1977-1978

SENATE COMMERCE COMMITTEE

LIST OF FILES (PAGE 1)

HB 55

HB 67

HB 308

HB 350

HB 356

HB 357

HB 668

HB 703

HB 739

HB 756

HB 786

HB 872

HB 876

SB 326

HB

55

02-001B

STATE
of ALASKA

MEMORANDUM

THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

OPR: Lawrence P. Carroll
Securities Examiner

TO: Honorable Joseph H. McKinnon, Chairman
House Commerce Committee

DATE : January 26, 1977

FROM: Julius J. Brecht
Division of Banking & Securities

SUBJECT: House Bill 55
Native Corporations
Background Information

As promised please find copies of correspondence between this office and the various Native corporations together with their responses concerning the proposed legislation contained in House Bill 55. In addition I have included two interoffice memorandums discussing the legislation and our meetings with Native representatives.

We feel this legislation provides needed protection while imposing minimum burden on the subject corporations.

Please do not hesitate to call on this office if we may offer any further assistance.

JJB/it/3/7

Attachments

cc: Representative Alfred C. Nakak

WILKINSON, CRAGUN & BARKER

LAW OFFICES

THE OCTAGON BUILDING

1735 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20006

(202) 833 9800

CABLE ADDRESS

"WILCBAR"

ERNEST L. WILKINSON
JOHN W. CRAGUN (1938-1964)
GLEN A. WILKINSON
ROBERT W. BARKER
CHARLES A. HOBBS
ANGELO A. IADAROLA
PAUL S. QUINN
LEON T. KNAUER
RICHARD A. BAENEN
JERRY C. STRAUS
HERBERT E. MARKS
PIERRE J. LaFORCE
FRANCES L. HORN
GORDON C. COFFMAN
PATRICIA L. BROWN
STEPHEN R. BELL

ROSEL H. HYDE
DONALD C. GORMLEY
Counsel

R. ANTHONY ROGERS
WILLIAM R. LOFTUS
THOMAS J. BACAS
FOSTER DeREITZES
ALAN I. RUBINSTEIN
JOHN M. FACCIOLA
PHILIP A. NACKE
THOMAS E. WILSON
JERRY R. GOLDSTEIN
EDWARD M. FOGARTY
S. STEVEN KARALEKAS
ROBIN A. FRIEDMAN
JAMES E. MAGEE
ROBERT B. McKENNA, JR.
JOSEPH P. MARKOSKI
MICHAEL P. GREEN
STEVEN C. LAMBERT
STEPHEN A. HILDEBRANDT
CHARLES I. APPLER *

* ADMITTED IN VIRGINIA ONLY

September 14, 1976

Mr. Julius J. Brecht
Director
Division of Banking, Securities,
Small Loans and Corporations
Department of Commerce and Economic
Development, State of Alaska
Pouch D
Juneau, Alaska 99801

Re: Proposed Legislation - AS 45.55.139

Dear Mr. Brecht:

John Schaeffer, president of NANA Regional Corporation, Inc., has asked us, as NANA's general counsel, to respond to your August 24, 1976, letter requesting NANA's comments on the proposed legislation, AS 45.55.139, relating to reports of corporations formed under the Alaska Native Claims Settlement Act.

First, we should state that we are in full agreement with the general scheme of the proposed bill. Consistent with the spirit of the federal exemptions granted by Congress, the bill does not impose on the corporations any new affirmative or substantive burdens, but in effect merely makes it easier for the State of Alaska to enforce its statutory provisions prohibiting false or misleading statements to stockholders and other forms of fraud. We believe that the corporations already are covered by the State's substantive standards regulating corporate activity, and the requirement that the materials be filed with the State's administrator seems a reasonable method of facilitating the State's enforcement of these standards.

The following, however, are some specific comments or suggestions which we have on the proposed legislation. First, we wish to clarify what may be a misunderstanding as

to what is required by the January 2, 1976, amendments to the Alaska Native Claims Settlement Act, Public Law 94-204. The "Justification" accompanying the proposed legislation states that Settlement Act corporations, although exempt from the federal securities laws, are required to "send their stockholders yearly a report containing substantially the same information required in an annual report of a corporation which is subject to the federal acts." This is not quite accurate. Section 3 of Public Law 94-204, which exempts the corporations from the federal securities laws, requires such reports only of corporations which, but for the exemption, would be subject to the Securities Exchange Act of 1934. The 1934 Act applies only to corporations with more than 500 stockholders and $1,000,000 in assets, and therefore it is only the twenty or so largest Settlement Act corporations, meeting these criteria, which must mail such annual reports. The only stockholder reporting requirements imposed by federal law on the smaller corporations are those contained in sections 7(o) and 8(c) of the Settlement Act, requiring the distribution to the stockholders of the corporation's annual audit. Thus we would suggest that the statement of "Justification" be corrected. The correction, however, should not to our mind generate any changes in the substance of the proposed legislation.

Dealing with the specific language of the proposed bill, we would suggest that the bill be made more specific in describing precisely which materials must be filed with the State. For example, we are not sure of what is included in "other materials," and believe that this term may require the filing of materials which the State is not really interested in seeing. For example, NANA periodically sends its stockholders a newsletter, in newspaper format, reporting on various corporate activities as well as giving other news of general interest in the region but not related to NANA's activities. Similarly, dividend checks are mailed out annually, with an appropriate written explanation of the nature of the dividend. Finally, at various informal meetings held from time to time in various of the villages, for the purpose of explaining to groups of stockholders various corporate matters of concern to them, written outlines or explanations sometimes are prepared and distrubited to persons attending the meetings. These tie in with oral presentations made at the meeting, and, standing alone, they would most likely make little sense to a State official who did not also attend the meeting. Such materials are not traditionally of the type which state or federal securities administrators tend to regulate, particularly since

they tend not to relate to the financial condition of the corporation or to any stockholders' vote being taken. We therefore would suggest that the filing requirement apply only to "annual reports to stockholders and proxy statements and other proxy materials relating to a vote of stockholders."

Secondly, we would suggest that the description of the corporations covered by the proposed legislation be changed simply to refer to "a corporation organized pursuant to the Alaska Native Claims Settlement Act, as amended (43 U.S.C. §§ 1601 et seq.)." Presently, the reference is to corporations exempted from the filing provisions of the three federal securities laws. We believe this is intended to cover all Settlement Act corporations, and a reference to the Settlement Act would seem to be a more precise way of expressing this. Moreover, identifying the corporations by reference to the federal exemptions would leave room for a corporation which even without the exemptions would not have been subject to the federal acts to argue that it therefore also is not subject to the proposed state law. This would be contrary to what we believe to be the intent of your bill.

Finally, we believe that the last sentence of the proposed bill may be deleted entirely, since to us it appears superfluous. We always have believed that any materials distributed by any of the Settlement Act corporations to its stockholders were subject to any existing State laws normally applicable thereto, such as the laws prohibiting false and misleading statements. This in fact is one of the reasons why Congress determined that the federal securities laws need not also apply.

To summarize, we would propose that AS 45.55.139 read as follows:

> "A copy of all annual reports to stockholders and proxy statements and other proxy materials relating to a vote of stockholders distributed to Alaskan stockholders of a corporation organized pursuant to the Alaska Native Claims Settlement Act, as amended (43 U.S.C. §§ 1601 et seq.), shall be filed with the administrator concurrently with their distribution to shareholders."

On behalf of NANA, we thank you for the opportunity provided us to review and comment on the proposed bill. We would be pleased to provide you with any further assistance or suggestions which you might find helpful.

Sincerely yours,

WILKINSON, CRAGUN & BARKER

By: Richard Anthony Baenen

Attendants of meeting of October 13, 1976 at the offices of the AFN in Anchorage regarding the Native Securities Bill

Julius J. Brecht	Department of Commerce	Pouch D, Juneau, Alaska 99811
Jim Thompson	Department of Commerce	Pouch D, Juneau, Alaska 99811
H. Nobel Dick	Bristol Bay Native Corp.	445 E. 5th Ave, Anchorage, AK.
George See	Sealaska Corporation	811 West 12th, Juneau, AK.
Everett Buness	Arctic Slope Reg. Corp.	313 E. St, Suite 5, Anch, AK.
Brian Johnson	Calista Corporation	516 Denali St, Anchorage, AK.
Perry Eaton	Koniag, Inc.	3501 Hooper Way, Anch, AK.
Bill Timme	Doyon Limited	First & Hall, Fairbanks, AK.
Dave Cooke	Bering Straits	310 K. St, Suite 601, Anch. AK.
Janie Brower	AFN (secretary to Sam Kito)	8th & F. St., Anch, AK.

STATE of ALASKA

MEMORANDUM

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

TO: Langhorne A. Motley
Commissioner

DATE: October 19, 1976

FROM: Julius J. Brecht
Director

SUBJECT: AS 45.55.139 - Status Corporations

On October 13, 1976, James L. Thompson, Securities Examiner with the Division of Banking, and I met with leaders of various Native corporations at the Alaska Federation of Natives' office in Anchorage. A list of names of those in attendance at the meeting is attached.

The purpose of this meeting was to discuss the bill proposed by the Department of Commerce and Economic Development which requires that corporations established pursuant to the Alaska Native Claims Settlement Act file copies of all annual reports, proxy statements, and other materials with the department. The filing would subject the person distributing the materials to the fraud provisions of the Alaska Securities Act, AS 45.55.

The general reaction of the participants to the bill at this meeting was favorable, but they did not show overwhelming support for it. The group was pleased that the proposed bill does not require any additional burden on the Native corporations.

The points of the proposed bill that were discussed are as follows:

1. PROXIES: It was felt that the term "proxies" should be added to those materials to be supplied to the division. The reason given for this suggestion was that "proxies" are different from "proxy statements" and both of these items should be included.

2. ADDED LANGUAGE: It was felt that in the proposed act we should add the term "related to proxy solicitations" between the words "materials" and "distributed." This addition was recommended because it was felt that there were many "materials" that would not be germane to stockholder voting and therefore, need not be sent to the department. It was also felt that some of these "materials" might be proprietary in nature and the divulging of this material would not be in the best interests of the stockholders of a "private" nonprofit corporation.

