-25. 42 U.S.C. 300x-21 relates to federal grants for substance abuse and thus appears to have been intended to have been the replacement for repealed 300x-2. These substitutions are made in this section.

Bill section 59 updates AS 44.29.210(c) to reflect the repeal of a federal provision for the reason set out in the explanation of bill sec. 58.

Bill section 60 deletes obsolete language in AS 44.42.065(a) relating to an outdated date reference.

Bill section 61 deletes obsolete language in AS 44.62.350(c) relating to an outdated date reference.

Bill section 62 deletes obsolete language in AS 44.66.050 to reflect the repeal of AS 44.66.020 and 44.66.030 in this bill's repeal section. Note that the term "program" is left in place in certain parts of the section because of its generic use in AS 44.66.050(d)(2) encompassing boards and commissions, which are also left in place.

Bill section 63 updates AS 44.66.060 to reflect the repeal of AS 44.66.020 and 44.66.030 in this bill's repeal section.

Bill section 64 updates AS 44.83.425 to reflect the repeal of AS 44.83.380 in 1993.

Bill section 65 updates AS 44.88.085(c) to reflect the repeal of (h) of this section in 1998.

Bill section 66 improves the form of AS 45.55.138 in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 67 updates AS 45.57.090 to reflect the 1988 repeal of AS 10.05.597 - 10.05.696, which was the former article on foreign corporations, and the replacement of those sections by AS 10.06.705 - 10.06.788, which is the new article on foreign corporations.

Bill section 68 corrects an oversight in AS 45.63.080(a)(11) that occurred when the section was being amended last session in HB 15, enacted as ch. 55, SLA 2004. Our office prepared an amendment to this bill relating to AS 45.63.080(a)(11), and when the amendment was offered in the Senate Labor and Commerce Committee, the language "or at the time the invoice is received by the buyer, whichever is later" was included as a handwritten addition to the printed amendment. The added language was placed in paragraph (11)(A) following the original amendment language "receipt of the magazine" in the first clause immediately before the semi-colon. This handwritten language preceded the language "; a cancellation request," which begins the second clause.

The amendment as amended with the handwritten addition was adopted and is reflected in paragraph (11)(A) today.

However, at the time the amendment with its handwritten addition was offered, a second, conforming addition should have been made to paragraph (11)(A)'s second clause for the

sake of consistency. Specifically, the language "or invoice, whichever is later" should have been added following the language "receipt of the magazine" in the second clause. However, that addition was not made. That apparent oversight is corrected here.

Bill section 69 improves the form of AS 46.03.822(c) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 70 improves the form of AS 46.14.010(b) by conforming a state air quality control term relating to emissions to the term's federal counterpart as required by federal law. In 2003, sec. 59 of HB 160, which was sponsored by the House Rules Committee at the request of the governor, added the definition of "emission unit" to AS 46.14.990. AS 46.14.990 provides the definitions for AS 46.14, which deals with air quality control, and the "emission unit" definition in AS 46.14.990 adopted the federal regulations definition by reference.

As it turns out, the federal definition is in fact "emissions unit" -- with an "s" -- and federal regulations require exact conformity with federal definitions in this area. Furthermore, the Environmental Protection Agency has recently contacted the Department of Law to remind the department of this requirement. At the request of the department, this change is made in this subsection and throughout AS 46.14.

Bill section 71 improves the form of AS 46.14.010(c) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 72 improves the form of AS 46.14.010(d) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 73 improves the form of AS 46.14.010(e) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 74 improves the form of AS 46.14.010(f) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 75 improves the form of AS 46.14.020 by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 76 improves the form of AS 46.14.130(b) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 77 improves the form of AS 46.14.180 by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 78 improves the form of AS 46.14.190(a) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 79 improves the form of AS 46.14.210 by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation to bill sec. 70.

Bill section 80 improves the form of AS 46.14.250(c) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 81 deletes obsolete language in AS 46.14.250(f) to reflect the repeal of AS 46.14.250(e) in this bill's repeal section.

Bill section 82 improves the form of AS 46.14.400(c) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 83 improves the form of AS 46.14.400(f) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 84 improves the form of AS 46.14.410(e) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 85 improves the form of AS 46.14.515(a) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 86 improves the form of AS 46.14.540(a) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 87 improves the form of AS 46.14.560 by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

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Bill section 88 improves the form of AS 46.14.990(11) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 89 improves the form of AS 46.14.990(20) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 90 improves the form of AS 46.14.990(21) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 91 improves the form of AS 46.15.165(c) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 92 improves the form of AS 47.07.020(b) by removing initial capital letters in a reference to the aid to families with dependent children program to conform the reference to other references to the identical program in the same section and by conforming age references to the preferred usage for legal drafting.

Bill section 93 improves the form of AS 47.08.060(c) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 94 improves the form of AS 47.55.020(d) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 95 is the repeal section.

The repeal of AS 14.08.031(d) removes obsolete material relating to the Bureau of Indian Affairs. Subsection (d) provided that "U.S. Bureau of Indian Affairs schools shall be included in a regional educational attendance area boundary," and this provision is obsolete for the reasons set out in the explanation of bill sec. 25.

The repeal of AS 18.50.950(4) removes obsolete language from the statutes. Specifically, paragraph (4) is the definition for the term "child adoption agency" for AS 18.50, the Vital Statistics Act. It is being repealed on the recommendation of the Department of Law, which correctly points out that the term "child adoption agency" is not used in the chapter anywhere and thus is extraneous.

The repeal of AS 44.66.020 removes an obsolete section for the statutes. This section, enacted in 1977, is an artifact of program budgeting, which is no longer used in this state. A glance at any recent operating budget or review of AS 37.07, the Executive Budget Act, reveals the obvious: budgeting is now done by agency, which is the governmental subunit that administers the program, and not by the program itself. See, e.g., AS 37.07.010(1) and (2); 37.07.020(a).

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The repeal of AS 44.66.030 removes an obsolete section from the statutes. This section, enacted in 1977, is an artifact of program budgeting, which is no longer used in this state.

The repeal of AS 46.14.250(e) removes obsolete material from AS 46.14.250. Subsection (e) relates to the Department of Environmental Conservation's duty to set an "initial fee rate" for emission fees established in AS 46.14.250 for "the first two years following approval of the permit program" under AS 46.14 by the relevant federal administrator (chapter 46.14 is entitled "Air Quality Control").

The effective date of the approval in question was December 5, 1996, as set out in the Federal Register, Vol. 61, No. 235, Thursday, December 5, 1996, pp. 64463-64475. Obviously, more than two years have passed since the effective date of approval, and this subsection has thus become obsolete.

Bill section 96 provides an immediate effective date for the bill.

JPC:jad

05-111.jad

AMENDMENT

OFFERED IN THE SENATE

TO: SB 101

- 1 Page 9, line 16:
- 2 Delete "as I have checked"
- 3 Insert "as indicated [AS I HAVE CHECKED]"
- 4
- 5 Page 19, line 4:
- 6 Delete "that is, or recently was, subject"
- 7 Insert "that [IS, OR] recently was [,] subject"
- 8
- 9 Page 33, line 1, through page 35, line 20:
- 10 Delete all material.
- 11
- 12 Renumber the following bill sections accordingly.

# LEGAL SERVICES

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Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

February 23, 2005

**SUBJECT:** Corrected Sectional Analysis for SB 101 -- 2005 Revisor's Bill  
(Work Order No. 24-LS0195\G)

**TO:** Senator Gene Therriault  
Attn: Heather Brakes

**FROM:** James P. Crawford   
Assistant Revisor

Enclosed please find a new draft of the sectional analysis of SB 101 with the page headers corrected.

JPC:jad  
05-018.jad

Enclosure

# LEGAL SERVICES

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## MEMORANDUM

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**TO:** Senator Gene Therriault  
Attn: Heather Brakes

**FROM:** James P. Crawford   
Assistant Revisor

The following is a sectional analysis of a draft of the 2005 revisor's bill. The bill is prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of any portion of the statute law of this state.

To assist the reader in understanding the bill, I have summarized the contents by listing sections that have similar purposes or effects.

**Sections that delete, repeal, or update obsolete provisions:** Sections 25, 26, 28, 29, 30, 32, 33, 34, 35, 41, 42, 43, 47, 57, 58, 59, 60, 61, 62, 63, 64, 65, 67, 81, and 95 amend or repeal provisions that have become obsolete in whole or in part.

**Sections that correct errors or oversights:** Sections 2, 20, 21, 36, 38, 39, 48, 54, and 68 correct errors or oversights.

**Sections that improve the form or substance of the law:** Sections 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 27, 31, 37, 40, 44, 45, 46, 49, 50, 51, 52, 53, 55, 56, 66, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, and 94 propose amendments to improve the form or substance of the statutory law of Alaska.

## SECTIONAL ANALYSIS

Bill section 1 improves the form of AS 04.11.210(c). The term "includes" incorporates the concept of "is not limited to" under AS 01.10.040(b) and is the preferred usage for legal drafting in this situation

Bill section 2 corrects an error in AS 06.50.020(a)(2)(C). As originally set out in sec. 3, ch. 116, SLA 2004, the term "convictions" modified all the items in sub-subparagraphs (i)-(iii). Following the bill's enactment, the Office of Legal Services, the Department of Law, and the administration personnel who administer this area noted that, strictly speaking, the concept of convictions did not fit correctly with the items in (ii) or (iii). The term is moved to (i), where the concept of corrections is most appropriate.

Bill section 3 improves the form of AS 10.06.960(a) in its reference to the Alaska Native Claims Settlement Act ("ANCSA"). At present, ANCSA proper actually consists of sections 1601 - 1629h, which comprise chapter 33 in title 43 of the U.S. Code. The last section, 1629h, was added in 2000. Like many statutes, AS 10.06.960(a)'s citation of the Act includes a spanned reference. However, every time another section is added to the Act, Alaska statutes that cite to it with a spanned reference become incorrect, necessitating their amendment.

An alternate way of referring to the Act avoids this necessity by citing to the first section, which does not change, followed by "et seq." This is the abbreviation for "*et sequentes*", which means "and the following." This citation form, when used in association with the Act, will automatically incorporate new additions to the Act as they occur and will obviate the need for amending each statute citing the Act after each addition.

Accordingly, all statutes in which the legislative intent appears to have been to refer to the Alaska Native Claims Settlement Act are amended to reflect this automatically inclusive citation form.

Bill sections 4, 5, 6, 7, 8, 9, 10, and 11 improve the form of AS 10.06.960(b), (c), (e), (f), (g), (h), (i), and (k), respectively, by capitalizing the first letter of "Act," which is the abbreviated version of the Alaska Native Claims Settlement Act. This is the preferred usage for legal drafting.

Bill section 12 improves the form of AS 10.06.960(n) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 13 improves the form of AS 10.06.960(o) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 14 improves the form of AS 10.06.960(p) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3. It also improves the form of AS 10.06.960(p) by changing the abbreviated reference to that Act to the preferred usage for legal drafting for the reason described in the explanation of bill secs. 4 '1.

Bill section 15 improves the form of AS 10.06.961(a) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 16 improves the form of AS 10.20.007 in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 17 improves the form of AS 13.12.102(b) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 18 improves the form of AS 13.16.705(a) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 19 improves the form of AS 13.16.705(g) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 20 corrects an error in AS 13.26.210, which was repealed and reenacted by sec. 21, ch. 84, SLA 2004. The court system pointed out that the language "incapacitated person" in subsection (g) was not the correct term for use with conservators, that "protected person" was the correct term, and that a substitution should be made. The court system's observation is supported by usage in AS 13.26. Specifically, AS 13.26.090 - 13.26.155, entitled "Article 3. Guardians of Incapacitated Persons," links guardians to "incapacitated persons," as the title of the article suggests. Additionally, AS 13.26.165 - 13.26.320, entitled "Article 4. Protection of the Property of Persons under Disability and Minors," links conservators with "protected persons."

Moreover, the phrasing of this section's other subsections, specifically (d) and (f), which were repealed and reenacted in the same bill as subsection (g), suggest that the "incapacitated person" language was used mistakenly and also support the change from "incapacitated person" to "protected person."

