

Alaska State Legislature

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Senator Lesil McGuire

Sponsor Statement

SB 77

"An Act relating to the books and records of a corporation, including the nonapplication of certain provisions to a state bank, the waiver or alteration of certain provisions by shareholder agreements, and the application of certain provisions to shareholder voting trusts; and amending Rule 26, Alaska Rules of Civil Procedure."

SB 77 amends AS 10.06.430, the statute under which shareholders of Alaska corporations may inspect and copy corporate books and records, because it is unclear and outdated. The statute was last amended in the late 1980s—before the emergence of modern information technology. Although an Alaska Supreme Court case decided last year addressed some questions about the statute, the Legislature needs to amend the statute to conform it to present-day needs and to eliminate substantial holes and ambiguities. Otherwise, the outdated statute will continue to spawn unnecessary, costly, and time-consuming disputes and litigation.

Balancing the interests of everyone involved, the proposed bill amends the statute in three principal ways. *First*, the amendments add procedures regarding making, and responding to, requests for books and records. Currently, the statute contains no such processes. As amended, the statute will establish clear, consistent, and fair procedures for everyone to follow.

Second, the amendments incorporate holdings from *Pederson v. Arctic Slope Regional Corporation, et al.*, dated August 8, 2014. This includes provisions protecting confidential information where, in the electronic era, information about corporations, employees, and shareholders can now be irretrievably disseminated by e-mail and the internet in an instant. The amendments further incorporate definitions of “minutes,” “record of shareholders,” and a clarified definition of “books and records of account.” Incorporating these provisions into the statute provides transparency and eliminates the need to review case law to which some shareholders lack ready access.

Third, the amendments both add protection from frivolous, harassing inspection requests and also clarify the consequences of inadequate responses by corporations. With the amendments, if a court orders a shareholder to pay a money judgment after unsuccessfully suing their company, then the shareholder must comply with the court’s order before making new inspection requests. Conversely, if a corporation fails to abide by its obligations, then it must pay a monetary fine, which is now clarified under the proposed statute. The amendments keep the penalty of up to \$5,000, which permits a court to compensate a shareholder in line with the gravity of the violation, but eliminates vague language regarding another method of calculating penalties based on a percentage of the value of shares, which invites collateral and uncertain litigation about how to value shares of privately held companies.

Please join me in modernizing and clarifying Alaska’s books and records statute to fit the needs of both shareholders and corporations.