3. DISTRIBUTED: It was felt that the term "distributed" was not clear enough. The reason for this is that some of the materials and some of the reports are not distributed by mail but are posted in local newspapers or on television and radio. The group felt that this term should be expanded to be more specific.

4. DESCRIPTION OF STOCKHOLDERS: It was felt by the group that this bill should be expanded to include a number larger than two with respect to the reports. The recommendation was that we put in the term "at least ten" before

Alaskan shareholders. It was also recommended that we be more specific in our description of shareholders and put in "Alaskan resident shareholders."

5. DESCRIPTION OF CORPORATIONS: There was active discussion on the item in the proposed bill that was directed towards Alaska Native Claims Settlement Act Corporations. It was felt that this might be singling out those corporations and might also leave a loophole for other corporations that were granted an exemption. Two alternatives were discussed. One which would bring in large village corporations and would be based upon the federal law which requires a corporation with 500 shareholders or 1 million dollars in assets to register, or that it be basically for all corporations that are exempt under the Federal Securities Acts.

6. CONFIDENTIAL MATERIAL: There was also discussion as to whether materials filed under this act would be public record or not, and that the division should make certain that these materials were not part of public documents.

Conclusion

It appears as if some of the recommendations made by the Native leaders at this meeting were well taken. The comment regarding the addition of the term proxies would make the act more viable.

The feeling that the act should include the terms "related to proxy solicitations" also appears to be well taken. Much of the materials that a corporation does distribute to its shareholders are proprietary materials. For example, prices of fish to be paid by a cannery owned by a corporation would not be necessary information for our department and might cause damage to the corporation if those items were made known. Inasmuch as the purpose of this act is to make certain that the stockholders receive fair and not misleading materials relating to their voting of their stock, it does not appear as if we need to include all other materials.

The comments relating to the changes of a part of the act that relates to distribution to Alaska shareholders, was also well taken. This area should be expanded and clarified before the proposed bill goes before the Legislature.

The discussion of how the description of the corporations should be changed has required certain additional examination. As a result of this examination, it is felt that we should use the terminology as followed in the Federal Acts.

There does not appear to be any need to add a clause that would make this information confidential as that is contained already under AS 45.55.180(b).

Recommendation

As a result of the meeting with the Native leaders, it is recommended that AS 45.55.139 be amended as follows:

"Sec. 45.55.139. REPORTS OF CORPORATIONS. A copy of all annual reports proxies, consents or authorizations, proxy statements and other materials relating to proxy solicitations distributed, published or made available to at least ten Alaska resident shareholders of a corporation which

has total assets exceeding $1,000,000 and a class of equity security held of record by 500 or more persons and exempted form the provisions of the Securities Act of 1933 (15 U.S.C. Secs. 77a-77aa), the Securities Exchange Act of 1934 (15 U.S.C. Secs. 78a-78jj) or the Investment Company Act of 1940 (15 U.S.C. Secs 80a1-80a52) shall be filed with the administrator concurrently with their distribution to shareholders."

LA Copies of this revised bill have been sent to those on the attached JJB/attendance list, to the presidents of each of the 12 regional corporations and to Sam Kito of AFN, who was not in attendance at the October 13 meeting.

Enclosures

LAW OFFICES
JOE P. JOSEPHSON, INC.,
A PROFESSIONAL CORPORATION
1526 F STREET
ANCHORAGE, ALASKA 99501

(907) 272-8531

OF COUNSEL
ROBERT M. GOLDBERG, ESQ.

GEORGE KAUFMANN, ESQ.
(D.C. BAR ONLY)

November 18, 1975

Mr. Miles S. Schlosberg
Director
Division of Banking, Securities, Small Loans and Corporations
Pouch D
Juneau, Alaska

Dear Miles:

I have again reviewed the State's proposed amendment to Section 28 of HR 6644.

While I understand the concerns that prompted the amendment, it must remain my view that the interests of Chugach Natives, Inc. are best served by the original federal exemption proposed in the legislation, coupled with State regulation if needed. Chugach Natives, Inc. is a relatively small Native regional corporation, and much of its effort has been devoted to finding ways by which large overhead could be avoided. While your proposal in itself would not involve great costs to the corporations, the introduction of the State's proposal may threaten the passage of any exemption or partial exemption by Congress. This is a very serious matter to the Native corporations, and is not in the best interests of the shareholders, especially those enrolled in the relatively small corporations.

I deeply believe that the State should support the proposed exemption in HR 6644 and then that the Administration, after consultation with the Native regional corporations, should frame suitable legislation at the State level, if necessary, to protect shareholders without imposing undue burdens on the corporations.

I do appreciate your courtesy in meeting with those of us representing the corporations and your frankness in the discussions.

Sincerely,

Joe P. Josephson

cc: Mr. Cecil Barnes
Honorable Ted Stevens
Honorable Mike Gravel
Honorable Don Young
Mr. Sam Kito
Senator John Sackett
Barry Jackson, Esq.
Joseph Rudd, Esq.
Richard Baenen, Esq.
John Petters, Esq.
Edward Weinberg, Esq.
Mr. John Shively
Eric Treisman, Esq.
William Timme, Esq.
Nancy Williams, Esq.
Jay R. Weill, Esq.
Allan McGrath, Esq.
Harold Horton, Esq.
Michael Holmes, Esq.
James Wickware, Esq.
Ken Bass, Esq.
Arthur Lazarus, Esq.

02-0018

STATE
of ALASKA

MEMORANDUM

THE DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OPR: Lawrence P. Carroll
Securities Examiner

TO: The Members of the Committee

DATE : January 17, 1977

FROM: Julius J. Brecht
Director
Division of Banking & Securities

SUBJECT: House Bill 55
(Narrative Supplement)

House Bill 55 amends AS 45.55 (the Alaska Securities Act of 1959) by adding a new section requiring that certain Native corporations, who are exempt from registration by virtue of Section 138 of the Alaska Securities Act, file with the Administrator of Securities a copy of all annual reports, proxies, consents or authorizations, proxy statements, and other materials relating to proxy statments. Please note that these requirements are imposed only on those coroporations whose total assets exceed one million dollars, whose stock is held by 500 or more persons, and who would be distributing such material to ten or more shareholders.

The amendments to the Alaska Native Land Claims Settlement Act (Act of January 2, 1976, P.L. 9-204, 89 Statute, 1145) exempted all settlement act corporations until 1991 from the three principal federal securities laws and thereby from any Securities Exachange Commission jurisdiction. However, the House Interior Committee report on the exemption contains the following:

> "Native corporations have assured the committee that they... intend to pursue the passage of state legislation to the extent necessary to provide any appropriate additional protection." (House of Representatives. 94-729, 94th Congress, first session, December 15, 1975).

The proposed legislation before you will provide Native shareholders the same degree of protection from fraud and deception that any shareholder of a comparable nonexempt corporation enjoys.

The proposed legislation was developed with the cooperation of the twelve regional corporations and contains language which is acceptable to them. The amendment will create no additional burden on the corporations in question as the requirement for filing is concurrent with distribution to shareholders.

The staff of this division remains at your disposal should you have any further requirements.

JJB/it/1/8

HB 55

REMARKS OF JULIUS J. BRECHT
DIRECTOR OF BANKINGS AND SECURITIES
THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
HOUSE COMMITTEE HEARING
JANUARY 24, 1977

Good Morning Mr. Chairman and members of the committee. I want to thank you for allowing me to appear before you to discuss House Bill 55. My name is Julius J. Brecht, and I am the Director of the Division of Banking and Securities within the Department of Commerce and Economic Development. I am appearing before you to present the administration's viewpoint on this bill.

The bill before you proposed to amend the Alaska Securities Act by adding a new section requiring that certain Native corporations, who are exempt from registration by virtue of AS 45.55.138, file with the Administrator of Securities copies of annual reports and other materials relating to proxy statements in the narrow context of activities involving the initial assets of those corporations. These requirements are imposed only on corporations whose total assets exceed $1 million, and whose stock is held by 500 or more persons, and who would be distributing such materials to 10 or more shareholders.

While other non-Native corporations of this State must file these materials with the Securities and Exchange Commission, the 1976 amendment to the Alaska Native Settlement Act (ANCSA), explicitly prohibits the SEC until 1991 from regulating the Native corporation activities involving the initial issue of stock of those corporations. This moratorium on SEC regulation came about in part because the Native corporations may not "sell" their assets during this period. They may, however, invest or otherwise encumber those assets.

I would like to distribute to the committee a copy of my memo of January 17, 1977 at this time. As you can see from this memo, the Native corporations assured Congress that they intended to pursue the passage of State legislation to provide the necessary protection to Native corporation shareholders during the moritorium.

Perhaps an example will best illustrate the scope of the bill before you. Assume the board of directors of a given regional corporation decides to purchase an established business or perhaps a building as an investment using a portion of the assets which the corporation received as a result of ANSCA. At present, while a "non-Native" corporation having at least 500 shareholders and $1 million in assets would have to comply with extensive SEC regulations to protect the shareholders in such a transaction, a Native corporation organized under ANCSA is completely free of regulation. Furthermore, the transaction would be exempt from State regulation because of AS 45.55.138. I have a copy of Section 138 for the information of the committee. If the Native corporations were later to issue shares in the new business or building corporation, then the offering would be a security and would be subject to SEC and State regulation as the case may be. But if the corporation just holds the new acquisition, then there is no protection extended to the shareholder. This bill would require that the regional corporation file a copy of its annual report in which the transaction would quite likely be explained to the shareholders. Similarly, if the context of a transaction or proposed course of action involving the initial assets require the directors to solicit proxies, then copies of those materials would have to be filed with the division.

The proposed legislation will then provide Native shareholders the same degree of protection from fraud and deception that any shareholder of a comparable non-exempt corporation now enjoys. The bill before you does not treat Native corporations any differently then other corporations in the context of overall regulation. The bill in fact strikes equitynon-Native corporations and those other corporations.

/between

The bill before you was developed with the cooperation of the 12 regional corporations and the Alaska Federation of Natives. Numerous helpful comments were received from representatives of the regional corporations at a meeting held in the AFN offices in Anchorage this past summer. The amendment will create no additional burden on the corporations since the requirement for filing is concurrent with distribution to the shareholders.

In summary then, I believe this bill will clear up the matter of "unfinished business" created by Congress in passing the 1976 amendment to ANCSA to which the Native corporations have assured Congress their support.