Bill section 21 corrects an oversight in AS 13.26.332, the statutory form power of attorney. The amendment removes the language "and the power to make your health care decisions" in the form's preamble, which generally describes what powers the form may grant to the agent who holds the power of attorney.

Last year, statutory provisions relating to health care decision were consolidated and moved to AS 13.52 by HB 25, enacted as Chapter 83, SLA 2004. As part of this consolidation, HB 25 repealed the specific paragraph in this form relating to the power to make decisions regarding "health care services" and transplanted it to the new chapter. See AS 13.52.010 and 13.52.300. However, the bill neglected to address the corresponding reference to the repealed paragraph in the introductory material. That oversight is corrected here.

Bill section 22 improves the form of AS 13.26.344(c) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 23 improves the form of AS 13.46.085(a) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 24 improves the form of AS 13.46.085(f) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 25 deletes an obsolete reference to the Bureau of Indian Affairs in AS 14.07.030(2). The Office of Legal Services confirmed with the Department of Law that the reference in paragraph (2) is outdated and should be removed because, as a general matter, the Bureau of Indian Affairs no longer operates or administers schools in Alaska.

Bill section 26 deletes an obsolete reference to the Bureau of Indian Affairs in AS 14.08.101(2) for the reasons set out in the explanation of bill sec. 25.

Bill section 27 improves the form of AS 14.57.210(a) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 28 deletes obsolete language relating to the Bureau of Indian Affairs in AS 14.60.010(6) for the reasons set out in bill sec. 25.

Bill section 29 updates AS 16.05.835(b)'s reference to hair crab. The Department of Law requested this change because the scientific classifying group I.T.I.S., which is the entity used by federal agencies, including the Department of Agriculture, has dropped "Korean" from the species name. This amendment makes the same change.

Bill section 30 deletes obsolete language in AS 16.10.520(e) relating to outdated date references.

Bill section 31 improves the form of AS 16.20.032(b) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 32 deletes obsolete language in AS 16.20.310(e) relating to the Agricultural Development Authority. This section was enacted in 1979, and the act did not create, define, or even otherwise refer to an "Agricultural Development Authority." It does not now exist or ever appear to have existed in statute. The reference to it is removed.

Bill section 33 updates AS 16.43.450(a)'s reference to hair crab. The scientific classifying group I.T.I.S., which is the entity used by federal agencies, including the Department of Agriculture, has dropped "Korean" from the species name. This amendment makes the same change at the Department of Law's request.

Bill section 34 updates AS 16.43.450(b)'s reference to hair crab for the reason set out in the explanation of bill sec. 33.

Bill section 35 updates AS 16.43.460(b) to reflect the repeal of AS 16.43.901 in 1996 and of AS 16.43.906 in 1997.

Bill section 36 corrects an apparent oversight in AS 17.20.330. This section relates to certain entities that disseminate an advertisement of another entity's product that is false.

In particular, the section provides that the disseminating entity is not liable for the dissemination of the false advertising unless the disseminating entity refuses to provide certain identification information about the other entity to the commissioner of health and social services. At the time this section was enacted, the commissioner of health and social services was responsible for the enforcement of the prohibition on the dissemination of false advertising, set out in AS 17.20.290(a)(5).

However, responsibility for enforcing the prohibition on dissemination of false advertising was split last year between two commissioners. See secs. 2 and 3, ch. 151, SLA 2004. The commissioner of health and social services remains responsible for the enforcement of false advertising relating to "drugs or devices" under AS 17.20.290(c). However, the commissioner of commerce, community, and economic development is now responsible for the enforcement of false advertising relating to "food or cosmetics" under AS 17.20.290(b).

Because the commissioner of commerce, community, and economic development now has been given enforcement responsibility, a corresponding reference to the commissioner should have been added as a part of the 2004 amendments to this chapter. It was not. This change corrects that omission.

Bill section 37 improves the form of AS 18.56.097 in its reference to one section of the Alaska Native Claims Settlement Act, which is changed to reflect the codified section number. It also improves the form of the section's reference to the Act generally for the reasons set out in the explanation of bill sec. 3.

Bill section 38 corrects an error in AS 21.34.170(a). This subsection relates to reporting requirements concerning, among other things, allocations of aggregate tax in the surplus lines insurance context. The Department of Law brought to our attention that AS 21.34.150, which is referenced in subsection (a), relates to the different issues of originating or accepting surplus lines insurance. The Department of Law recommended AS 21.34.180, which does relate to surplus lines tax, as the correct cite. We agree.

Bill section 39 corrects an error in AS 21.34.180(a) in its description of a tax that is imposed under AS 21.09.210. Subsection (a) refers to the tax imposed by AS 21.09.210 as a "premium receipts tax." In fact, AS 21.09.210 describes the tax imposed under its terms simply as a "premium tax." Accordingly, subsection (a)'s reference to this tax is corrected to reflect that.

In other sections, the use of "premium receipts tax" appears correct. "Premium receipts tax" is the description given to the tax imposed under AS 21.33.055(a) and under AS 21.33.061(c). These descriptions of the tax have been unchanged since the sections

were enacted 1968. Accordingly, these occurrences of the "premium receipts tax" terminology are left unchanged.

Bill section 40 improves the form of AS 22.10.025(a) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 41 deletes obsolete provisions in AS 24.20.271 to reflect the repeal of AS 44.66.020 and 44.66.030 in this bill's repeal section.

Bill section 42 deletes an obsolete reference to AS 26.05.260(c) in AS 26.05.330 to reflect the 1981 repeal of AS 26.05.260(c).

Bill section 43 updates AS 26.10.060(a) to reflect the repeal of federal law cited in the subsection. Specifically, subsections (b)-(h) of 50 U.S.C. App. 459, cited in the section, have been repealed by Act of Dec. 3, 1974, as shown in the notes relating to the 1974 amendments in the "History; Ancillary Laws and Directives" section following the text of section 459 in the U.S.C.S. volumes. These repealed subsections contained the re-employment provisions mentioned in the material being deleted. The Department of Law recommends that the section be amended as shown, in light of the federal repeal.

Bill section 44 improves the form of AS 29.45.050(m) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 45 improves the form of AS 34.15.075(b) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 46 improves the form of AS 34.45.760(10) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 47 updates AS 36.30.170(b)(4) to reflect the repeal of the old Uniform Partnership Act, AS 32.05, by sec. 8, ch. 115, SLA 2000 and its replacement in sec. 6 of the same act by AS 32.06, the new Partnership Act.

Bill section 48 corrects an oversight in AS 37.14.410(a) relating to the prohibition on crediting certain funds to oil and hazardous substance ("OHS") release mitigation accounts. Currently, subsection (a) restricts certain money from being credited to "the oil and hazardous substance release mitigation account under AS 46.04.010 or to an account established in AS 46.08.020 or 46.08.025." (Emphasis added).

Problematically, AS 46.04.010 does not encompass one such account; it encompasses two. One is the OHS *release prevention* mitigation account, which is established in AS 46.08.020. The other is the OHS *release response* mitigation account, which is established in AS 46.08.025. It appears that the restriction was intended to apply to both OHS release mitigation accounts encompassed by 46.04.010, and this amendment, changing "the" to "an," makes that clear.

As originally enacted by sec. 1, ch. 1, FSSLA 1992, this subsection directed the crediting prohibition to "the oil and hazardous substance **release** mitigation account under AS 46.04.010 or AS 46.08.020." At that time there was only one such account. The account was described in AS 37.14.410(a) and in AS 46.04.010 as the "OHS **release** mitigation account," but it was referenced as OHS **release prevention** mitigation account in AS 46.08.020. In any event, because there was only one OHS release mitigation account in existence at the time, the "the" in AS 37.14.410(a) was correct.

However, in 1994 another OHS **release** mitigation account was established. Section 26, ch. 128, SLA 1994 enacted AS 46.08.025, which established the OHS **release response** mitigation account. In the same bill, sec. 19 changed the reference to "OHS **release** mitigation account" in AS 46.04.010 by adding "prevention" so that the reference read the "OHS **release prevention** mitigation account." This change conformed the existing reference in AS 46.04.010 to the reference in AS 46.08.020.

In addition to this change to AS 46.04.010, sec. 19 also inserted a new reference in the section to the "OHS **release response** mitigation account" that elsewhere had been established in AS 46.08.025. Thus, after these changes, AS 46.04.010 encompassed not one but two OHS **release** mitigation accounts. The "the" in 37.14.410(a) became incorrect.

Chapter 128's addition of the new OHS **release** mitigation account was only partially reflected in AS 37.14.410(a). Section 12 added to subsection (a)'s crediting prohibition the reference to accounts in AS 46.08.025 that exists today. This addition shows an intent that the account established there -- the OHS **release response** mitigation account - - was intended to be included in subsection (a)'s crediting restriction along with the OHS **release prevention** mitigation account in AS 46.08.020. Unfortunately, the corollary change -- turning the "the" preceding the reference to AS 46.04.010 to an "an" to reflect that that section now referenced both such accounts, was not made. That oversight is corrected here.

Bill section 49 improves the form of AS 38.05.073(c) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 50 improves the form of AS 38.95.050 in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 51 improves the form of AS 41.17.041(b) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 52 improves the form of AS 41.17.900(f) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

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Bill section 53 improves the form of AS 41.21.025(b) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3. It also improves the form of the subsection by capitalizing references to "Native," which is the preferred usage for legal drafting.

Bill section 54 corrects an error in AS 43.50.460(d)(1). This paragraph refers to AS 43.50.530 in the context of a requirement that certain tobacco product manufacturers appoint registered agents.

However, this referenced section, AS 43.50.530, does not relate in any way to providing notice of the appointment of registered agents. It instead relates to sales of cigarette tax stamps by the Department of Revenue. The correct reference is to AS 43.50.475, which does relate to notice of appointments, and paragraph (d)(1) is amended to reflect this.

Bill section 55 improves the form of AS 43.98.015(a) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3. It also improves the form of the subsection by capitalizing a reference to "Native," which is the preferred usage for legal drafting.

Bill section 56 improves the form of AS 43.98.015(b) in the subsection's reference to a particular subsection of the Alaska Native Claims Settlement Act ("ANCSA"), which is changed to reflect the codified version.

Bill section 57 deletes obsolete language in AS 44.27.056 relating to an outdated date reference

Bill section 58 updates AS 44.29.210(a) to reflect the repeal of federal provisions cited in the subsection and to incorporate the federal provisions that replace the repealed provisions. Subsequent to this section's enactment, the Act of July 10, 1992 repealed 42 U.S.C. sec. 300x-4a and 42 U.S.C. sec. 300x-2. That same act enacted 42 U.S.C. 300x-25, which allows the secretary of the Department of Health and Human Services to make grants to the state if the state sets up a certain type of revolving loan fund relating to alcohol or drug abuse. This is similar to the subject matter of AS 44.29.210 and of repealed 42 U.S.C. 300x-4a, and 42 U.S.C. 300x-25 appears to have been intended as the replacement for repealed sec. 300x-4a.

Although 42 U.S.C. 300x-2 has been repealed by the same act that repealed 300x-4, there is still a 300x-2 in the federal code because, unlike Alaska, the federal code re-uses section numbers. However, the current 300x-2 relates to "children with serious emotional disturbances" and thus does not appear to have been intended as a replacement for repealed 300x-2. On the other hand, sec. 300x-25 itself cites 42 U.S.C. 300x-21, which was also enacted by the same federal act that repealed 300x-2 and 300x-4 and enacted 300x-25. 42 U.S.C. 300x-21 relates to federal grants for substance abuse and thus appears to have been intended to have been the replacement for repealed 300x-2. These substitutions are made in this section.

Bill section 59 updates AS 44.29.210(c) to reflect the repeal of a federal provision for the reason set out in the explanation of bill sec. 58.

Bill section 60 deletes obsolete language in AS 44.42.065(a) relating to an outdated date reference.

Bill section 61 deletes obsolete language in AS 44.62.350(c) relating to an outdated date reference.