I urge the thoughtful consideration of this legislation by this committee.

March 1, 1977

Mr. Jake Gregory, Chairman
Bristol Bay Native Association
P. O. Box 99
Egegik, Alaska 99579

Dear Mr. Gregory:

Re: CSSB 15 and HB 55

This letter is to confirm our conversation in Juneau on two bills presently before the Alaska State Legislature.

One bill deals with the conducting of business of a corporation by its board of directors. That bill has been introduced by Senator Ziegler of Ketchikan. The present Alaska corporations law requires that a board of directors of a corporation may take action as a board only when the board meets in person or through a conference telephone call. (See AS 10.05.198-199)

Under CSSB 15, a board of directors may conduct the business of a corporation without holding a formal meeting or resorting to a telephone conference call, under limited conditions. Those conditions are: (1) subsequent written consent to the action is obtained, (2) the consent specifies the action authorized, (3) the consent is signed by all of the directors, and (4) the consent is filed with the minutes of the board.

In essence, the bill allows the polling of the members of a board of directors on a proposed course of action, and allows the board or a person designated by the board to take the action. The bill, therefore, provides more flexibility to corporate directors in carrying out their duties for a corporation.

The other bill about which you inquired, HB 55, has been submitted by the Governor and requires that certain corporations formed as a result of the Alaska Native Claims Settlement Act (ANCSA) submit copies of specified materials to the Department of Commerce & Economic Development. Only those Native corporations with 500 or more shareholders and total assets exceeding $1-million are subject to the bill. The materials submitted include copies of annual reports and other specified written

materials used to solicit votes on proposed actions by a Native corporation involving the initial assets of the corporation. In this context, if more than 10 Alaskan resident shareholders of such a corporation are solicited, then copies of the written materials used in the solicitation must be filed with the department.

Perhaps an example will best illustrate the scope of HB 55. Assume the board of directors of a given regional or village corporation decides to purchase an established business, or perhaps a building as an investment, using a portion of the assets which the corporation received as a result of ANCSA. At present, while a "non-Native" corporation, having at least 500 shareholders and $1-million in assets, would have to comply with extensive federal regulations to protect the shareholders in such a transaction, a Native corporation organized under ANCSA is completely free of regulation. Furthermore, the transaction would be exempt from State regulation because of AS 45.55.138. If the Native corporations were later to issue shares in the new business or building corporation, then the offering would be a security and would be subject to federal and State regulations, as the case may be. But if the corporation just holds the new acquisition, then there is no protection extended to the shareholder. The bill would require that the Native corporation involved file a copy of its annual report in which the transaction would, quite likely, be explained to the shareholders. Similarly, if the context of a transaction or proposed course of action, involving the initial assets, requires the directors to solicit proxies, then copies of those materials would have to be filed with the department.

For your information, there are presently only about 15, and possibly 18, village corporations out of a total of 226 that have a sufficient number of shareholders and total assets to come under the requirements of HB 55. That is, about 8% of the village corporations would be affected by the bill. Obviously, all 12 regional corporations would also be subject to the bill. The 18 village corporations involved are as follows, based on information obtained recently from the Bureau of Indian Affairs:

Village Name	Total Enrollments
St. Paul	540
Barrow	2,029
Dillingham	925
Ft. Yukon	734
Tanana	590
Bethel	1,725
Hooper Bay	623
Kotzebue	1,976
Nome	2,041
Unalakleet	327

Village Name	Total Enrollments
Angcon	629
Hoonah	867
Hydaburg	554
Kake	551
Klawak	510
Three villages took cash	
Kodiak	529
Juneau	2,658
Sitka	1,915

The proposed legislation will, then, provide Native shareholders the same degree of protection from fraud and deception that any shareholder of a comparable nonexempt corporation now enjoys. The bill does not treat Native corporations any differently than other corporations in the context of overall regulation. The bill, in fact, strikes equity between non-Native corporations and other corporations.

The bill was developed with the cooperation of the twelve regional corporations and the Alaska Federation of Natives. Numerous helpful comments were received from the representatives of the regional corporations at a meeting held in the AFN offices in Anchorage this past summer. The bill will create no additional burden on the corporations, since the requirement for filing is concurrent with distribution to the shareholders.

I believe this bill will clear up the matter of "unfinished business" created by Congress in passing the 1976 amendment to ANCSA to which the Native corporations have assured Congress their support. That is, while other non-Native corporations of this State must file the materials specified in HB 55 with federal authorities, the 1976 amendment to ANCSA explicitly prohibits the federal authorities, until 1991, from regulating Native corporation activities involving the initial issue of stock of those corporations. The moratorium on federal regulation came about in part because Native corporations may not "sell" their assets during this period. They may, however, invest or otherwise encumber those assets.

If you have any further questions concerning either of the bills that I have just discussed, please do not hesitate to contact me.

Sincerely,

Julius J. Brecht
Director

JJB/val2/1

THE DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

Dave Gray, Legislative Assistant
to Senator Ferguson
Court Building, Room 650

February 17, 1977

Julius J. Brecht, Director
Division of Banking and Securities

Native Enrollments

This memorandum is in response to a question that you raised in our meeting in your office on Wednesday, February 16, 1977. The meeting concerned the purpose and scope of HB 55, a bill relating to reports by Native corporations.

Your question was how many village corporations may be affected by the bill? That is, how many village corporations have more than 500 shareholders and more than $1 million in assets?

My office has contacted Mr. Prentiss (Print) Gazaway in the Industrial Development Section of the Bureau of Indian Affairs in Juneau (586-7183). He gave the following information on enrollments as of November 17, 1976:

1. 15 villages each having total assets over $1 million and each having over 500 members.

2. Three villages having over 500 members who took cash settlements (distributed to shareholders); however, the land settlement is still held and quite likely has a value in excess of $1 million.

3. 13 villages with 400-500 members, who took a cash settlement similar to 2 above.

4. A total of 226 village corporations and 12 regional corporations in the State.

5. A total of five "place" village applications pending and an estimated 30 applications expected.

In addition, Mr. Gazaway gave the following information on total enrollments:

St. Paul	540
Barrow	2,029
Dillingham	925
Fort Yukon	734
Tanana	590
Bethel	1,725
Hooper Bay	623
Kotzebue	1,976
Nome	2,041
Unalakleet	827
Angoon	629
Hoonah	867
Hydaberg	564
Kake	551
Klawak	510
Three villages that took cash.	
Kodiak	520
Juneau	2,658
Sitka	1,815

In summary then, the bill would affect 18 village and 12 regional corporations out of a total of 239 corporations presently doing business in the State. That is, about 8% of the village corporations and all of the 12 in-State regional corporations would be subject to the provisions of HB 55.

I suggest that these figures demonstrate the minimal impact on the corporations organized under the Alaska Native Claims Settlement Act. Most importantly, the shareholders from those corporations affected will enjoy a level of protection similar to that which is accorded by federal regulation to corporations of a comparable size both in the State and outside of the State.

I encourage you to discuss the benefits of HB 55 with the Bush Caucus, and I stand ready to discuss the matter with you or the caucus at your pleasure.

JJB/it/4/2

FORM 02-001BC
FOR BRIEF COMMUNICATIONS
MAY BE HANDWRITTEN

MEMORANDUM

State of Alaska

DEPT. COMMERCE & ECONOMIC DEVELOPMENT
DIV. BANKING & SECURITIES
SEC.

TO: 1977 Securities Legislation Ideas File

DATE : March 26, 1976

FROM: Miles S. Schlosberg
Director
Division of Banking and Securities

SUBJECT:

Miles Schlosberg has discussed these matters at length with the drafters of this memorandum, and other affected Native Corporations during his and Commissioner Motley's 1975 efforts on behalf of modifying the Omnibus amendments to the Alaska Native Claims Settlement Act before Congress. He should be consulted before drafting legislation to reflect this memorandum. In essence, however, as the attached notes will reflect (at the back) he is in accord with the positions expressed here.

Attachment

MEMORANDUM

Re: Alaska Native Claims Settlement Act Corporations - Proposed State Securities Law Protections

This memorandum outlines possible alternative proposals for additional state securities law provisions which may be deemed necessary or desirable to provide additional protections to stockholders of corporations formed under the Alaska Native Claims Settlement Act (the "Settlement Act"). The recent Settlement Act amendments (Act of January 2, 1976, P.L. 94-204, 89 Stat. 1145) exempted all Settlement Act corporations until 1991 from the three principal federal securities laws, and thereby also from any SEC jurisdiction. The House Interior Committee Report on the exemptions contained the amendments stated:

> "Native corporations have assured the Committee that they . . . intend to pursue the passage of State legislation to the extent necessary to provide any appropriate additional protection." (H.Rep. 94-729, 94th Cong., 1st Sess. 20 (December 15, 1975))

The additional state protections deemed to be necessary by some regional corporations relate primarily to State regulation of the content of proxy materials mailed by the corporations to their stockholders, particularly materials soliciting votes in annual elections of directors. Concern has also been expressed over regulations of verbal statements and solicitations made in connection with such elections.

EXISTING ANNUAL REPORT REQUIREMENT

In considering alternatives for state regulation of proxy materials, it must be kept in mind that section 3 of the Settlement Act amendments, exempting the corporations from the federal securities laws, contains also the following requirement:

> "Any [Settlement Act] corporation which, but for this section, would be subject to the provisions of the Securities Exchange Act of 1934 shall transmit to its stockholders each year a report containing substantially all the information required to be included in an annual report to stockholders by a corporation which is subject to the provisions of such Act."

The scope of this requirement for annual reports is as follows:

Applicability of Requirement. The requirement for mailing to stockholders an annual report complying with the SEC standards for such a report applies only to corporations which, but for the newly enacted exemptions, would be subject to the Securities Exchange Act of 1934 (the "1934 Act"). These are corporations with more than $1,000,000 in assets and at least 500 stockholders. The requirement therefore presently covers all regional corporations, as well as perhaps the five or ten largest village corporations. 1/

1/ A village corporation with only slightly over 500 stockholders might not yet be subject to this requirement. Such a corporation to date may not yet have received $1,000,000 in

[footnote continued on following page]

This annual report requirement was deliberately made applicable only to the largest of the corporations. Many small village corporations do not currently mail out annual reports to stockholders, and should not have to incur the cost of doing so. It would be consistent with this theory that any affirmative proxy requirements or standards imposed by state law similarly be applicable to only the large corporations, i.e., regional corporations and the largest village corporations.

Content of Annual Reports. The annual report must contain "substantially all the information" required to be included in an annual report to stockholders under the federal securities laws.2/

1/ [footnote continued from preceding page] funds under the Settlement Act, and, since the value of the corporation's future interest in lands may presently be unknown and may have to be excluded in determining the total of the corporation's assets, the corporation may not yet come within the requirement. After the next distribution from the Alaska Native Fund, it probably would have $1,000,000 in assets and thereafter have to comply with the annual report provisions.

2/ The reports of both the House and Senate Interior Committees on the recent amendments express the belief that "the Native leadership will comply fully with the intent of this provision and will submit annual reports to their stockholders which are as effective in disclosing corporate activities as those prepared by companies regulated under the 1934 Act by the SEC." (H.Rep. 94-729, 94th Cong., 1st Sess. 20 (December 15, 1975), and S. Rep. 94-361, 94th Cong., 1st Sess. 18 (August 1, 1975)).

Annual reports currently prepared by regional corporations already contain much of the information required by the SEC's rules.[3/] Additional information, however, will have to be added. Roughly outlined (and omitting items clearly inapplicable to Settlement Act corporations), the following information has to be included:

1. Certified financial statements for the last two fiscal years.

2. Brief description of the business done by the corporation and subsidiaries during the most recent fiscal year, indicating the general nature and scope of the company's business.

3. If the company is engaged in more than one line of business, the approximate amount or percentage, for each of the last five years, of (1) total sales and revenues, and (2) income (or loss) attributable to each line of business accounting for 15 percent or more of sales, revenues or income during either of the last two years.

4. Amount or percentage, for each of the last five years, of total sales and revenues contributed by each class of similar products or services contributing 15 percent or more of total sales and revenues during either of the last two years.

3/ Rule 14a-3 under the 1934 Act.

5. Tabular summary of operations of the company and subsidiaries for each of the last five years, set forth in any form deemed suitable by management.

6. Identification of each director and executive officer of the company, indicating principal occupation or employment and name and principal business of any organization by which employed.

The regulations further explain these requirements and specify the amount of detail required. Subject to the requirements, however, the report can be in any form which the management deems suitable. An annual report so prepared will contain much information useful to the stockholders in evaluating the performance of the board of directors in connection with their annual election.

POSSIBLE ADDITIONAL STATE LEGISLATION

The memorandum here will deal with possible alternatives for state legislation, imposing additional requirements, protection or standards to supplement the annual report requirement. The following are only various suggestions, from which one might select those most appropriate.

1. Timing of annual report. Since the annual report is to contain much information valuable to stockholders in electing directors, state law could require the annual report to be mailed out to the stockholder simultaneously

with the notice of annual meeting for election of directors. The Settlement Act amendments require only that the report be sent out "each year", without designating when.

2. Enforcement of Annual Report Requirement. The Settlement Act amendments contain no provision for enforcing the annual report requirement. The SEC also has no jurisdiction to do so. State law therefore could make it illegal to (a) fail to prepare and mail out the required annual report, or (b) mail an annual report which does not contain "substantially all the information" required under the 1934 Act. Officers and directors violating such a provision of State law could personally be subject to prosecution and fines, with a specific provision that the corporation may not indemnify the officers and directors for the fines.

3. Proxy Materials - General. In spite of the annual report requirement, it may be deemed appropriate also to require separate proxy statements to be mailed to stockholders in connection with their vote at any meeting, and to regulate the content of such materials. (The SEC requires and regulates the content of the annual report and the proxy materials.)

4. Proxy Materials - Type of Legislation. The 1934 Act itself provides, as to proxy materials, only that proxies may not be solicited "in contravention of such rules and regulations as the Commission may prescribe as necessary or

appropriate in the public interest or for the protection of investors". All the remaining detailed requirements for proxy materials are contained not in the statute, but in the SEC's own regulations. A State statutory provision could be similarly vague, leaving all the details of the requirement to agency regulations. This, however, would leave the agency with considerable flexibility. For obvious reasons, the state requirements on proxy materials should not be as detailed and complex as the SEC's requirements. Having specific guidelines and rules written into the statute could help insure that the requirements will be of a type appropriate to Settlement Act corporations.

5. Proxy Materials - Content. The SEC proxy rules contain a long list of items and subjects to be covered in a proxy statement. The proxy statement, however, generally must cover only those of the subjects which are relevant to the meetings or which are voted on by the stockholders. Consideration must be given to the types of stockholder votes to which the state proxy requirements should apply, e.g., only elections of directors, or all stockholders meetings and votes. A brief listing of the information which must be set forth in proxy materials under the federal laws, i.e., the different subject matters covered (again omitting items clearly inapplicable to Settlement Act corporations), is as follows:

- Revocability of proxy. Whether the stockholder may revoke the proxy, and any limitations on this right.

- Persons making the solicitation. Statement of who is making the solicitation (e.g., management), and description of any known opposition to the solicitation.

- Interest of certain persons in matters to be acted upon. Description of any interest of any officer or director in any matter to be acted upon.

- Voting securities and principal holders thereof. The number of shares of each class of stock outstanding and the number of votes to which each class is entitled, the record date, description of any available cumulative voting rights, and any past or expected change in control of the corporation.

- Nominees and directors. In tabular form, for each person nominated as a director and each other director, the name, term of office, other positions held, principal occupation, name and principal business of any organization by which employed, principal occupation during the last five years, previous terms as a director, approximate amount of stock owned, etc.

- Remuneration and other transaction with management and others. In tabular form, (a) direct remuneration, and (b) annuity, pension or retirement benefits,

paid to each director or officer earning more than $40,000 and all directors and officers as a group. Description of any stock options granted to such officers and directors, any indebtedness which any of them have to the corporation, any transactions or proposed transactions with the corporation in which any director, officer or nominee (or relative thereof) has an interest.

- Relation with independent accountants. Description of company's relationship with its independent public accountants, naming accountants selected or to be ratified by stockholders, whether representatives of the accountants will be present at the meeting, the names of any audit committee of the board of directors, etc.

- Bonus, profit-sharing pension or retirement plans. If action is to be taken by the stockholders on any such plan, the plan must be described in detail.

- Options, warrants or rights. If action is to be taken by the stockholders on these, they must be described in detail.

- Authorization or issuance of securities other than for exchange. If additional securities are to be authorized, the title, amount, terms or rights of the securities must be described, as well as the transaction in connection with which they are issued.

- Modification or exchange of securities. If the stockholders are to vote on modification of any class of securities or issuance of new securities in exchange for outstanding securities, all relevant details must be described.

- Mergers, consolidations, acquisitions and similar matters. The entire transaction and its terms must be described in detail.

- Financial statements. In a proxy statement relating to any of the last three preceding items, financial statements must be included.

- Acquisition of property. If the stockholders are to vote on the acquisition of property, the property and the terms of the acquisition must be described.

- Amendment of charter, by-laws and other documents. If any such amendments are voted on, the reasons and general effect of the amendment must be given.

- Vote required for approval. On any matter submitted to a vote (other than election of directors or selection of auditors), the vote required for approval must be given.

All or some of these subject matters similarly could be required to be described and discussed in proxy materials required by state law.

6. Proxy materials - Procedure. Regulation of the content of proxy materials could be imposed without necessarily requiring that the materials be submitted to or approved by the State in advance of their mailing. Alternatively, a procedure similar to the SEC's proxy procedure

could be required. The SEC's regulations require that proxy materials be mailed to the SEC at least 10 days before mailing to the stockholders. During the 10 day period the SEC recommends changes in the materials, further detail or elaboration, etc.

7. Proxy Materials - Enforcement. It could be made a specific crime, subject to appropriate punishment, to make any false or misleading statements in any written proxy materials to stockholders.

8. Oral Proxy Solicitations. It similarly could be made a crime to make any false or misleading oral statements or presentations in connection with any solicitation of proxies for a vote of stockholders. The prohibition could cover corporate directors and employees, as well as any "outside" candidates for directorships who are opposing management's nominees. Violations could be subject to appropriate punishment.

9. Coverage of Requirements. As noted, the annual report requirement currently applies only to corporations with over $1,000,000 in assets and 500 stockholders. Any of the potential state requirements listed above similarly could be limited to only those corporations. Alternatively, they could be made to cover a larger group of Settlement Act corporations, or even all. It may, however, be inappropriate to impose any proposed affirmative

requirements on the smaller corporations. However, there may be little reason why the non-affirmative provisions, such as in the two last preceding items (generally prohibiting false or misleading statements in connection with proxy solicitations), could not be made applicable to all proxy solicitations by all Settlement Act corporations.

CONCLUSION

As already noted, the foregoing is intended merely as a list of possible areas which could be covered by state securities laws amendments. The state legislature could enact amendments convering all these areas, or, alternatively, could be more selective and impose only some of the requirements. There is also considerable leeway as to how detailed any proxy materials required by the State must be.

make registration practicable for them under the Investment Company Act. On the other hand, the penalty for failure to register under that Act, even for a company which inadvertently becomes subject to its provisions, are severe. It is the purpose of Section 3 of H.R. 6644, amended, to provide the corporations formed under the Settlement Act with turnaround time in order to identify any problems which they may ultimately have under the Investment Company Act and to work out appropriate solutions for such problems internally and in consultation with the staff of the Securities and Exchange Commission.

The SEC has promulgated a temporary rule exempting Native corporations which register as investment companies from most of the provisions of the 1940 Act. Nonetheless, the exemption provided for in this section is necessary. The Committee is informed that some Regional Corporations have not registered under the SEC temporary rule and there exists some risk that their corporate acts and contracts might be vulnerable to challenge under the 1940 Act. The exemption will provide necessary breathing room to the SEC and the Native corporations in order to permit resolution of long-range solutions.