Bill section 62 deletes obsolete language in AS 44.66.050 to reflect the repeal of AS 44.66.020 and 44.66.030 in this bill's repeal section. Note that the term "program" is left in place in certain parts of the section because of its generic use in AS 44.66.050(d)(2) encompassing boards and commissions, which are also left in place.

Bill section 63 updates AS 44.66.060 to reflect the repeal of AS 44.66.020 and 44.66.030 in this bill's repeal section.

Bill section 64 updates AS 44.83.425 to reflect the repeal of AS 44.83.380 in 1993.

Bill section 65 updates AS 44.88.085(c) to reflect the repeal of (h) of this section in 1998.

Bill section 66 improves the form of AS 45.55.138 in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 67 updates AS 45.57.090 to reflect the 1988 repeal of AS 10.05.597 - 10.05.696, which was the former article on foreign corporations, and the replacement of those sections by AS 10.06.705 - 10.06.788, which is the new article on foreign corporations.

Bill section 68 corrects an oversight in AS 45.63.080(a)(11) that occurred when the section was being amended last session in HB 15, enacted as ch. 55, SLA 2004. Our office prepared an amendment to this bill relating to AS 45.63.080(a)(11), and when the amendment was offered in the Senate Labor and Commerce Committee, the language "or at the time the invoice is received by the buyer, whichever is later" was included as a handwritten addition to the printed amendment. The added language was placed in paragraph (11)(A) following the original amendment language "receipt of the magazine" in the first clause immediately before the semi-colon. This handwritten language preceded the language "; a cancellation request," which begins the second clause.

The amendment as amended with the handwritten addition was adopted and is reflected in paragraph (11)(A) today.

However, at the time the amendment with its handwritten addition was offered, a second, conforming addition should have been made to paragraph (11)(A)'s second clause for the

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sake of consistency. Specifically, the language "or invoice, whichever is later" should have been added following the language "receipt of the magazine" in the second clause. However, that addition was not made. That apparent oversight is corrected here.

Bill section 69 improves the form of AS 46.03.822(c) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 70 improves the form of AS 46.14.010(b) by conforming a state air quality control term relating to emissions to the term's federal counterpart as required by federal law. In 2003, sec. 59 of HB 160, which was sponsored by the House Rules Committee at the request of the governor, added the definition of "emission unit" to AS 46.14.990. AS 46.14.990 provides the definitions for AS 46.14, which deals with air quality control, and the "emission unit" definition in AS 46.14.990 adopted the federal regulations definition by reference.

As it turns out, the federal definition is in fact "emissions unit" -- with an "s" -- and federal regulations require exact conformity with federal definitions in this area. Furthermore, the Environmental Protection Agency has recently contacted the Department of Law to remind the department of this requirement. At the request of the department, this change is made in this subsection and throughout AS 46.14.

Bill section 71 improves the form of AS 46.14.010(c) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 72 improves the form of AS 46.14.010(d) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 73 improves the form of AS 46.14.010(e) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 74 improves the form of AS 46.14.010(f) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 75 improves the form of AS 46.14.020 by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 76 improves the form of AS 46.14.130(b) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 77 improves the form of AS 46.14.180 by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 78 improves the form of AS 46.14.190(a) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 79 improves the form of AS 46.14.210 by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation to bill sec. 70.

Bill section 80 improves the form of AS 46.14.250(c) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 81 deletes obsolete language in AS 46.14.250(f) to reflect the repeal of AS 46.14.250(e) in this bill's repeal section.

Bill section 82 improves the form of AS 46.14.400(c) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 83 improves the form of AS 46.14.400(f) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 84 improves the form of AS 46.14.410(e) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 85 improves the form of AS 46.14.515(a) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 86 improves the form of AS 46.14.540(a) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 87 improves the form of AS 46.14.560 by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

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Bill section 88 improves the form of AS 46.14.990(11) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 89 improves the form of AS 46.14.990(20) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 90 improves the form of AS 46.14.990(21) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 91 improves the form of AS 46.15.165(c) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 92 improves the form of AS 47.07.020(b) by removing initial capital letters in a reference to the aid to families with dependent children program to conform the reference to other references to the identical program in the same section and by conforming age references to the preferred usage for legal drafting.

Bill section 93 improves the form of AS 47.08.060(c) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 94 improves the form of AS 47.55.020(d) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 95 is the repeal section.

The repeal of AS 14.08.031(d) removes obsolete material relating to the Bureau of Indian Affairs. Subsection (d) provided that "U.S. Bureau of Indian Affairs schools shall be included in a regional educational attendance area boundary," and this provision is obsolete for the reasons set out in the explanation of bill sec. 25.

The repeal of AS 18.50.950(4) removes obsolete language from the statutes. Specifically, paragraph (4) is the definition for the term "child adoption agency" for AS 18.50, the Vital Statistics Act. It is being repealed on the recommendation of the Department of Law, which correctly points out that the term "child adoption agency" is not used in the chapter anywhere and thus is extraneous.

The repeal of AS 44.66.020 removes an obsolete section from the statutes. This section, enacted in 1977, is an artifact of program budgeting, which is no longer used in this state. A glance at any recent operating budget or review of AS 37.07, the Executive Budget Act, reveals the obvious: budgeting is now done by agency, which is the governmental subunit that administers the program, and not by the program itself. See, e.g., AS 37.07.010(1) and (2); 37.07.020(a).

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The repeal of AS 44.66.030 removes an obsolete section from the statutes. This section, enacted in 1977, is an artifact of program budgeting, which is no longer used in this state.

The repeal of AS 46.14.250(e) removes obsolete material from AS 46.14.250. Subsection (e) relates to the Department of Environmental Conservation's duty to set an "initial fee rate" for emission fees established in AS 46.14.250 for "the first two years following approval of the permit program" under AS 46.14 by the relevant federal administrator (chapter 46.14 is entitled "Air Quality Control").

The effective date of the approval in question was December 5, 1996, as set out in the Federal Register, Vol. 61, No. 235, Thursday, December 5, 1996, pp. 64463-64475. Obviously, more than two years have passed since the effective date of approval, and this subsection has thus become obsolete.

Bill section 96 provides an immediate effective date for the bill.

JPC:jad  
05-119.jad

24-LS0195F  
Crawford  
2/24/05

**CS FOR SENATE BILL NO. 101( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY**

**Offered:**

**Referred:**

**Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE COUNCIL**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act making corrective amendments to the Alaska Statutes as recommended by the  
2 revisor of statutes; and providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1.** AS 04.11.210(c) is amended to read:

5 (c) In this section, "recreational site" includes [MEANS, BUT IS NOT  
6 LIMITED TO.] a location where baseball games, car races, hockey games, dog sled  
7 racing events, or curling matches are regularly held during a season.

8 \* **Sec. 2.** AS 06.50.020(a) is amended to read:

9 (a) To qualify for a license, an applicant shall

10 (1) have cash assets of at least \$25,000, as determined under generally  
11 accepted accounting principles, except that an applicant who wants to engage in the  
12 business of making advances at more than one location in the state shall have cash  
13 assets of at least \$25,000 for each location:

14 (2) demonstrate the financial responsibility, financial condition,

1 business experience, character, and general fitness that reasonably warrant the  
2 department's belief that the applicant's business will be conducted lawfully and fairly;  
3 when determining whether this qualification has been met, and for the purpose of  
4 investigating compliance with this chapter, the department may review

5 (A) the relevant business records of the applicant and the  
6 adequacy of the capital of the applicant;

7 (B) the competence, experience, integrity, and financial ability  
8 of the applicant, and, if the applicant is an entity, of any person who is a  
9 member, partner, director, senior officer, or owner of 10 percent or more of the  
10 equity of the applicant; and

11 (C) a record [OF CONVICTION], on the part of the applicant  
12 or a person described in (B) of this paragraph, of

13 (i) a conviction for criminal activity, fraud, or other act  
14 of personal dishonesty;

15 (ii) an act, an omission, or a practice that constitutes a  
16 breach of a fiduciary duty; or

17 (iii) a suspension, a revocation, a removal, or an  
18 administrative act by an agency or a department of the United States or  
19 a state from participation in the conduct of a business;

20 (3) if the person has a physical business location in the state, have a  
21 physical business location that is accessible by and convenient to the public;

22 (4) have a current business license issued under AS 43.70; and

23 (5) if applicable, have a certificate of incorporation under  
24 AS 10.06.218, have a certificate of authority under AS 10.06.705, have a copy of  
25 articles of organization that satisfies AS 10.50.090, be registered under AS 10.50.605,  
26 have a statement of foreign qualification filed under AS 32.06.922, have a certificate  
27 of limited partnership filed under AS 32.11.060, or be registered under AS 32.11.420.

28 \* Sec. 3. AS 10.06.960(a) is amended to read:

29 (a) A corporation organized under 43 U.S.C. 1601 et seq. [43 U.S.C. 1601 -  
30 1629e] as amended (Alaska Native Claims Settlement Act) shall be incorporated under  
31 and is subject to this chapter except

1 (1) each corporation shall issue without further consideration the  
2 number of shares of common stock that may be necessary to comply with the  
3 requirements of the Act [ACT] and all stock so issued is considered fully paid and  
4 nonassessable when issued;

5 (2) unless otherwise provided in the articles of incorporation, the  
6 capital

7 (A) is considered the consideration for the initial issuance of  
8 shares; and

9 (B) of a corporation organized under the Act [ACT] includes  
10 the

11 (i) land or interests in it conveyed to the corporation by  
12 the United States under the Act [ACT], except that which is required to  
13 be conveyed under 43 U.S.C. 1613(c)(1), (3), and (4), entered at its fair  
14 value to the corporation upon receiving the conveyance of it; and

15 (ii) money, when received under 43 U.S.C. 1605 and 43  
16 U.S.C. 1608, that is retained by the corporation and that is not  
17 immediately distributed or required to be distributed under 43 U.S.C.  
18 1606(j).

19 \* Sec. 4. AS 10.06.960(b) is amended to read:

20 (b) Notwithstanding the provision of AS 10.06.305 - 10.06.390, payment from  
21 the money of a corporation organized under the act that is required by the language of  
22 the Act [ACT] to be distributed to shareholders or to other corporations so organized  
23 is not a distribution to its shareholders as defined in AS 10.06.990.

24 \* Sec. 5. AS 10.06.960(c) is amended to read:

25 (c) Notwithstanding the provisions of AS 10.06.546, a plan of merger,  
26 consolidation, or exchange in which each participating corporation either (1) was  
27 organized under the Act [ACT], within the same one of the 12 regions of Alaska  
28 established under the Act [ACT], or (2) resulted from the prior merger, consolidation,  
29 or exchange of other similarly organized corporations within the same region, is  
30 approved if it receives the affirmative vote of the holders of at least a majority of the  
31 outstanding shares of each corporation. If a class of shares of a corporation specified

1 in this subsection is entitled to vote as a class, the plan of merger, consolidation, or  
2 exchange is approved if it receives the affirmative vote of the holders of at least a  
3 majority of the outstanding shares of each class of shares entitled to vote as a class and  
4 of the total outstanding shares. Notwithstanding AS 10.06.574 - 10.06.582, a plan of  
5 merger, consolidation, or exchange approved under this section before December 19,  
6 1991, may not include a right of shareholders to dissent.

7 \* Sec. 6. AS 10.06.960(e) is amended to read:

8 (e) Notwithstanding the provision of AS 10.06.502 - 10.06.510, a corporation  
9 organized under the Act [ACT] may amend its articles by a vote of the board of  
10 directors in order for the corporation to comply with the mandatory requirements of  
11 the Act [ACT].

12 \* Sec. 7. AS 10.06.960(f) is amended to read:

13 (f) Notwithstanding the other provisions of this chapter, a corporation  
14 organized under the Act [ACT] is governed by the Act [ACT] to the extent the Act  
15 [ACT] is inconsistent with this chapter, and the corporation may take any action,  
16 including amendment of its articles, authorized by the Act [ACT], and the action is  
17 considered to be approved and adopted if approved under the Act [ACT]. An  
18 amendment approved under the Act [ACT] and delivered to the commissioner under  
19 AS 10.06.512 shall be filed by the commissioner under AS 10.06.910, and a certificate  
20 of amendment shall be issued.