Another reason for temporarily exempting these entities from the Investment Company Act is to enable them to merge under provisions of Section 6 of H.R. 6644. In 1975 the NANA Corporation and the eleven Village Corporations in that region agreed on a plan of merger. The Natives spent about $200,000 in preparation and filing of a prospectus under the Securities Act of 1933. They did so in reliance on a "no-action" letter from the SEC advising them that no application would be necessary under section 17 of the Investment Company Act, a section which prohibits transactions between "affiliated persons" without a prior order from the SEC that the terms of the transaction are fair and equitable. At the last moment, however, the SEC withdrew their no-action letter, insisted on a section 17 application, and advised that no action would be taken on the application until extensive public hearings had been held. This administrative procedure imposes such substantial costs that merger may be impracticable. Since the very purpose of the merger authority in section 6 is to reduce administrative expense and overhead, it is appropriate at the same time to eliminate unnecessary expenses and delays imposed by federal securities laws.

B. The Securities Act of 1933 and the Securities Exchange Act of 1934

During the 20 year period when Native stock cannot be sold or transferred it is not necessary to subject these corporations to the expense and administrative burdens of compliance with the 1933 Securities Act and the 1934 Securities Exchange Act. Until December 1991, there will be no "market" in the stock of Native corporations since the stock is inalienable. Therefore it does not seem necessary to subject these corporations to the requirements of registering stock under the 1933 Act. The SEC has itself recognized that the 1933 Act need not be applied to those corporations in certain cases when it issued a "no-action" letter regarding the issuance of the initial shares of stock to Natives enrolled in Regional and Village Corporations.

The exemption from the 1933 Act is also needed to effectuate the merger authority in section 6. The 1933 Act requires that the stock be registered with the SEC, and a prospectus prepared and mailed

to all stockholders to whom the stock is offered, prior to the time at which they make the decision on the merger. Stock registration under the 1933 Act is an extremely elaborate and technical proceeding. The resulting prospectus, to be mailed to the stockholders, is intended to disclose every last detail bearing on the question of whether the person should acquire the stock. In the merger which NANA and the Village Corporations attempted to undertake in the spring of 1975, the prospectus, which had not yet been cleared by the SEC but which resulted from the SEC's initial round of comments on an earlier version submitted, consisted of a total of 80 printed pages, including 50 pages of financial statements, and accompanying footnotes, on all the corporations involved. In view of the lack of sophistication of most of the stockholders, particularly on matters such as complex mergers, such a document clearly is not an appropriate method of informing the stockholders. Yet, such a document would be required. It is extremely costly to prepare, and, as noted in the case of the NANA merger, costs well over $100,000. Clearly such costs for practical purposes would preclude the possibility of merger between two small Village Corporations which might be most in need of it.

Conversely, the tight restrictions of the 1933 Act on the verbal communications which may be made in conjunction with the prospectus virtually preclude any meaningful or simplified discussion at village or community meetings in order to explain merger to the stockholders. Thus the 1933 Act requires for disclosure an extremely complex and expensive document which does not serve its intended purpose at least as to Native corporations, but also precludes the one effective means of communication.

Similarly, application of the 1934 Securities Exchange Act is not necessary during the period when Native stock is inalienable. The 1934 Act applies to corporations with over 500 stockholders and $1,000,000 in assets. An exemption of Settlement Act corporations from only the 1940 Investment Company Act would result in all the Regional Corporations and approximately 19 of the Village Corporations being subject to the 1934 Act which requires expensive initial registration with the SEC, the filing of periodic reports with the SEC, and makes the detailed proxy rules applicable to any vote of stockholders. For the reasons discussed above under the 1940 Act, these requirements again have little proper application to Native corporations and do not fulfill their intended purpose in this context. In fact, in a recent letter to Congressman Lloyd Meeds in connection with the question of exempting the corporations from the 1940 Act, the SEC characterized the 1934 Act as "a statute which is designed basically to inform the Commission and the investing public as to securities of publicly traded companies." Since the stock of Native corporations may not be traded and the "public" may not invest in it until 1991, the 1934 Act has no proper application to these corporations.

Although the SEC has stated that the 1934 Act is designed to inform the "investing public" about securities, the federal securities laws do provide useful information to the stockholders as well as the investing public. Accordingly the new section 28 of the Settlement Act provides that any Native corporation which, but for the provisions of that section, would be subject to the 1934 Act, must transmit an annual

US House Interior Committee

report to its stockholders containing substantially all the information contained in annual reports of corporations subject to the 1934 Act. Such reports by Native corporations would not be filed with or reviewed by the SEC, but the Committee believes that the Native leadership will comply fully with the intent of this provision and will submit annual reports to their stockholders which are as effective in disclosing corporate activities as those prepared by companies regulated under the 1934 Act by the SEC. Finally, the Committee understands that the general provisions of Alaska law provide protection for Native stockholders from any corporate mismanagement and misrepresentations or omissions to represent in connection with sales of securities, and that Alaska courts would look to precedents under federal securities laws for appropriate standards of conduct by management and other persons connected with securities transactions. Native corporations have assured the Committee that they do not intend to seek an exemption from state securities laws on the basis of this exemption from federal laws and intend to pursue the passage of State legislation to the extent necessary to provide any appropriate additional protection. Therefore, it is not necessary at this time to impose additional federal requirements.

It should be noted that these corporations are being exempted from the federal securities laws on the understanding that federal regulation of Settlement Act corporations is not necessary to protect Native stockholders or the public during the twenty-year period when Native-owned stock cannot be sold. However, if this assumption proves invalid in light of experience, the Committee is prepared to re-impose such provisions of the federal laws as may be necessary. In short, the twenty-year exemption should be viewed by the Natives as an experiment which will be stopped if it is abused.

SECTION 4

Subsection (a) merely makes clear the congressional intent that payments and grants under the Settlement Act are not to be deemed a substitute for any governmental program or benefit which is otherwise available to Alaska Natives as citizens of the United States and Alaska.

Subsection (b) makes clear that benefits under the Settlement Act shall not be considered as income or other resources for purposes of the Food Stamp program. The background to subsection (b) is provided in an August 6, 1974, memorandum prepared by the Congressional Research Service of the Library of Congress:

THE LIBRARY OF CONGRESS, WASHINGTON, D.C. 20540

THE COUNTING OF INCOME FROM PAYMENTS UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT IN DETERMINING ELIGIBILITY FOR AND THE AMOUNT OF FOOD STAMP AND CASH WELFARE BENEFITS

Food Stamps

In March 1974, the State of Alaska notified the Federal offices of the Food Stamp Program (in the USDA's Food and Nutrition Service) that it was Alaska's interpretation that

DATE	CORRESPONDENCE	SUBJECT
8/10/76	Letter to Brecht from Doyon Corp.	Request that we keep Doyon informed
7/30/76	Letter to Brecht from Bristol Bay Native Corp.	Comments on proposed legis.
7/26/76	Letter to Brecht from Cook Inlet Region	Comments on proposed legislation
7/22/76	Letter from Brecht to Securities & Exchange Commission	Requesting SEC comments
7/19/76	Letter from Brecht to Native leaders (13 copies)	Initial request for comments to proposed legislation
6/17/76	Memo from James Thompson to Brecht	Recommendations as to content and procedures of proposed legislation
3/26/76	Memo from Miles Schlosberg to 1977 Legislative file	Proposed to have Native corporations legislation
1/5/76	Letter to Schlosberg from Sen. Stevens' office	Copy of H.R. 6644
12/15/75	U.S. House of Representatives Report 94-729 of Interior Committee on ANCA > see page 20	Intent of Native corporations to pursue State legislation
11/20/75	Letter from Schlosberg to Sen. Stevens and Congressman Young	Discussion that Native leaders will not oppose State legislation
11/18/75	Letter to Schlosberg from Chugach Native Corp. counsel	Suggesting State legislation to protect native shareholders
8/22/75	Securities & Exchange Commission Release #8902	Proposals to protect Native shareholders
	Legislative Proposal Request Form	Justification of proposed legislation
	Names and addresses of Native Regional Corporations	

INDEX OF MATERIALS

Exhibit	Date	Description
A.	July 19, 1976	Copy of initial letter to Sam Kito, President AFN.
B.	August 24, 1976	Copy of original letter to all regional corporations (list of correspondents)
C.		Various - Copies of initial responses from the various regional corporations.
D.	October 18. 1976	Copy of letter sent to all regional corporations following Anchorage meeting (list of correspondents)
E.	October 19, 1976	Copy of letter sent to meeting attendees. (list of meeting attendees)
F.	September 30, 1976	Copy of memo to Commissioner reporting on status of legislation also copy of NANA'S Counsel letter.
G.	October 19, 1976	Copy of memo to Commissioner reporting on meeting with Native corporations on October 13, 1976 in Anchorage.

July 19, 1976

Mr. Sam Kito, Jr., President
ALASKA FEDERATION OF NATIVES, INC.
515 "D" Street
Anchorage, AK 99501

Re: Proposed Securities legislation

Dear Mr. Kito:

This division is currently making a study on the feasibility and necessity of introducing legislation concerning annual reports and proxy materials of corporations subject to the Alaska Native Claims Settlement Act.

The recent Settlement Act amendments (Act of January 2, 1976, P. L. 94-204, 89 Stat. 1145) exempt all settlement act corporations from the three principal federal securities laws until 1991. This exemption from any U.S. Securities & Exchange Commission regulation has raised the question of whether or not investor protection needs to be afforded under the Alaska Securities Act of 1959, AS 45.55. The House Interior Committee Report on the exemptions from federal securities laws stated:

> Native corporations have assured the committee that they . . . intend to pursue the passage of State legislation to the extent necessary to provide any appropriate additional protection . . . (H. Rep. 94-729, 94th Cong., 1st Sess, December 15, 1975).

We note the native corporations' willingness in the past to work towards insuring protection for their stockholders. I, therefore, personally invite your comments and suggestions on the approach that should be taken in reaching these goals.

If you feel that a joint meeting between the staff of the Division of Banking & Securities and native leaders would be beneficial, I shall be glad to make the necessary arrangements. I shall keep you informed of any proposals that this division formulates after we complete our study of the problems and solutions regarding native stockholder protection.

Sincerely,

Julius J. Brecht

JJB:mp

Julius J. Brecht
Director

August 24, 1976

Mr. Joseph Upicksoun, President
Arctic Slope Regional Corporation
P.O. Box 129
Barrow, Alaska 99723

Dear Mr. Upicksoun:

Enclosed is a copy of legislation that this division is considering for submission in the next session of the legislature.

As was stated in my letter of July 19, 1976, the division is asking for input from the Native corporations prior to submission of any legislation pertaining to corporations organized pursuant to the Alaska Native Claims Settlement Act.

I would appreciate receiving any comments you have on this proposed legislation. As I stated in my prior letter, I would be happy to assist in making arrangements for a joint meeting between the staff of the Division of Banking & Securities, and Native leaders, if you think it would be beneficial.

Sincerely,

Julius J. Brecht

Julius J. Brecht
Director

JJB/ec22

Mr. Sam Kito Jr., President
Alaska Federation of Natives, Inc.
515"D" Street
Anchorage, Alaska 99501

Mr. John Borbridge, Jr., Chairman
Sealaska Corporation
811 W. 12th Street
Juneau, Alaska 99801

Mr. John W. Schaeffer, Jr.
Nana Regional Corporation, Inc.
P. O. Box 49
Kotzebue, Alaska 99754

Mr. Jacob Wick, President
Koniag, Inc.
P. O. Box 746
Kodiak, Alaska 99615

Mr. John C. Sackett, President
Doyon, LTD
First & Hall Street
Doyon Bldg.
Fairbanks, Alaska 99701

Mr. Roy M. Huhndorf, President
Cook Inlet Region, Iinc.
1211 W. 27th Ave.
Anchorage, Alaska 99509

Mr. Cecil Barnes
Chugach Natives, inc,
912 E. 15th Ave.
Anchorage, Alaska 99501

Mr. Raymond C. Christiansen, President
Calista Corporation
516 Denali Street
Anchorage, Alaska 99501

Mr. Harold Samuelson, President
Bristol Bay Native Corporation
P. O. Box 237
Dillingham, Alaska 99576

Mr. Jerome Trigg, President
Bering Straits Native Corporation
P. O. Box 1008
Nome, Alaska 99762

Mr. Joseph Upickson, President
Arctic Slope Regional Corporation
P. O. Box 129
Barrow, Alaska 99723

Mr. Carl E. Moses, President
Aleut Corporation
833 Gambell Street
Anchorage, Alaska 99501

Mr. Robert Marshall, President
Ahtna, Inc.
515 "D" Street
Anchorage, Alaska 99501

COOK INLET REGION, INC.

1211 WEST 27th AVE. ANCHORAGE, ALASKA 99503
TELEPHONE 274-8638

July 26, 1976

Mr. Julius J. Brecht, Director
State of Alaska
Department of Commerce and
Economic Development
Pouch D
Juneau, Alaska 99811

Dear Mr. Brecht:

Thank you for advising me of the study your department is making concerning the necessity of State legislation relative to the Native Corporations' annual reports and proxy materials.

I can only speak for the Cook Inlet Region, Inc., but I believe that the Native Corporations desire maximum protection for their stockholders while keeping to a minimum the amount of regulations and red tape.

As you have suggested, a joint meeting between your staff and representatives from the Native Corporations would be an appropriate step in making further determinations in this matter.

In the interim, if I can be of assistance, please feel free to call on me.

Sincerely,

COOK INLET REGION, INC.

Roy M. Huhndorf
President

RH/cmh

Bristol
Bay
Native
Corporation
645 E. 5TH STREET / ANCHORAGE / ALASKA 99501 / PH. (907) 277-9511

July 30, 1976

Julius J. Brecht, Director
Department of Commerce
and Economic Development
Pouch D
Juneau, Alaska 99811

Re: Proposed Securities Legislation

Dear Mr. Brecht:

Thank you for your July 19, 1976 letter to Mr. Harvey Samuelson on the above subject.

We might be in favor of State legislation regulating the solicitation of proxies. We'd like to protect our shareholders against misleading statements in proxy materials, etc.

Section 28 of ANCSA, as amended, provides that the annual reports of the ANCSA Corporations shall contain substantially the same information as that required by the Securities Exchange Act of 1934. Thus, State legislation is probably unnecessary in this area.

As you are probably aware, the Native Corporations are immersed in red tape in securing the resources granted them under ANCSA. Indeed, that's one of the primary reasons why they were exempted from the Securities laws in the first instance.

If any State legislation is enacted regarding annual reports and proxy materials we'd like to see it be brief, clear and shaped to take into account the special features of the Native Corporations.

Sincerely,

BRISTOL BAY NATIVE CORPORATION

James Vollintine

James Vollintine
Acting General Counsel

JV:avm

Calista Corporation
516 Denali Street, Anchorage, Alaska 99501 (907) 279 - 5516
P. O. Box 574, Bethel, Alaska 99559 (907) 543 - 2191

Native Land Claims

RECEIVED
AUG 16 1976
DEPARTMENT OF COMMERCE
DIVISION OF BANKING
SECURITIES AND SMALL LOANS

August 10, 1976

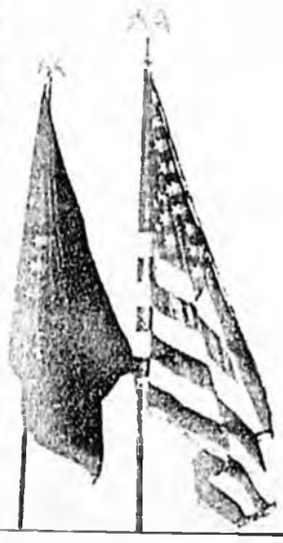
Mr. Julius J. Brecht
Director
State of Alaska
Department of Commerce and
Economic Development
Pouch D
Juneau, AK 99811

Reference: Proposed Securities Legislation

Dear Mr. Brecht:

We are in receipt of your letter of July 19, 1976 in which you inquire about securities regulations for native corporations. At the present time we are bogged down in multitudes of red tape and other bureaucratic entanglements surrounding the Alaska Native Claims Settlement Act. One of the last things we need at this point in time is further regulations by the government.

Despite our desires to have as little regulation as possible, we do realize that there may be some need for shareholder protection under State securities law now that ANCSA corporations have been exempted from federal securities law. Any such State regulations should be concise but inclusive of all corporations in Alaska. We will be more than happy to work with the Division of Banking and Securities, and with other native corporations in seeking to resolve the problems surrounding this matter.



If you could keep us informed as to any proposals or recommendations that are submitted to you on this matter, it would be greatly appreciated. Hopefully, we will be developing a position on securities regulations relating to annual reporting and proxy materials. At such time as this is completed we will forward this proposal to you.

Should you have any questions or comments, please feel free to contact me.

Sincerely,

CALISTA CORPORATION

Brian Johnson
Legal Department

BJ:sah

Telephone (907) 452-4755

Doyon, Limited

Doyon Building
First and Hall
Fairbanks, Alaska 99701

August 10, 1976

Mr. Julius J. Brecht, Director
Division of Banking, Securities,
Small Loans and Corporations
Pouch D
Juneau, Alaska 99811

RE: Proposed Securities Legislation

Dear Mr. Brecht:

Mr. Sackett forwarded your letter of July 19, 1976, regarding proposed securities legislation for ANCSA corporations to me. Doyon is obviously interested and would be willing to work with the Division in whatever way possible.

I would appreciate it if you would please keep me advised as to the Division's proposals in this area.

Yours truly,

William H. Timme
General Counsel

WHT/lr

cc: Mr. Tim Wallis

August 16, 1976

Mr. Julius J. Brecht, Director
Department of Commerce &
Economic Development
Division of Banking, Securities,
Small Loans & Corporations
Pouch D
Juneau, Alaska 99811

Dear Mr. Brecht:

Please excuse the delay in responding to your letter of July 19, 1976; however, I have been out of the office for an extended period of time.

As noted in your letter, the Regional Corporations have consistently worked towards insuring the protection of their stockholders. This aspect is what basically prompted the Regional Corporations to seek various exemptions from the Federal Securities laws in that their protective features were not designed for corporations such as the Native Corporations. Additionally, compliance with the Federal Securities laws have subjected the Regional and village corporations to expenses of some magnitude.

On behalf of Sealaska's stockholders, I would be reluctant to see the same situation develop through State regulation. If memory serves me correctly, the position of the State of Alaska at the time the Native Corporations were seeking exemption from the Federal Securities laws was to the effect that adequate protection existed wihin the current laws of the State of Alaska for protection of stockholders. Therefore, I am somewhat amazed that your division is now making a study directed towards the possibility of introducing legislation.

No

Perhaps the best solution would be to involve the Native Corporations in any study which your Department proposes. This would insure the accuracy of facts and additionally would be of assistance in determining the necessity of any legislation. I have designated Donald J. Beighle, Sealaska's attorney, to work with you in reviewing any proposals. However, I must again state that we would like the opportunity to review proposals prior to the time your Department has completed its study, and arrived at what it considers an appropriate solution. If we are to cooperate on the necessity for any legislation, I feel it is important that the Native people have input initially, rather than when the facts and solutions have become finalized.

Sincerely,

John Borbridge, Jr.

John Borbridge, Jr.
President

October 19, 1976

Mr. Jack Wick
President
Koniag, Inc.
P.O. Box 746
Kodiak, Alaska 99615

Dear Mr. Wick:

This letter is to inform you that a meeting was held between native corporation representatives, AFN representatives and members of my staff, in the offices of the AFN in Anchorage on October 13, 1976. A list of the attendants of the meeting is enclosed for your information.

As a result of the meeting, the Native Securities Bill that we are considering to propose at the next legislative session has been redrafted. A copy of the redrafted bill is enclosed for your information.

If you have any comments on this redraft, please do not hesitate to contact me.

Thank you again for taking the time to consider this proposal.