21 \* Sec. 8. AS 10.06.960(g) is amended to read:

22 (g) Notwithstanding AS 10.06.358, if there are no retained earnings, the  
23 directors of a corporation organized under the Act [ACT] may declare and pay  
24 distributions in cash or property out of its net profits for the fiscal year in which the  
25 distribution is declared and for the preceding fiscal year, except when the corporation  
26 is insolvent under AS 10.06.360. For the purposes of this subsection, a corporation's  
27 debts include the amounts it is required to distribute under 43 U.S.C. 1606(i) and 43  
28 U.S.C. 1606(j). The directors may determine the net profits derived from the  
29 exploitation or liquidation of wasting assets without consideration of the depletion of  
30 those assets resulting from lapse of time, consumption, liquidation, or exploitation, of  
31 the assets, and a distribution declared from those net profits shall be described.

1 concurrently with distribution of the net profits to shareholders, as a distribution from  
2 wasting assets without consideration of the depletion of the assets. In this subsection,  
3 "wasting assets" means timber resources and subsurface estates.

4 \* **Sec. 9.** AS 10.06.960(h) is amended to read:

5 (h) Notwithstanding AS 10.06.358, the directors of a corporation organized  
6 under the Act [ACT] may, from time to time, distribute to its shareholders in partial  
7 liquidation a portion of the corporation's assets out of capital, in cash or property,  
8 except that a distribution

9 (1) may not be made at a time when the corporation is insolvent under  
10 AS 10.06.360;

11 (2) may not be made unless the articles of incorporation authorize the  
12 board to make the distribution or the distribution is authorized by the affirmative vote  
13 of the holders of at least two-thirds of the outstanding shares;

14 (3) when made, shall be identified as a distribution in partial  
15 liquidation and the amount per share shall be disclosed to the shareholders  
16 concurrently with the distribution.

17 \* **Sec. 10.** AS 10.06.960(i) is amended to read:

18 (i) Notwithstanding AS 10.06.633(e), a corporation that is organized as a  
19 Native corporation under the Act [ACT], that has been involuntarily dissolved by the  
20 commissioner under AS 10.06.633, and that has failed to apply for reinstatement  
21 during the period established under AS 10.06.633(e), may be reinstated under  
22 AS 10.06.633(e) within one year of June 29, 1994. The reinstated corporation and its  
23 shareholders have all of the rights, privileges, liabilities, and obligations that would  
24 have applied to them if the corporation had not been dissolved, and all corporate and  
25 shareholder actions taken during the period of dissolution are considered to be as valid  
26 as if dissolution had not occurred.

27 \* **Sec. 11.** AS 10.06.960(k) is amended to read:

28 (k) Notwithstanding (i) of this section and AS 10.06.633(e), a corporation that  
29 is organized as a Native village corporation under the Act [ACT], that has been  
30 involuntarily dissolved by the commissioner under AS 10.06.633, and that has failed  
31 to apply for reinstatement during the period established under AS 10.06.633(e) may be

1 reinstated under AS 10.06.633(e) on or before December 31, 2003. The reinstated  
2 corporation and its shareholders have all of the rights, privileges, liabilities, and  
3 obligations that would have applied to them if the corporation had not been dissolved,  
4 and all corporate and shareholder actions taken during the period of dissolution are  
5 considered to be as valid as if dissolution had not occurred. If a corporation elects to  
6 reinstate under this subsection and if the corporation's previous<sup>1</sup> used corporate name  
7 is no longer available for use by the corporation, then, notwithstanding AS 10.06.502 -  
8 10.06.510, an amendment to the articles of incorporation changing the previously used  
9 corporate name may be adopted by action of the corporation's board of directors alone.

10 \* Sec. 12. AS 10.06.960(n) is amended to read:

11 (n) Notwithstanding AS 10.06.504(d), an amendment to the articles of  
12 incorporation of a corporation organized under 43 U.S.C. 1601 et seq. [43 U.S.C.  
13 1601 - 1628] (Alaska Native Claims Settlement Act) and incorporated under former  
14 AS 10.05.005 to add a provision eliminating or limiting the personal liability of a  
15 director to the corporation or its stockholders for monetary damages under  
16 AS 10.06.210(1)(N) may be adopted by the affirmative vote of a majority of the shares  
17 represented at the regular or special meeting at which a quorum is present in person or  
18 by proxy.

19 \* Sec. 13. AS 10.06.960(o) is amended to read:

20 (o) Notwithstanding AS 10.06.455(b) and 10.06.504(d), an amendment to the  
21 articles of incorporation of a village corporation organized under 43 U.S.C. 1601 et  
22 seq. [43 U.S.C. 1601 - 1629e] (Alaska Native Claims Settlement Act) and  
23 incorporated under former AS 10.05.005 to add a provision authorizing the  
24 classification of directors under AS 10.06.455 may be adopted by the affirmative vote  
25 of a majority of the shares represented at a regular or special meeting at which a  
26 quorum is present in person or by proxy.

27 \* Sec. 14. AS 10.06.960(p) is amended to read:

28 (p) In this section,

29 (1) "Act [ACT]" means 43 U.S.C. 1601 et seq. [43 U.S.C. 1601 -  
30 1641] (Alaska Native Claims Settlement Act);

31 (2) "Native corporation" has the meaning given in 43 U.S.C. 1602(m).

1 \* **Sec. 15.** AS 10.06.961(a) is amended to read:

2 (a) Notwithstanding AS 13.46.085 or the appointment of a guardian of the  
3 property of the child under AS 47.10.010, when a child who is in the custody of this  
4 state under AS 47.10 or a minor who is in the custody of this state under AS 47.12 or  
5 of another state under a provision similar to AS 47.10 or AS 47.12 becomes entitled to  
6 receive dividends or other distributions resulting from the ownership of stock or a  
7 membership in a corporation organized under this chapter and under 43 U.S.C. 1601  
8 et seq. [43 U.S.C. 1601 - 1641] (Alaska Native Claims Settlement Act), the  
9 corporation paying the dividends or making the other distributions shall retain the  
10 dividends and other distributions in an interest bearing account for the benefit of the  
11 child or minor during the state custody.

12 \* **Sec. 16.** AS 10.20.007 is amended to read:

13 **Sec. 10.20.007. Corporations organized under Alaska Native Claims**  
14 **Settlement Act.** A village corporation organized under 43 U.S.C. 1601 et seq. [43  
15 U.S.C. 1601 - 1628] (Alaska Native Claims Settlement Act) may be incorporated  
16 under and subject to this chapter except the name of the corporation may not contain  
17 the word "village" or otherwise imply that the corporation is a municipal corporation;  
18 however, the name of a village may be used in the corporate name.

19 \* **Sec. 17.** AS 13.12.102(b) is amended to read:

20 (b) The intestate share of the surviving spouse in settlement common stock or  
21 other inalienable stock in a corporation organized under the laws of the state under 43  
22 U.S.C. 1601 et seq. [43 U.S.C. 1601 - 1641] (Alaska Native Claims Settlement Act) is

23 (1) all of it if there is no surviving issue; or

24 (2) one-half of it if the decedent is survived by issue.

25 \* **Sec. 18.** AS 13.16.705(a) is amended to read:

26 (a) The settlement common stock or other inalienable stock in a corporation  
27 organized under the laws of Alaska under 43 U.S.C. 1601 et seq. [43 U.S.C. 1601 -  
28 1642] (Alaska Native Claims Settlement Act) is not subject to probate nor shall its  
29 value be considered in determining the value of an estate or allowance under this title.  
30 Upon death of the holder, if the stock does not pass by the testamentary disposition  
31 clause on the stock certificate or by the form authorized under (b) of this section.

1 properly executed, it passes by will or intestate succession. In such a case, the  
2 determination of the person entitled to the stock shall be made by the corporation that  
3 initially issued the stock or its designated agent. The determination shall be made on  
4 the basis of an affidavit, furnished to the corporation that initially issued the stock, or  
5 its agent, showing the right of the person entitled to the stock to receive it. The  
6 affidavit, accepted in good faith by the corporation or its agent, has the same effect as  
7 an affidavit under AS 13.16.685, and the person entitled to the stock, if the affidavit is  
8 not accepted, has the remedy set out in AS 13.16.685. In case of dispute as to the  
9 person entitled to receive the stock, a person claiming ownership may bring an  
10 independent action in the superior court.

11 \* **Sec. 19.** AS 13.16.705(g) is amended to read:

12 (g) Where appropriate, terms used in this section have the meanings given in  
13 AS 13.06.050. In this section, "stock" means the settlement common stock or other  
14 inalienable stock of a corporation organized under the laws of the state under 43  
15 U.S.C. 1601 et seq. [43 U.S.C. 1601 - 1642] (Alaska Native Claims Settlement Act),  
16 and includes membership in a corporation organized under AS 10.20 and inchoate  
17 rights to stock.

18 \* **Sec. 20.** AS 13.26.210(g) is amended to read:

19 (g) In addition to any other requirement of this section, when appointing a  
20 relative or friend of the protected person [INCAPACITATED PERSON] as the  
21 conservator of the [A] protected person, the court shall require that the proposed  
22 conservator complete one hour of mandatory education on the basics of  
23 conservatorship before the appointment or within 30 days after the appointment. If the  
24 person is appointed based on the person's agreement to complete the mandatory  
25 education and the person fails to complete the mandatory education within the 30  
26 days, the court shall remove the conservator and appoint a successor.

27 \* **Sec. 21.** AS 13.26.332 is amended to read:

28 **Sec. 13.26.332. Statutory form power of attorney.** A person who wishes to  
29 designate another as attorney-in-fact or agent by a power of attorney may execute a  
30 statutory power of attorney set out in substantially the following form:

31 GENERAL POWER OF ATTORNEY

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THE POWERS GRANTED FROM THE PRINCIPAL TO THE AGENT OR AGENTS IN THE FOLLOWING DOCUMENT ARE VERY BROAD. THEY MAY INCLUDE THE POWER TO DISPOSE, SELL, CONVEY, AND ENCUMBER YOUR REAL AND PERSONAL PROPERTY [, AND THE POWER TO MAKE YOUR HEALTH CARE DECISIONS]. ACCORDINGLY, THE FOLLOWING DOCUMENT SHOULD ONLY BE USED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS DOCUMENT, YOU SHOULD SEEK COMPETENT ADVICE.

YOU MAY REVOKE THIS POWER OF ATTORNEY AT ANY TIME.

Pursuant to AS 13.26.338 - 13.26.353, I, \_\_\_(Name of principal)\_\_\_, of \_\_\_(Address of principal)\_\_\_, do hereby appoint \_\_\_(Name and address of agent or agents)\_\_\_, my attorney(s)-in-fact to act as indicated [AS I HAVE CHECKED] below in my name, place, and stead in any way which I myself could do, if I were personally present, with respect to the following matters, as each of them is defined in AS 13.26.344, to the full extent that I am permitted by law to act through an agent:

THE AGENT OR AGENTS YOU HAVE APPOINTED WILL HAVE ALL THE POWERS LISTED BELOW UNLESS YOU DRAW A LINE THROUGH A CATEGORY; AND INITIAL THE BOX OPPOSITE THAT CATEGORY

- (A) real estate transactions ( )
- (B) transactions involving tangible personal property, chattels, and goods ( )
- (C) bonds, shares, and commodities transactions ( )
- (D) banking transactions ( )
- (E) business operating transactions ( )
- (F) insurance transactions ( )

- 1 (G) estate transactions ( )
- 2 (H) gift transactions ( )
- 3 (I) claims and litigation ( )
- 4 (J) personal relationships and affairs ( )
- 5 (K) benefits from government programs and military service ( )
- 6 (L) records, reports, and statements ( )
- 7 (M) delegation ( )
- 8 (N) all other matters, including those specified as follows: ( )
- 9 \_\_\_\_\_
- 10 \_\_\_\_\_
- 11 \_\_\_\_\_

12 IF YOU HAVE APPOINTED MORE THAN ONE AGENT,  
 13 CHECK ONE OF THE FOLLOWING:

- 14 ( ) Each agent may exercise the powers conferred separately, without  
 15 the consent of any other agent.
- 16 ( ) All agents shall exercise the powers conferred jointly, with the  
 17 consent of all other agents.