Sincerely,

Julius J. Brecht

Julius J. Brecht
Director

JJB/it/28

Enclosures

PRESIDENTS
REGIONAL CORPORATIONS

as of February 13, 1976

Mr. Robert Marshall
AHTNA, INC.
P. O. Box 323
Copper Center, Alaska 99573
TELEPHONE: 822-3476

Mr. Carl Moses
ALEUT CORPORATION
833 Gambell Street
Anchorage, Alaska 99501
TELEPHONE: 274-1506

Mr. Joe Upicksoun
ARCTIC SLOPE REGIONAL CORP.
P. O. Box 129
Barrow, Alaska 99723
TELEPHONE: 852-6930/6970

Mr. Jerome Trigg
BERING STRAITS NATIVE CORP.
P. O. Box 1008
Nome, Alaska 99762
TELEPHONE: 443-5252

Mr. Harvey Samuelson
BRISTOL BAY NATIVE CORP.
P. O. Box 220
Anchorage, Alaska 99510
TELEPHONE: 277-9511

Mr. Robert Schenker
CALISTA CORPORATION
516 Denali Street
Anchorage, Alaska 99501
TELEPHONE: 279-5516

Mr. Cecil Barnes
CHUGACH NATIVES, INC.
912 E. 15th Street
Anchorage, Alaska 99501
TELEPHONE: 274-4553

Mr. Roy Huhndorf
COOK INLET REGION, INC.
1211 W. 27th
Anchorage, Alaska 99503
TELEPHONE: 274-8638

Mr. Tim Wallis
DOYON LIMITED
First & Hall Streets
Fairbanks, Alaska 99701
TELEPHONE: 452-4755

Mr. Jack Wick
KONIAG, INC.
P. O. Box 746
Kodiak, Alaska 99615
TELEPHONE: 486-4147

Mr. John Schaeffer
NANA REGIONAL CORPORATION, INC.
P. O. Box 49
Kotzebue, Alaska 99752
TELEPHONE: 442-3301/3302/3303

Mr. John Hornbridge, Jr.
SEALASKA CORPORATION
811 W. 12th Street
Juneau, Alaska 99801
TELEPHONE: 586-1512

October 19, 1976

Mr. Brian Johnson
Calista Corporation
516 Denali Street
Anchorage, Alaska 99501

Dear Mr. Johnson:

Please find enclosed a copy of the redraft of the Native Securities Bill incorporating the constructive comments that were made at our meeting at the AFN office in Anchorage on October 13, 1976. Also enclosed is a list of the attendants of the meeting for your information.

If you have any further comments, please do not hesitate to contact me.

Again let me thank you for taking the time for meeting with my staff on this proposed legislation.

Sincerely,

Julius J. Brecht

Julius J. Brecht
Director

Enclosures

JJB/mw 5/11

Attendants of meeting of October 13, 1976 at the offices of the AFN in Anchorage regarding the Native Securities Bill

Julius J. Brecht	Department of Commerce	Pouch D, Juneau, Alaska 99811
Jim Thompson	Department of Commerce	Pouch D, Juneau, Alaska 99811
H. Nobel Dick	Bristol Bay Native Corp.	445 E. 5th Ave, Anchorage, AK.
George See	Sealaska Corporation	811 West 12th, Juneau, AK.
Everett Buness	Arctic Slope Reg. Corp.	313 E. St, Suite 5, Anch, AK.
Brian Johnson	Calista Corporation	516 Denali St, Anchorage, AK.
Perry Eaton	Koniag, Inc.	3501 Hooper Way, Anch, AK.
Bill Timme	Doyon Limited	First & Hall, Fairbanks, AK.
Dave Cooke	Bering Straits	310 K. St, Suite 601, Anch. AK
Janie Brower	AFN (secretary to Sam Kito)	8th & F. St., Anch, AK.

02-0018

STATE
of ALASKA

MEMORANDUM

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

TO: Langhorne A. Motley
Commissioner

43? CFR

DATE : September 30, 1976

FROM: Julius J. Brecht JB
Director

SUBJECT: Alaska Native Corporation Security Proposal - Status of 1977 Legislative Proposal

The Division of Banking and Securities has proposed an amendment to the Alaska Security Act (AS 45.55) relating to reports of corporations organized pursuant to the Alaska Native Claims Settlement Act.

The division has corresponded with all twelve regional corporations regarding this proposal. A number of the corporations that were contacted have responded with comments regarding this proposal. On the whole, the regional corporations appear to be receptive to this sort of legislation. However, some are concerned about additional red tape.

On September 20, 1975, the Division of Banking received correspondence from Richard Anthony Baenen, serving as general counsel of NANA Regional Corporation. This letter stated that NANA is in full agreement with the general scheme of our proposed bill. He stated that the bill does not impose on the corporations, any new affirmative or substantive requirements, but in effect merely makes it easier for the State of Alaska to enforce its statutory provisions prohibiting false or misleading statements to stockholders.

Mr. Baenen went on to comment about the specific language of our proposed bill, and suggested that we make several changes. His suggested changes are:

1. That we change the term "other materials" to more specific language. Basically, he proposed that we put in language that would change other materials to all materials relating to a vote by stockholders.

2. Mr. Baenen suggested that we change our description of the corporations from being a broad description to one that would be purely Alaska Native Claims Settlement Act Corporation.

3. Mr. Baenen suggested that we drop the last sentence of our proposal which is "These reports are subject to all provisions of this chapter." The reason for this suggestion was that the language was superfluous, and was covered by other portions of the Alaska Securities Act.

The staff of this division feel that we should not change the term "other material" to being limited to just materials relating to a vote of stockholders. The reason for this is that the other materials, while appearing non-necessary, may definitely influence the shareholders in a final vote.

The suggested change relating to limiting this statute to purely Native Claims Settlement Act Corporation is well taken. The original terminology as presented by the staff of the division may be too broad and encompassing and could possibly lead to an unenforceable statute, especially where it applies to small corporations that would otherwise be exempt.

The third suggestion of Mr. Baenen is that we drop the last sentence of our proposed bill is also well taken. It does appear as if this language is redundant, as all reports are subject to provisions of this chapter by AS 45.55.160.

CONCLUSION

It appears if some of the changes proposed by Mr. Baenen are well taken and thus the staff of the Division of Banking recommend that we change our proposed bill to read as follows:

A copy of all annual reports, proxy statements, and other materials distributed to Alaskan shareholders of a corporation organized pursuant to the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.), shall be filed with the administrator concurrently with their distribution to shareholders.

JJB/jag4/1

WILKINSON, CRAGUN & BARKER

LAW OFFICES

THE OCTAGON BUILDING

1735 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20006

(202) 833 9900

CABLE ADDRESS

"WILCBAR"

ERNEST L. WILKINSON
JOHN W. CRAGUN (1939-1965)
GLEN A. WILKINSON
ROBERT W. BARKER
CHARLES A. HOBBS
ANGELO A. IADAROLA
PAUL S. QUINN
LEON T. KNAUER
RICHARD A. BAENEN
JERRY C. STRAUS
HERBERT E. MARKS
PIERRE J. LaFORCE
FRANCES L. HORN
GORDON C. COFFMAN
PATRICIA L. BROWN
STEPHEN R. BELL

ROSEL H. HYDE
DONALD C. GORMLEY
Counsel

R. ANTHONY ROGERS
WILLIAM R. LOFTUS
THOMAS J. BACAS
FOSTER DeREITZES
ALAN I. RUBINSTEIN
JOHN M. FACCIOLA
PHILIP A. NACKE
THOMAS E. WILSON
JERRY R. GOLDSTEIN
EDWARD M. FOGARTY
S. STEVEN KARALEKAS
ROBIN A. FRIEDMAN
JAMES E. MAGEE
ROBERT B. McKENNA, JR.
JOSEPH P. MARKOSKI
MICHAEL B. GREEN
STEVEN C. LAMBERT
STEPHEN A. HILDEBRANDT
CHARLES I. APPLER *

* ADMITTED IN VIRGINIA ONLY

September 14, 1976

Mr. Julius J. Brecht
Director
Division of Banking, Securities,
Small Loans and Corporations
Department of Commerce and Economic
Development, State of Alaska
Pouch D
Juneau, Alaska 99801

Re: Proposed Legislation - AS 45.55.139

Dear Mr. Brecht:

John Schaeffer, president of NANA Regional Corporation, Inc., has asked us, as NANA's general counsel, to respond to your August 24, 1976, letter requesting NANA's comments on the proposed legislation, AS 45.55.139, relating to reports of corporations formed under the Alaska Native Claims Settlement Act.

First, we should state that we are in full agreement with the general scheme of the proposed bill. Consistent with the spirit of the federal exemptions granted by Congress, the bill does not impose on the corporations any new affirmative or substantive burdens, but in effect merely makes it easier for the State of Alaska to enforce its statutory provisions prohibiting false or misleading statements to stockholders and other forms of fraud. We believe that the corporations already are covered by the State's substantive standards regulating corporate activity, and the requirement that the materials be filed with the State's administrator seems a reasonable method of facilitating the State's enforcement of these standards.

The following, however, are some specific comments or suggestions which we have on the proposed legislation. First, we wish to clarify what may be a misunderstanding as

to what is required by the January 2, 1976, amendments to the Alaska Native Claims Settlement Act, Public Law 94-204. The "Justification" accompanying the proposed legislation states that Settlement Act corporations, although exempt from the federal securities laws, are required to "send their stockholders yearly a report containing substantially the same information required in an annual report of a corporation which is subject to the federal acts." This is not quite accurate. Section 3 of Public Law 94-204, which exempts the corporations from the federal securities laws, requires such reports only of corporations which, but for the exemption, would be subject to the Securities Exchange Act of 1934. The 1934 Act applies only to corporations with more than 500 stockholders and $1,000,000 in assets, and therefore it is only the twenty or so largest Settlement Act corporations, meeting these criteria, which must mail such annual reports. The only stockholder reporting requirements imposed by federal law on the smaller corporations are those contained in sections 7(o) and 8(c) of the Settlement Act, requiring the distribution to the stockholders of the corporation's annual audit. Thus we would suggest that the statement of "Justification" be corrected. The correction, however, should not to our mind generate any changes in the substance of the proposed legislation.

Dealing with the specific language of the proposed bill, we would suggest that the bill be made more specific in describing precisely which materials must be filed with the State. For example, we are not sure of what is included in "other materials," and believe that this term may require the filing of materials which the State is not really interested in seeing. For example, NANA periodically sends its stockholders a newsletter, in newspaper format, reporting on various corporate activities as well as giving other news of general interest in the region but not related to NANA's activities. Similarly, dividend checks are mailed out annually, with an appropriate written explanation of the nature of the dividend. Finally, at various informal meetings held from time to time in various of the villages, for the purpose of explaining to groups of stockholders various corporate matters of concern to them, written outlines or explanations sometimes are prepared and distrubited to persons attending the meetings. These tie in with oral presentations made at the meeting, and, standing alone, they would most likely make little sense to a State official who did not also attend the meeting. Such materials are not traditionally of the type which state or federal securities administrators tend to regulate, particularly since

they tend not to relate to the financial condition of the corporation or to any stockholders' vote being taken. We therefore would suggest that the filing requirement apply only to "annual reports to stockholders and proxy statements and other proxy materials relating to a vote of stockholders."