18 TO INDICATE WHEN THIS DOCUMENT SHALL  
 19 BECOME EFFECTIVE, CHECK ONE OF THE FOLLOWING:

- 20 ( ) This document shall become effective upon the date of my  
 21 signature.
- 22 ( ) This document shall become effective upon the date of my  
 23 disability and shall not otherwise be affected by my disability.

24 IF YOU HAVE INDICATED THAT THIS DOCUMENT  
 25 SHALL BECOME EFFECTIVE ON THE DATE OF YOUR  
 26 SIGNATURE, CHECK ONE OF THE FOLLOWING:

- 27 ( ) This document shall not be affected by my subsequent disability.
- 28 ( ) This document shall be revoked by my subsequent disability.

29 IF YOU HAVE INDICATED THAT THIS DOCUMENT  
 30 SHALL BECOME EFFECTIVE UPON THE DATE OF YOUR  
 31 SIGNATURE AND WANT TO LIMIT THE TERM OF THIS

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DOCUMENT, COMPLETE THE FOLLOWING:

This document shall only continue in effect for \_\_\_\_\_ ( ) years from the date of my signature.

NOTICE OF REVOCATION OF THE POWERS GRANTED IN THIS DOCUMENT

You may revoke one or more of the powers granted in this document. Unless otherwise provided in this document, you may revoke a specific power granted in this power of attorney by completing a special power of attorney that includes the specific power in this document that you want to revoke. Unless otherwise provided in this document, you may revoke all the powers granted in this power of attorney by completing a subsequent power of attorney.

NOTICE TO THIRD PARTIES

A third party who relies on the reasonable representations of an attorney-in-fact as to a matter relating to a power granted by a properly executed statutory power of attorney does not incur any liability to the principal or to the principal's heirs, assigns, or estate as a result of permitting the attorney-in-fact to exercise the authority granted by the power of attorney. A third party who fails to honor a properly executed statutory form power of attorney may be liable to the principal, the attorney-in-fact, the principal's heirs, assigns, or estate for a civil penalty, plus damages, costs, and fees associated with the failure to comply with the statutory form power of attorney. If the power of attorney is one which becomes effective upon the disability of the principal, the disability of the principal is established by an affidavit, as required by law.

IN WITNESS WHEREOF, I have hereunto signed my name this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

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Signature of Principal

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Signature of Officer or Notary

\* Sec. 22. AS 13.26.344(c) is amended to read:

(c) In a statutory form power of attorney, the language conferring general authority with respect to bonds, shares, and commodities transactions shall be construed to mean that, with respect to a bond, share, or commodity of the principal, whether in the state or elsewhere, the principal authorizes the agent to

(1) accept as a gift, or as a security for a loan, reject, demand, buy, receive, or otherwise acquire either ownership or possession of, a bond, share, or instrument of similar character including, by way of illustration, but not of restriction, stock in a corporation organized under 43 U.S.C. 1601 et seq. [43 U.S.C. 1601 - 1628] (Alaska Native Claims Settlement Act), commodity interest, or an instrument with respect to a bond, share, or instruments of similar character, together with the interest, dividends, proceeds, or other distributions connected with a bond, share, or instrument of a similar character;

(2) sell, exchange, transfer, release, surrender, hypothecate, pledge, revoke, create, or modify a trust, grant options concerning, loan, trade in, or otherwise dispose of a bond, share, instrument of similar character, commodity interest, or a related instrument;

(3) release, assign the whole or part of, satisfy in whole or in part, and enforce a pledge, encumbrance, lien, or other claim as to a bond, share, instrument of similar character, commodity interest, or a related interest, when the pledge, encumbrance, lien, or other claim is owned, or claimed to be owned, by the principal;

(4) do any act of management or of conservation with respect to a bond, share, instrument of similar character, commodity interest, or a related instrument, owned or claimed to be owned by the principal or in which the principal has or claims to have an interest, including by way of illustration, but not of restriction, power to insure against a casualty, liability, or loss, obtain or regain possession or protect the principal's interest, pay, compromise, or contest taxes or assessments, apply for a refund in connection with a payment, compromise, or tax, consent to and participate in a reorganization, recapitalization, liquidation, merger,

1 consolidation, sale or lease or other change in or revival of a corporation or other  
2 association, or in the financial structure of a corporation or other association, or in the  
3 priorities, voting rights, or other special rights with respect to a corporation or  
4 association, become a depositor with a protective, reorganization or similar committee  
5 of the bond, share, other instrument of similar character, commodity interest or a  
6 related instrument, belonging to the principal, make a payment reasonably incident to  
7 them, and exercise or sell an option, conversion, or similar right, or vote in person or  
8 by the granting of a proxy for the accomplishment of the purposes enumerated in this  
9 subsection;

10 (5) carry in the name of a nominee selected by the agent evidence of  
11 the ownership of a bond, share, other instrument of similar character, commodity  
12 interest, or related instrument belonging to the principal;

13 (6) employ, in any way believed to be desirable by the agent, a bond,  
14 share, other instrument of similar character, commodity interest, or a related  
15 instrument, in which the principal has or claims to have an interest, for the protection  
16 or continued operation of a speculative or margin transaction personally begun or  
17 personally guaranteed, in whole or in part, by the principal;

18 (7) demand, receive, or obtain money or any other thing of value to  
19 which the principal is, or may claim to be, entitled as the proceeds of an interest in a  
20 bond, share, other instrument of similar character, commodity interest or a related  
21 instrument, or of one or more of the transactions enumerated in this subsection,  
22 conserve, invest, disburse, or use anything so received for purposes enumerated in this  
23 subsection; and reimburse the agent for an expenditure properly made in the execution  
24 of the powers conferred by the statutory form power of attorney;

25 (8) agree and contract, in any manner, and with a broker or other  
26 person, and on terms that the agent may select, for the accomplishment of the purposes  
27 enumerated in this subsection, and perform, rescind, reform, release, or modify the  
28 agreement or contract or other similar agreement made by or on behalf of the  
29 principal;

30 (9) execute, acknowledge, seal, and deliver a consent, agreement,  
31 authorization, assignment, revocation, declaration or modification of trust, notice,

1 waiver of notice, check, or other instrument that the agent considers useful for the  
2 accomplishment of the purposes enumerated in this subsection;

3 (10) execute, acknowledge and file a report or certificate required by  
4 law or regulation;

5 (11) prosecute, defend, submit to arbitration, settle, and propose or  
6 accept a compromise with respect to, a claim existing in favor of, or against, the  
7 principal based on or involving a bond, share, or commodity transactions, or intervene  
8 in a related action or proceeding;

9 (12) hire, discharge, and compensate an attorney, accountant, expert  
10 witness, or assistant when the agent considers that action to be desirable for the proper  
11 execution of the powers described in this subsection, and for the keeping of records  
12 about that action; and

13 (13) do any other act or acts that the principal can do through an agent,  
14 with respect to an interest in a bond, share, or other instrument of similar character,  
15 commodity, or instrument with respect to a commodity.

16 \* Sec. 23. AS 13.46.085(a) is amended to read:

17 (a) The stock or membership in a corporation organized under the law of this  
18 state under 43 U.S.C. 1601 et seq. ([THE] Alaska Native Claims Settlement Act) [(43  
19 U.S.C. 1601 - 1642)] that a minor is entitled to receive under that Act shall be held by  
20 a custodian.

21 \* Sec. 24. AS 13.46.085(f) is amended to read:

22 (f) In this section,

23 (1) "Act" means 43 U.S.C. 1601 et seq. ([THE] Alaska Native Claims  
24 Settlement Act) [(43 U.S.C. 1601 - 1642)];

25 (2) "minor" means an individual who is less than 18 years of age;

26 (3) "stock" means the stock or membership in a corporation that is  
27 organized under the law of this state under the Act and that a minor is entitled to  
28 receive under the Act, whether by gift, devise, or other method; "stock" includes  
29 inchoate rights to stock.

30 \* Sec. 25. AS 14.07.030 is amended to read:

31 **Sec. 14.07.030. Powers of the department.** The department may

1 (1) establish, maintain, govern, operate, discontinue, and combine area,  
2 regional, and special schools;

3 (2) enter into contractual agreements with [THE BUREAU OF  
4 INDIAN AFFAIRS OR WITH] a school district to share boarding costs of secondary  
5 school students;

6 (3) provide for citizenship night schools when and where expedient;

7 (4) provide for the sale or other disposition of abandoned or obsolete  
8 buildings and other state-owned school property;

9 (5) prescribe a classification for items of expense of school districts;

10 (6) acquire and transfer personal property, acquire real property, and  
11 transfer real property to federal agencies, state agencies, or to political subdivisions;

12 (7) enter into contractual agreements with school districts to provide  
13 more efficient or economical education services; reasonable fees may be charged by  
14 the department to cover the costs of providing services under an agreement, including  
15 costs for professional services, reproduction or printing, and mailing and distribution  
16 of educational materials;

17 (8) provide for the issuance of elementary and secondary diplomas to  
18 persons not in school who have completed the equivalent of an 8th or 12th grade  
19 education, respectively, in accordance with standards established by the department;

20 (9) apply for, accept, and spend endowments, grants, and other private  
21 money available to the state for educational purposes in accordance with AS 37.07  
22 (Executive Budget Act);

23 (10) set student tuition and fees for educational and extracurricular  
24 programs and services provided and schools operated by the department under the  
25 provisions of (1) of this section and AS 14.07.020(a)(9), (11), and (12);

26 (11) charge fees to cover the costs of care and handling with respect to  
27 the acquisition, warehousing, distribution, or transfer of donated foods;

28 (12) establish and collect fees for the rental of school facilities and for  
29 other programs and services provided by the schools;

30 (13) develop a model curriculum and provide technical assistance for  
31 early childhood education programs.

1 \* **Sec. 26.** AS 14.08.101 is amended to read.

2 **Sec. 14.08.101. Powers.** A regional school board may

3 (1) sue and be sued;

4 (2) contract with the department [, THE BUREAU OF INDIAN  
5 AFFAIRS,] or any other school district, agency, or regional board for the provision of  
6 services, facilities, supplies, or utilities;

7 (3) determine its own fiscal procedures, including but not limited to  
8 policies and procedures for the purchase of supplies and equipment; the regional  
9 school boards are exempt from AS 37.05 (Fiscal Procedures Act) and AS 36.30 (State  
10 Procurement Code);

11 (4) appoint, compensate, and otherwise control all school employees in  
12 accordance with this title; these employees are not subject to AS 39.25 (State  
13 Personnel Act);

14 (5) adopt regulations governing organization, policies, and procedures  
15 for the operation of the schools;

16 (6) establish, maintain, operate, discontinue, and combine schools  
17 subject to the approval of the commissioner;

18 (7) recommend to the department projects for construction,  
19 rehabilitation, and improvement of schools and education-related facilities as specified  
20 in AS 14.11.011(b), and plan, design, and construct the project when the responsibility  
21 for it is assumed under AS 14.11.020;

22 (8) by resolution adopted by a majority of all the members of the board  
23 and provided to the commissioner of the department, assume ownership of all land and  
24 buildings used in relation to the schools in the regional educational attendance area;

25 (9) provide housing for rental to teachers, by leasing existing housing  
26 from a local agency or individual, by entering into contractual arrangements with a  
27 local agency or individual to lease housing that will be constructed by the local agency  
28 or individual for that purpose, or, without using for the purpose that portion of public  
29 school funding that consists of state aid provided under AS 14.17, by constructing or  
30 otherwise acquiring housing that is owned and managed by the regional educational  
31 attendance area for rental to teachers;

1 (10) exercise those other functions that may be necessary for the  
2 proper performance of its responsibilities;

3 (11) employ a chief school administrator.

4 \* Sec. 27. AS 14.57.210(a) is amended to read:

5 (a) A museum may acquire title to undocumented property held by a museum  
6 for seven years or longer if

7 (1) the seven-year holding period is verified by the written records of  
8 the museum;

9 (2) when this paragraph is applicable, the museum has notified by mail  
10 all corporations, except nonprofit corporations, created under 43 U.S.C. 1601 et seq.  
11 [43 U.S.C. 1601 - 1629e] (Alaska Native Claims Settlement Act) that the  
12 undocumented property appears to be a Native artifact, that the corporations are  
13 requested to view, identify, and catalog the property within one year after the  
14 notification, and that the museum may take steps to acquire title to the property after  
15 the one-year notification period and the seven-year holding period have expired  
16 without a person filing a claim with the museum that the person is the owner of the  
17 property; in this paragraph, the periods may run concurrently; and

18 (3) during the seven-year holding period, or the longer period if  
19 expanded by the application of (2) of this subsection, a person has not filed a claim  
20 with the museum that the person is the owner of the property.

21 \* Sec. 28. AS 14.60.010(6) is amended to read:

22 (6) "public schools" include elementary schools, high schools,  
23 citizenship night schools for adults, and other public educational institutions that  
24 [WHICH] may be established [; HOWEVER, NOTHING IN THIS TITLE  
25 INCLUDES SCHOOLS FOR ALASKA NATIVES UNDER THE CONTROL OF  
26 THE FEDERAL GOVERNMENT AND ADMINISTERED AND SUPERVISED  
27 THROUGH THE BUREAU OF INDIAN AFFAIRS];

28 \* Sec. 29. AS 16.05.835(b) is amended to read:

29 (b) A vessel engaged in the Bering Sea [KOREAN] hair crab fishery within  
30 five miles of the shore may not be longer than 58 feet overall length.

31 \* Sec. 30. AS 16.10.520(e) is amended to read:

1 (e) The total amount of loans made or purchased in any fiscal year may not  
2 exceed the amount specifically authorized by statute. [THE AMOUNT TO BE  
3 PURCHASED MAY NOT EXCEED \$3,000,000 FOR FISCAL YEAR 1977 AND  
4 \$10,000,000 FOR FISCAL YEAR 1978.]

5 \* Sec. 31. AS 16.20.032(b) is amended to read:

6 (b) Selections under 43 U.S.C. 1601 et seq. ([43 U.S.C. 1601 - 1628 (P.L.  
7 92-203,] Alaska Native Claims Settlement Act) are recognized as valid prior claims to  
8 the land within the area described in (a) of this section. Land specified in (a) of this  
9 section may not include land patented to a Native corporation under that Act.

10 \* Sec. 32. AS 16.20.310(c) is amended to read:

11 (c) The commissioner shall develop and amend the game management plan to  
12 coordinate, as closely as possible, the game management plan with the activities of the  
13 [AGRICULTURAL DEVELOPMENT AUTHORITY,] Department of Natural  
14 Resources [,] relating to the Big Delta agricultural development project.

15 \* Sec. 33. AS 16.43.450(a) is amended to read:

16 (a) The commission may establish a vessel permit system under AS 16.43.450  
17 - 16.43.520 for the Bering Sea [KOREAN] hair crab fishery or a weathervane scallop  
18 fishery if the commission determines that

19 (1) the regulation of entry into the fishery is necessary to achieve the  
20 purposes of this chapter;

21 (2) a vessel permit system would achieve the purposes of this chapter.

22 and

23 (3) either

24 (A) limiting the number of participants in the fishery under  
25 AS 16.43.140 - 16.43.330 would not achieve the purposes of this chapter; or

26 (B) regulating the number of vessels in the fishery would  
27 enable the state to gain or retain management of the fishery.

28 \* Sec. 34. AS 16.43.450(b) is amended to read:

29 (b) If the federal government has delegated management authority in the  
30 United States exclusive economic zone to the state for the Bering Sea [KOREAN] hair  
31 crab fishery or a weathervane scallop fishery, the commission may, to the extent

1 consistent with this chapter, adopt regulations to ensure that the vessel permit system  
2 is consistent with applicable federal laws.

3 \* **Sec. 35.** AS 16.43.460(b) is amended to read:

4 (b) If the commission establishes a vessel permit system under AS 16.43.450  
5 for a fishery that [IS, OR] recently] was [,] subject to a moratorium on entry of new  
6 vessels under former AS 16.43.901 or former 16.43.906, the commission shall  
7 incorporate some or all of the vessel eligibility criteria established for the moratorium  
8 into the eligibility criteria for vessel permits issued under the vessel permit system.

9 \* **Sec. 36.** AS 17.20.330 is amended to read:

10 **Sec. 17.20.330. Liability for dissemination of false advertising.** The  
11 publisher, radio-broadcast licensee, or agency or medium for the dissemination of an  
12 advertisement, except the manufacturer, packer, distributor, or seller of the article to  
13 which a false advertisement relates, is not liable under AS 17.20.305, 17.20.315, or  
14 AS 45.50.471 - 45.50.561 for the dissemination of the false advertisement, unless the  
15 publisher, licensee, agency, or medium has refused the request of the commissioner of  
16 health and social services or the commissioner of commerce, community, and  
17 economic development to furnish the name and post office address of the  
18 manufacturer, packer, distributor, seller, or advertising agency [,] residing in the state  
19 who caused dissemination of the advertisement.

20 \* **Sec. 37.** AS 18.56.097 is amended to read:

21 **Sec. 18.56.097. Collateral for loans.** Under procedures established by  
22 regulations of the corporation adopted in accordance with AS 18.56.088 a person may  
23 pledge as security for the repayment of a loan made, purchased, or insured by the  
24 corporation under this chapter a preference right the person holds to receive title to  
25 land the person occupies as a primary place of residence, primary place of business,  
26 subsistence campsite, or as headquarters for reindeer husbandry. The preference right  
27 must be conveyed to the person by the Native corporation to which the land was  
28 granted under 43 U.S.C. 1613 [SECTION 14 OF THE ALASKA NATIVE CLAIMS  
29 SETTLEMENT ACT (85 STAT. 688, 43 U.S.C. SEC. 1601 - 1626, AS AMENDED  
30 BY P.L. 94-204)] before it may be pledged as security under this section. The  
31 Department of Commerce, Community, and Economic Development shall prescribe

1 procedures and standard forms for establishing and appraising the value of a  
2 preference right held by a person to secure the repayment of a loan made, purchased,  
3 or insured by the corporation under this chapter.

4 \* **Sec. 38.** AS 21.34.170(a) is amended to read:

5 (a) A surplus lines broker shall file with the director on or before the end of  
6 each month, on forms prescribed by the director, a verified report of all surplus lines  
7 insurance, by type of insurance as required to be reported in the annual statement that  
8 must be filed with the director by admitted insurers. The report must include all  
9 surplus lines insurance transactions during the preceding calendar month showing the  
10 aggregate gross premiums written, the aggregate return premiums, the amount of  
11 aggregate tax remitted to this state, and the amount of aggregate tax remitted to each  
12 other state for which an allocation is made under AS 21.34.180 [AS 21.34.150].

13 \* **Sec. 39.** AS 21.34.180(a) is amended to read:

14 (a) Gross premiums written, less any return premium, for surplus lines  
15 insurance are subject to a premium [RECEIPTS] tax as outlined in AS 21.09.210,  
16 which shall be collected by the surplus lines broker as specified by the director, in  
17 addition to the full amount of the gross premium written by the insurer for the  
18 insurance. The tax on any portion of the premium unearned at termination of insurance  
19 having been credited by the state to the surplus lines broker shall be returned to the  
20 policy holder directly by the surplus lines broker or through the producing broker, if  
21 any. The surplus lines broker may not absorb the tax or any part of it, and may not  
22 rebate for any reason the tax or any part of it. However, if, under AS 21.09.210, an  
23 admitted insurer is required to collect and pay premium tax on a portion of a  
24 subscription policy, the surplus lines broker is not required to collect any amount that  
25 would constitute double taxation of that portion of the insurance.

26 \* **Sec. 40.** AS 22.10.025(a) is amended to read:

27 (a) The superior court, in an action for divorce, separation, or child support,  
28 affecting inalienable stock in a corporation organized under 43 U.S.C. 1601 et seq.  
29 [43 U.S.C. 1601 - 1628] (Alaska Native Claims Settlement Act), may order the stock  
30 transferred to the spouse, a child, or a guardian or custodian for a child, but may not  
31 order it sold on the open market or transferred to other persons.

1 \* **Sec. 41.** AS 24.20.271 is amended to read:

2 **Sec. 24.20.271. Powers and duties.** The legislative audit division shall

3 (1) conduct a performance post-audit of boards and commissions  
4 designated in AS 44.66.010 [AND OF THOSE PROGRAMS AND ACTIVITIES OF  
5 AGENCIES SUBJECT TO TERMINATION AS DETERMINED IN THE MANNER  
6 SET OUT IN AS 44.66.020 AND 44.66.030.] and make the audit, together with a  
7 written report, available to the legislature not later than the first day of the regular  
8 session of the legislature convening in each year set out with reference to boards or [,]  
9 commissions [, OR AGENCY PROGRAMS] whose activities are subject to  
10 termination as prescribed in AS 44.66; the division shall notify the legislature that the  
11 audit and report are available;

12 (2) audit at least once every three years the books and accounts of all  
13 custodians of public funds and all disbursing officers of the state;

14 (3) at the direction of the Legislative Budget and Audit Committee,  
15 conduct performance post-audits on any agency of state government;

16 (4) cooperate with state agencies by offering advice and assistance as  
17 requested in establishing or improving the accounting systems used by state agencies;

18 (5) require the assistance and cooperation of all state officials and  
19 other state employees in the inspection, examination, and audit of state agency books  
20 and accounts;

21 (6) have access at all times to the books, accounts, reports, or other  
22 records, whether confidential or not, of every state agency;

23 (7) ascertain, as necessary for audit verification, the amount of agency  
24 funds on deposit in any bank as shown on the books of the bank; no bank may be held  
25 liable for making information required under this paragraph available to the legislative  
26 audit division;

27 (8) complete studies and prepare reports, memoranda, or other  
28 materials as directed by the Legislative Budget and Audit Committee;

29 (9) have direct access to any information related to the management of  
30 the University of Alaska and have the same right of access as exists with respect to  
31 every other state agency.

1 \* **Sec. 42.** AS 26.05.330(e) is amended to read:

2 (e) For each day of duty as a member of a general court-martial, or as a  
3 witness under summons from the president or judge advocate of the court, officers and  
4 enlisted persons shall be paid as provided in AS 26.05.260(b) [AND (c)].

5 \* **Sec. 43.** AS 26.10.060(a) is amended to read:

6 (a) The provisions of 50 U.S.C. App. 459 (sec. 9, Universal Military Training  
7 and Service Act), as amended, are extended to this state and its political subdivisions.  
8 [IT IS THE INTENT OF THIS SECTION THAT ALL RE-EMPLOYMENT  
9 BENEFITS GRANTED BY 50 U.S.C. APP. 459 TO A VETERAN WHO WAS IN  
10 THE EMPLOY OF A PRIVATE EMPLOYER AT THE TIME OF THE VETERAN'S  
11 INDUCTION INTO THE ARMED FORCES OF THE UNITED STATES SHALL,  
12 IN THE SAME MANNER AND TO THE SAME EXTENT, BE GRANTED TO A  
13 VETERAN WHO WAS IN THE EMPLOY OF THE STATE OF ALASKA OR A  
14 POLITICAL SUBDIVISION OF THE STATE AT THE TIME OF INDUCTION  
15 INTO THE ARMED FORCES OF THE UNITED STATES.]

16 \* **Sec. 44.** AS 29.45.050(m) is amended to read:

17 (m) A municipality may by ordinance partially or totally exempt all or some  
18 types of economic development property from taxation for up to five years. The  
19 municipality may provide for renewal of the exemption under conditions established  
20 in the ordinance. However, under a renewal, a municipality that is a school district  
21 may only exempt all or a portion of the amount of taxes that exceeds the amount  
22 levied on other property for the school district. A municipality may by ordinance  
23 permit deferral of payment of taxes on all or some types of economic development  
24 property for up to five years. The municipality may provide for renewal of the deferral  
25 under conditions established in the ordinance. A municipality may adopt an ordinance  
26 under this subsection only if, before it is adopted, copies of the proposed ordinance  
27 made available at a public hearing on it contain written notice that the ordinance, if  
28 adopted, may be repealed by the voters through referendum. An ordinance adopted  
29 under this subsection must include specific eligibility requirements and require a  
30 written application for each exemption or deferral. In this subsection "economic  
31 development property" means real or personal property, including developed property

1 conveyed under 43 U.S.C. 1601 et seq. [43 U.S.C. 1601 - 1629e] (Alaska Native  
2 Claims Settlement Act), that

3 (1) has not previously been taxed as real or personal property by the  
4 municipality;

5 (2) is used in a trade or business in a way that

6 (A) creates employment in the municipality;

7 (B) generates sales outside of the municipality of goods or  
8 services produced in the municipality; or

9 (C) materially reduces the importation of goods or services  
10 from outside the municipality; and

11 (3) has not been used in the same trade or business in another  
12 municipality for at least six months before the application for deferral or exemption is  
13 filed; this paragraph does not apply if the property was used in the same trade or  
14 business in an area that has been annexed to the municipality within six months before  
15 the application for deferral or exemption is filed; this paragraph does not apply to  
16 inventories.

17 \* **Sec. 45.** AS 34.15.075(b) is amended to read:

18 (b) In this section, "Alaska Native Claims Settlement Act real property" means  
19 real property that, at some point in that real property's chain of title, was conveyed by  
20 the federal government under 43 U.S.C. 1601 et seq. [43 U.S.C. 1601 - 1629h]  
21 (Alaska Native Claims Settlement Act) to a corporation established under 43 U.S.C.  
22 1601 et seq. [43 U.S.C. 1601 - 1629h ]

23 \* **Sec. 46.** AS 34.45.760(10) is amended to read:

24 (10) "intangible property"

25 (A) includes

26 (i) money, checks, drafts, warrants, deposits, interest,  
27 dividends, and income;

28 (ii) credit balances, customer overpayments, gift  
29 certificates, security deposits, refunds, credit memos, unpaid wages,  
30 and unidentified remittances;

31 (iii) stocks and other intangible equity interests in

1 business associations;

2 (iv) money deposited to redeem stocks, bonds, coupons,  
3 and other securities, or to make distributions;

4 (v) amounts due and payable under the terms of  
5 insurance policies;

6 (vi) amounts distributable from a trust or custodial fund  
7 established under a plan to provide health, welfare, pension, vacation,  
8 severance, retirement, death, stock purchase, profit-sharing, employee  
9 savings, supplemental unemployment insurance, or similar benefits;  
10 and

11 (vii) amounts due and payable as mineral proceeds.

12 (B) does not include

13 (i) unused airline tickets;

14 (ii) shares of stock issued by a corporation organized  
15 under 43 U.S.C. 1601 et seq. [43 U.S.C. 1601 - 1629a] (Alaska Native  
16 Claims Settlement Act) or unclaimed dividends payable on the shares  
17 of stock; or

18 (iii) overpaid contributions by employers to the  
19 unemployment compensation fund under AS 23.20.130;

20 \* Sec. 47. AS 36.30.170(b) is amended to read:

21 (b) The procurement officer shall award a contract based on solicited bids to  
22 the lowest responsive and responsible bidder after an Alaska bidder preference of five  
23 percent, an Alaska products preference as described in AS 36.30.322 - 36.30.338, and  
24 a recycled products preference under AS 36.30.337 have been applied. In this  
25 subsection, "Alaska bidder" means a person who

26 (1) holds a current Alaska business license;

27 (2) submits a bid for goods, services, or construction under the name as  
28 appearing on the person's current Alaska business license;

29 (3) has maintained a place of business within the state staffed by the  
30 bidder or an employee of the bidder for a period of six months immediately preceding  
31 the date of the bid;

1 (4) is incorporated or qualified to do business under the laws of the  
2 state, is a sole proprietorship and the proprietor is a resident of the state, is a limited  
3 liability company organized under AS 10.50 and all members are residents of the state,  
4 or is a partnership under former AS 32.05, AS 32.06, or AS 32.11 and all partners are  
5 residents of the state; and

6 (5) if a joint venture, is composed entirely of ventures that qualify  
7 under (1) - (4) of this subsection.

8 \* Sec. 48. AS 37.14.410(a) is amended to read:

9 (a) Amounts received by the state as reimbursement for expenses related to the  
10 Exxon Valdez oil spill incurred by the state on or before December 31, 1992, shall be  
11 deposited in the general fund and, except as required under (b) of this section may not  
12 be credited to an [THE] oil and hazardous substance release mitigation account under  
13 AS 46.04.010 or to an account established in AS 46.08.020 or 46.08.025.

14 \* Sec. 49. AS 38.05.073(c) is amended to read:

15 (c) If the commissioner identifies land for recreational facilities development  
16 leasing under (a) of this section, at least 30 days before the commissioner decides to  
17 solicit proposals from potential lessees, the commissioner shall provide public notice  
18 of the location and the specific type of recreational facilities development being  
19 considered and request comments. The notice shall be provided to (1) a municipality if  
20 the land is entirely or partially within the boundaries of the municipality; (2) a regional  
21 corporation organized under 43 U.S.C. 1601 et seq. [43 U.S.C. 1601 - 1629e] (Alaska  
22 Native Claims Settlement Act) if the boundaries of the corporation established by 43  
23 U.S.C. 1606(a) encompass part or all of the land and the land encompassed by the  
24 corporation's boundaries is entirely or partially outside the municipality; (3) a village  
25 corporation organized under 43 U.S.C. 1601 if all or part of the land is within 40 miles  
26 of the village for which the corporation was established and the land is located entirely  
27 or partially outside a municipality; (4) other persons affected by the specific  
28 recreational facility development; and (5) persons who have specifically requested to  
29 be notified. Public notice identifying the location and the specific type of recreational  
30 facilities development under consideration must also be published at least twice in a  
31 newspaper of general circulation in the state and in a local newspaper in general

1 circulation in the region where the land is located. The comments received under this  
2 subsection become part of the public record for the consideration of the commissioner.

3 \* **Sec. 50.** AS 38.95.050 is amended to read:

4 **Sec. 38.95.050. Land management contracts with Native corporations.** A  
5 corporation organized under state law pursuant to 43 U.S.C. 1601 et seq. [43 U.S.C.  
6 1601 - 1628] (Alaska Native Claims Settlement Act) may contract with the  
7 Department of Natural Resources for the management of land; however, a sale, lease,  
8 exchange or other disposal of this land may not be made without the approval of the  
9 corporation owning it. The contract is terminable upon reasonable notice by either  
10 party to it; it may cover all or a portion of the land of the corporation, and shall  
11 provide for the terms of management by reference to law or regulation or otherwise.  
12 The Department of Natural Resources is authorized to receive and expend, subject to  
13 appropriation, funds necessary to carry out its functions under this section.

14 \* **Sec. 51.** AS 41.17.041(b) is amended to read:

15 (b) The board is composed of nine members appointed by the governor:

- 16 (1) a representative of a commercial fishermen's organization;
- 17 (2) a representative of a Native corporation established under 43  
18 U.S.C. 1601 et seq. [43 U.S.C. 1601-1628] (Alaska Native Claims Settlement Act);
- 19 (3) a representative of an environmental organization;
- 20 (4) a representative of a forest industry trade association;
- 21 (5) a professional fish or wildlife biologist who is not employed in that  
22 capacity by a state, municipal, or federal government agency, except for university  
23 employment;
- 24 (6) a professional forester who is not employed in that capacity by a  
25 state, municipal, or federal government agency, except for university employment;
- 26 (7) a representative of a mining organization;
- 27 (8) a representative of a recreational organization; and
- 28 (9) the state forester, who serves ex officio and without a vote.

29 \* **Sec. 52.** AS 41.17.900(f) is amended to read:

30 (f) This chapter does not diminish the rights, privileges, or immunities of  
31 Alaska Natives or Alaska Native corporations with respect to land conveyed under 43

1 U.S.C. 1601 et seq. [43 U.S.C. 1601 - 1628] (Alaska Native Claims Settlement Act),  
2 and does not alter or diminish the authority of the Department of Fish and Game under  
3 AS 16, of the Department of Environmental Conservation under AS 46, or of a state  
4 agency under other law.

5 \* Sec. 53. AS 41.21.025(b) is amended to read:

6 (b) Land patented to or under interim conveyance to a regional or village  
7 Native [NATIVE] corporation under 43 U.S.C. et seq. [43 U.S.C. 1601-1628] ([P.L.  
8 92-203,] Alaska Native Claims Settlement Act) that falls within a state park boundary  
9 is subject to the zoning regulations provided for under (a) of this section only if the  
10 affected regional or village Native [NATIVE] corporation consents to or fails to reject  
11 the zoning regulations within 60 days from the date they are submitted to the affected  
12 corporation.

13 \* Sec. 54. AS 43.50.460(d) is amended to read:

14 (d) For a nonparticipating manufacturer, the certification required by (a) of  
15 this section must additionally certify that the nonparticipating manufacturer

16 (1) is registered to do business in the state or has appointed a resident  
17 agent for service of process and provided notice of the appointment as required by  
18 AS 43.50.475 [AS 43.50.530];

19 (2) has

20 (A) established and continues to maintain a qualified escrow  
21 fund; and

22 (B) executed a qualified escrow agreement that has been  
23 reviewed and approved by the Department of Law and that governs the  
24 qualified escrow fund; and

25 (3) is in full compliance with AS 45.53 and this section, and any  
26 regulations adopted under those statutes.

27 \* Sec. 55. AS 43.98.015(a) is amended to read:

28 (a) The receipt of the original issue of shares of stock in a corporation  
29 organized under Alaska law pursuant to 43 U.S.C. 1601 et seq. ([THE FEDERAL]  
30 Alaska Native Claims Settlement Act) [(P.L. 92-203; 85 STAT. 688; 43 U.S.C. 1601  
31 ET SEQ.)] by or on behalf of a Native [NATIVE] (as defined in the federal Act) is not

1 subject to any form of state or local taxation.

2 \* **Sec. 56.** AS 43.98.015(b) is amended to read:

3 (b) The receipt of land or an interest in it under the federal Act or of cash in  
4 order to equalize the values of property exchanged under 43 U.S.C. 1621(f) [SEC.  
5 22(f) OF THAT ACT] or AS 38.50 is not subject to any form of state or local taxation.  
6 The basis for computing gain or loss on subsequent sale or other disposition of this  
7 land or interest in land for purposes of a state or local tax imposed on or measured by  
8 income is the fair value of the land or interest in land at the time of receipt.

9 \* **Sec. 57.** AS 44.27.056 is amended to read:

10 **Sec. 44.27.056. Reports.** The council shall report to the governor [NOT  
11 LATER THAN NOVEMBER 1, 1966, AND] from time to time [THEREAFTER].  
12 The council shall notify the legislature when its reports are available.

13 \* **Sec. 58.** AS 44.29.210(a) is amended to read:

14 (a) There is created in the department an alcoholism and drug abuse revolving  
15 loan fund as required under 42 U.S.C. 300x-25 [42 U.S.C. 300x - 4a] to qualify the  
16 state to receive block grant money from the United States Department of Health and  
17 Human Services under 42 U.S.C. 300x-21 [42 U.S.C. 300x - 2].

18 \* **Sec. 59.** AS 44.29.210(c) is amended to read:

19 (c) Money in the fund may be used as required under 42 U.S.C. 300x-25 [42  
20 U.S.C. 300x - 4a] to make loans to private nonprofit organizations for the cost of  
21 establishing programs to help pay the living expenses of individuals recovering from  
22 alcohol or drug abuse who may reside in groups.

23 \* **Sec. 60.** AS 44.42.065(a) is amended to read:

24 (a) The department shall, [AS SOON AS PRACTICABLE AFTER JULY 1,  
25 1980, AND] at least once every seven years [THEREAFTER], perform an energy  
26 audit of each public building.

27 \* **Sec. 61.** AS 44.62.350(c) is amended to read:

28 (c) Except for a [A] hearing officer hired [AFTER APRIL 29, 1959,  
29 EXCEPT] to conduct hearings under AS 23.20 (Alaska Employment Security Act), a  
30 hearing officer shall have been admitted to practice law for at least two years  
31 immediately before the appointment.

1 \* **Sec. 62.** AS 44.66.050 is amended to read:

2 **Sec. 44.66.050. Legislative oversight.** (a) Before the termination, dissolution,  
3 continuation, or reestablishment of a board or commission under AS 08.03.010 or  
4 AS 44.66.010 [ , OR OF AN AGENCY PROGRAM UNDER AS 44.66.020 AND  
5 44.66.030], a committee of reference of each house, which shall be the standing  
6 committee of legislative jurisdiction as provided in the Uniform Rules of the  
7 Legislature, shall hold one or more hearings to receive testimony from the public, the  
8 commissioner of the department having administrative responsibility for each named  
9 board or [ ,] commission [ , OR AGENCY PROGRAM], and the members of the  
10 board or commission involved. The hearings may be joint hearings. The committee  
11 shall also consider the proposed budget of the board or [ ,] commission [ , OR  
12 AGENCY PROGRAM], prepared in accordance with AS 37.07.050(f), and the  
13 performance audit of the activities of the board or [ ,] commission [ , OR AGENCY  
14 PROGRAM], prepared by the legislative audit division as prescribed in  
15 AS 24.20.271(1). The committee may consider any other report of the activities of the  
16 board or [ ,] commission [OR PROGRAM], including but not limited to annual  
17 reports, summaries prepared by the Legislative Affairs Agency, and any evaluation or  
18 general report of the manner of conduct of activities of the board or [ ,] commission [ ,  
19 OR AGENCY PROGRAM] prepared by the office of the ombudsman.

20 (b) During a public hearing, the board, commission, or agency shall have the  
21 burden of demonstrating a public need for its continued existence [OR THE  
22 CONTINUATION OF THE PROGRAM.] and the extent to which any change in the  
23 manner of exercise of its functions or activities may increase efficiency of  
24 administration or operation consistent with the public interest.

25 (c) A determination as to whether a board or commission [OR AGENCY  
26 PROGRAM] has demonstrated a public need for its continued existence must take into  
27 consideration the following factors:

28 (1) the extent to which the board or [ ,] commission [ , OR  
29 PROGRAM] has operated in the public interest;

30 (2) the extent to which the operation of the board or [ ,] commission [ ,  
31 OR AGENCY PROGRAM] has been impeded or enhanced by existing statutes,

1 procedures, and practices that it has adopted, and any other matter, including  
2 budgetary, resource, and personnel matters;

3 (3) the extent to which the board, commission, or agency has  
4 recommended statutory changes that are generally of benefit to the public interest;

5 (4) the extent to which the board, commission, or agency has  
6 encouraged interested persons to report to it concerning the effect of its regulations  
7 and decisions on the effectiveness of service, economy of service, and availability of  
8 service that it has provided;

9 (5) the extent to which the board, commission, or agency has  
10 encouraged public participation in the making of its regulations and decisions;

11 (6) the efficiency with which public inquiries or complaints regarding  
12 the activities of the board, commission, or agency filed with it, with the department to  
13 which a board or commission is administratively assigned, or with the office of  
14 victims' rights or the office of the ombudsman have been processed and resolved;

15 (7) the extent to which a board or commission that regulates entry into  
16 an occupation or profession has presented qualified applicants to serve the public;

17 (8) the extent to which state personnel practices, including affirmative  
18 action requirements, have been complied with by the board, commission, or agency to  
19 its own activities and the area of activity or interest; and

20 (9) the extent to which statutory, regulatory, budgeting, or other  
21 changes are necessary to enable the agency, board, or commission to better serve the  
22 interests of the public and to comply with the factors enumerated in this subsection.

23 (d) As to each board or [,] commission [, OR AGENCY PROGRAM]  
24 assigned to it for purposes of review, the committee of reference shall, not later than  
25 the 60th day of the legislative session, submit a report to the presiding officer of the  
26 house. The report must contain a summary of the findings of the committee as to the  
27 compliance of the board or [,] commission [, OR PROGRAM] with the factors  
28 enumerated in (c) of this section, together with a summary or recommendations of the  
29 committee as to each of the following:

30 (1) an identification of the problems or the needs that the  
31 [PROGRAMS AND] activities of the board, commission, or agency are intended to

1 address;

2 (2) a statement, to the extent practicable, of the objectives of the  
3 program of the board or [,] commission [, OR AGENCY PROGRAM], and its  
4 anticipated accomplishments;

5 (3) an identification of any other programs having similar, conflicting,  
6 or duplicate objectives;

7 (4) an assessment of alternative methods of achieving the purposes of  
8 the program;

9 (5) an assessment of the consequences of eliminating the board,  
10 commission, or program and consolidating its activities with another program, or of  
11 funding it at a lower level;

12 (6) a justification for the recommended continuation or extension of  
13 the board, commission, or program, and an explanation of the manner in which it  
14 avoids duplication of or conflict with other efforts; and

15 (7) any other information that, in the opinion of the committee, would  
16 improve the performance of the board, commission, or agency with respect to its  
17 representation of and responsiveness to the public interest.

18 (e) The committee of reference may introduce a bill providing for the  
19 reorganization or continuation of the board or [,] commission. Not [, OR AGENCY  
20 PROGRAM. NO] more than one board or [,] commission [, OR AGENCY  
21 PROGRAM] may be continued or reestablished in any legislative bill, and the board  
22 or [,] commission, [OR AGENCY PROGRAM] must be mentioned in the title of the  
23 bill.

24 \* **Sec. 63.** AS 44.66.060 is amended to read:

25 **Sec. 44.66.060. Existing claims.** This chapter does not cause the termination  
26 or dismissal of a claim or right of a citizen against a board or [,] commission, or  
27 against a program of an agency under former AS 44.66.020 or former 44.66.030,  
28 terminated under this chapter that is subject to litigation. Claims and rights shall be  
29 assumed by the department to which the board or commission terminated under this  
30 chapter was attached for administrative purposes.

31 \* **Sec. 64.** AS 44.83.425 is amended to read:

1           **Sec. 44.83.425. Definitions.** In AS 44.83.382 - 44.83.425 [AS 44.83.380 -  
2           44.83.425],

3                   (1) "debt service" means the amounts covenanted with respect to, or  
4           pledged to pay, bonds under a trust agreement securing bonds;

5                   (2) "fund" means the power development fund established by  
6           AS 44.83.382;

7                   (3) "qualified utility" means an electric utility or an electric operating  
8           entity established as an instrumentality of two or more electric utilities certified under  
9           AS 42.05 to serve all or part of a market area that is served or will be served by the  
10          power project, that the authority determines is capable of operating and maintaining  
11          the power project.

12   \* **Sec. 65.** AS 44.88.085(c) is amended to read:

13                   (c) The authority may adopt regulations to carry out the purposes of this  
14          chapter and shall adopt regulations as provided in (g) [AND (h)] of this section.

15   \* **Sec. 66.** AS 45.55.138 is amended to read:

16                   **Sec. 45.55.138. Application to Alaska Native Claims Settlement Act**  
17          **corporations.** The initial issue of stock of a corporation organized under Alaska law  
18          pursuant to 43 U.S.C. 1601 et seq. [43 U.S.C. 1601 - 1628] (Alaska Native Claims  
19          Settlement Act) is not a sale of a security under AS 45.55.070 and 45.55.130(10).

20   \* **Sec. 67.** AS 45.57.090 is amended to read:

21                   **Sec. 45.57.090. Consent to service of process.** A nonresident offeror, except  
22          a foreign corporation which has complied with AS 10.06.705 - 10.06.788  
23          [AS 10.05.597 - 10.05.696], who makes a takeover bid affecting an offeree company  
24          is considered to have appointed the commissioner of commerce, community, and  
25          economic development as the offeror's agent upon whom may be served, in any matter  
26          arising under this chapter, any process, notice, order or demand except one issued by  
27          the department. Service may be made on the commissioner or any of the  
28          commissioner's staff at the commissioner's office. The commissioner shall send it by  
29          registered or certified mail addressed to the offeror at the latest address on file and  
30          keep a record of it. A process, notice, order or demand issued by the department shall  
31          be served by being mailed by the commissioner or any of the commissioner's staff by

1 registered or certified mail addressed to the offeror at the latest address on file.

2 \* **Sec. 68.** AS 46.03.822(c) is amended to read:

3 (c) For purposes of (b)(1)(B) of this section, a third party or an agent of a third  
4 party is in privity of contract with the person who is otherwise liable, if the third party  
5 or its agent and the person are parties to a land contract, deed, or other instrument  
6 transferring title or possession of the real property on which the facility in question is  
7 located, unless that property was acquired by the person after the disposal or  
8 placement of the hazardous substance on, in, or at the facility, and the person  
9 establishes that the person has satisfied the requirements of (b)(1)(B) of this section  
10 and establishes that

11 (1) at the time the person acquired the facility the person did not know  
12 and had no reason to know that a hazardous substance that is the subject of the release  
13 or threatened release was disposed of on, in, or at the facility;

14 (2) the person is a governmental entity that acquired the facility by  
15 escheat, or through another involuntary transfer or acquisition, or through the exercise  
16 of eminent domain authority by purchase or condemnation;

17 (3) the person is a corporation organized under 43 U.S.C. 1601 et seq.  
18 [43 U.S.C. 1601 - 1629e] (Alaska Native Claims Settlement Act) that acquired the  
19 facility under those sections;

20 (4) the person acquired the facility by inheritance or bequest; or

21 (5) the person is a state governmental entity and the state acquired the  
22 facility under Public Law 85 - 508 (Alaska Statehood Act).

23 \* **Sec. 69.** AS 46.14.010(b) is amended to read:

24 (b) Unless the governor has determined that an emergency exists that requires  
25 emergency regulations under AS 44.62.250, the department may adopt the following  
26 types of regulations only after the procedures established in (a), (c), and (d) of this  
27 section and compliance with AS 46.14.015:

28 (1) a regulation that establishes an ambient air quality standard for an  
29 air pollutant for which there is no corresponding federal standard;

30 (2) a regulation that establishes an ambient air quality standard or  
31 emission standard that is more stringent than a corresponding federal standard;

1 (3) a regulation that establishes an equivalent emission limitation for a  
2 hazardous air pollutant for which the federal administrator has not adopted a  
3 corresponding maximum achievable control technology standard; or

4 (4) a regulation that regulates emissions from an emissions  
5 [EMISSION] unit or stationary source or establishes an emission standard under the  
6 authority of AS 46.14.120(e) or 46.14.130(c)(2).

7 \* Sec. 70. AS 46.14.010(c) is amended to read:

8 (c) In preparation for peer review under AS 46.14.015 and before adopting a  
9 regulation described under (b) of this section, the department shall

10 (1) find in writing that exposure profiles and either meteorological  
11 conditions or emissions [EMISSION] unit characteristics in the state or in an area of  
12 the state reasonably require the ambient air quality standard, or emission standard to  
13 protect human health and welfare or the environment; this paragraph does not apply to  
14 a regulation under (b)(3) of this section;

15 (2) find in writing that the proposed standard or emission limitation is  
16 technologically feasible; and

17 (3) prepare a written analysis of the economic feasibility of the  
18 proposal.

19 \* Sec. 71. AS 46.14.010(d) is amended to read:

20 (d) Before adopting a regulation described in (b)(2) of this section, the  
21 department shall find in writing that exposure profiles and either meteorological  
22 conditions or emissions [EMISSION] unit characteristics are significantly different in  
23 the state or in an area of the state from those upon which the corresponding federal  
24 regulation is based.

25 \* Sec. 72. AS 46.14.010(e) is amended to read:

26 (e) When incorporated into more than one permit, emission standards and  
27 limitations, emissions monitoring and reporting requirements, and compliance  
28 verification requirements that are generally applicable statewide or are generally  
29 applicable to individual emissions [EMISSION] unit or stationary source types shall  
30 be adopted in regulation unless they have been requested by the owner and operator to  
31 whom the permit is issued. The department shall, by regulation, adopt a standard.