Secondly, we would suggest that the description of the corporations covered by the proposed legislation be changed simply to refer to "a corporation organized pursuant to the Alaska Native Claims Settlement Act, as amended (43 U.S.C. §§ 1601 et seq.)." Presently, the reference is to corporations exempted from the filing provisions of the three federal securities laws. We believe this is intended to cover all Settlement Act corporations, and a reference to the Settlement Act would seem to be a more precise way of expressing this. Moreover, identifying the corporations by reference to the federal exemptions would leave room for a corporation which even without the exemptions would not have been subject to the federal acts to argue that it therefore also is not subject to the proposed state law. This would be contrary to what we believe to be the intent of your bill.

Finally, we believe that the last sentence of the proposed bill may be deleted entirely, since to us it appears superfluous. We always have believed that any materials distributed by any of the Settlement Act corporations to its stockholders were subject to any existing State laws normally applicable thereto, such as the laws prohibiting false and misleading statements. This in fact is one of the reasons why Congress determined that the federal securities laws need not also apply.

To summarize, we would propose that AS 45.55.139 read as follows:

> "A copy of all annual reports to stockholders and proxy statements and other proxy materials relating to a vote of stockholders distributed to Alaskan stockholders of a corporation organized pursuant to the Alaska Native Claims Settlement Act, as amended (43 U.S.C. §§ 1601 et seq.), shall be filed with the administrator concurrently with their distribution to shareholders."

On behalf of NANA, we thank you for the opportunity provided us to review and comment on the proposed bill. We would be pleased to provide you with any further assistance or suggestions which you might find helpful.

Sincerely yours,

WILKINSON, CRAGUN & BARKER

Richard Anthony Baenen

By: Richard Anthony Baenen

02-001B

STATE
of ALASKA

MEMORANDUM

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

TO: Langhorne A. Motley
Commissioner

DATE : October 19, 1976

FROM: Julius J. Brecht
Director

SUBJECT: AS 45.55.139 - Status
Corporations

On October 13, 1976, James L. Thompson, Securities Examiner with the Division of Banking, and I met with leaders of various Native corporations at the Alaska Federation of Natives' office in Anchorage. A list of names of those in attendance at the meeting is attached.

The purpose of this meeting was to discuss the bill proposed by the Department of Commerce and Economic Development which requires that corporations established pursuant to the Alaska Native Claims Settlement Act file copies of all annual reports, proxy statements, and other materials with the department. The filing would subject the person distributing the materials to the fraud provisions of the Alaska Securities Act, AS 45.55.

The general reaction of the participants to the bill at this meeting was favorable, but they did not show overwhelming support for it. The group was pleased that the proposed bill does not require any additional burden on the Native corporations.

The points of the proposed bill that were discussed are as follows:

1. PROXIES: It was felt that the term "proxies" should be added to those materials to be supplied to the division. The reason given for this suggestion was that "proxies" are different from "proxy statements" and both of these items should be included.

2. ADDED LANGUAGE: It was felt that in the proposed act we should add the term "related to proxy solicitations" between the words "materials" and "distributed." This addition was recommended because it was felt that there were many "materials" that would not be germane to stockholder voting and therefore, need not be sent to the department. It was also felt that some of these "materials" might be proprietary in nature and the divulging of this material would not be in the best interests of the stockholders of a "private" nonprofit corporation.

3. DISTRIBUTED: It was felt that the term "distributed" was not clear enough. The reason for this is that some of the materials and some of the reports are not distributed by mail but are posted in local newspapers or on television and radio. The group felt that this term should be expanded to be more specific.

4. DESCRIPTION OF STOCKHOLDERS: It was felt by the group that this bill should be expanded to include a number larger than two with respect to the reports. The recommendation was that we put in the term "at least ten" before

Alaskan shareholders. It was also recommended that we be more specific in our description of shareholders and put in "Alaskan resident shareholders."

5. DESCRIPTION OF CORPORATIONS: There was active discussion on the item in the proposed bill that was directed towards Alaska Native Claims Settlement Act Corporations. It was felt that this might be singling out those corporations and might also leave a loophole for other corporations that were granted an exemption. Two alternatives were discussed. One which would bring in large village corporations and would be based upon the federal law which requires a corporation with 500 shareholders or 1 million dollars in assets to register, or that it be basically for all corporations that are exempt under the Federal Securities Acts.

6. CONFIDENTIAL MATERIAL: There was also discussion as to whether materials filed under this act would be public record or not, and that the division should make certain that these materials were not part of public documents.

Conclusion

It appears as if some of the recommendations made by the Native leaders at this meeting were well taken. The comment regarding the addition of the term proxies would make the act more viable.

The feeling that the act should include the terms "related to proxy solicitations" also appears to be well taken. Much of the materials that a corporation does distribute to its shareholders are proprietary materials. For example, prices of fish to be paid by a cannery owned by a corporation would not be necessary information for our department and might cause damage to the corporation if those items were made known. Inasmuch as the purpose of this act is to make certain that the stockholders receive fair and not misleading materials relating to their voting of their stock, it does not appear as if we need to include all other materials.

The comments relating to the changes of a part of the act that relates to distribution to Alaska shareholders, was also well taken. This area should be expanded and clarified before the proposed bill goes before the Legislature.

The discussion of how the description of the corporations should be changed has required certain additional examination. As a result of this examination, it is felt that we should use the terminology as followed in the Federal Acts.

There does not appear to be any need to add a clause that would make this information confidential as that is contained already under AS 45.55.130(b).

Recommendation

As a result of the meeting with the Native leaders, it is recommended that AS 45.55.139 be amended as follows:

> "Sec. 45.55.139. REPORTS OF CORPORATIONS. A copy of all annual reports proxies, consents or authorizations, proxy statements and other materials relating to proxy solicitations distributed, published or made available to at least ten Alaska resident shareholders of a corporation which

has total assets exceeding $1,000,000 and a class of equity security held of record by 500 or more persons and exempted form the provisions of the Securities Act of 1933 (15 U.S.C. Secs. 77a-77aa), the Securities Exchange Act of 1934 (15 U.S.C. Secs. 78a-78jj) or the Investment Company Act of 1940 (15 U.S.C. Secs 80a1-80a52) shall be filed with the administrator concurrently with their distribution to shareholders."

LA Copies of this revised bill have been sent to those on the attached JJB/attendance list, to the presidents of each of the 12 regional corporations and to Sam Kito of AFN, who was not in attendance at the October 13 meeting.

Enclosures

HB
67

STATE
of ALASKA

MEMORANDUM

OPR: James L. Thompson
Security Examiner

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

977

TO: Members of the Committee

DATE: February 1, 1977

FILE NO:

TELEPHONE NO:

FROM: Julius J. Brecht, Director
Division of Banking and Securities

SUBJECT: HB 67 Proposed Amendments

Subsequent to my testimony to the House Commerce Committee regarding HB 67, members of the real estate industry have expressed concern that two areas of the bill need clarification. Upon review of this, the Division of Banking and Securities in concert with the Alaska Realtors Association is proposing to your committee two housecleaning amendments that would not change the thrust or substance of HB 67 in any way but would more completely enunciate the 50 sale exemption and the term "common promotional plan." The result of these amendments would be to clarify the language of the proposed act.

The first amendment is to add the word "subdivider" and delete the word "a person" in two places in Section 7 of HB 67. This section would then read:

> Section 7. AS 34.55.042(a)(2) is amended to read: If fewer than ten separate lots, parcels, or units or interests in subdivided land located outside this state are offered by a subdivider [a person] in a period of 12 months, or if fewer than 50 separate lots, parcels, units or interests in subdivided land located within this state are offered by a subdivider in a period of 12 months.

The second amendment is to add the following language to the end of Section 8:

> Section 8. AS 34.55.044(6) is amended to read: (6)..... of advertising and sale. [;] If the land is contiguous or is known, designated, or advertised as a common unit or by a common name the land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for disposition as part of a common promotional plan.

JJB/ejc 2/2

TESTIMONY OF JULIUS J. BRECHT, DIRECTOR

DIVISION OF BANKING AND SECURITIES

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

BEFORE

HOUSE JUDICIARY COMMITTEE

February 4, 1977

Good morning, Mr. Chairman and members of the committee. My name is Julius J. Brecht, and I am director of the Division of Banking and Securities within the Department of Commerce and Economic Development. I want to thank you for allowing me to appear before you on behalf of the administration to discuss HB 67.

The bill before you proposes to amend the Uniform Land Sales Practices Act, AS 34.55, to bring Alaskan subdividers under it. In addition, the bill strengthens the fraud provisions of the act. However, Alaskan subdividers are expressly exempted from registration with the Department of Commerce and Economic Development under AS 34.55.

I have had distributed to each of you a file containing (1) a copy of the bill, (2) a copy of those sections of the act effected by the bill, (3) a memorandum from me to the committee dated January 17, 1977, (4) a copy of my written testimony before the House Commerce Committee dated January 26, 1977 on this bill, (5) a copy of a fiscal note prepared by the division, and (6) a memorandum from me to the committee dated February 1, 1977.

A copy of the bill should be read in conjunction with the copy of item (2) which gives the corresponding present law. The memorandum of January 17 outlines provisions of HB 67. The copy of my written testimony before the House Commerce Committee places HB 67 in the proper context. That is, it briefly discusses the purpose of the Uniform Land Sales Practices Act and the need for the amendments to the act presented in the bill.

This bill passed the House Commerce Committee 6-1. The bill has the support of the Alaska Realtors Association. However, since the House Commerce Committee hearing on the bill, members of that association have expressed concern that two areas of the bill need clarification.

The Realtors are concerned that a real estate agent acting as a real estate agent under HB 67 not be subject to the Uniform Land Sales Practices Act. The intent of the bill is to apply the provisions of the act to in-state subdividers. It is not to apply to real estate agents, except where those agents are acting as subdividers.

In this context, upon review of the two areas of concern, I have drafted amendments to HB 67 that appear in my memorandum of February 1. These amendments make clear the intent of the bill is to apply to subdividers. Mr. Al Courtney, Chairman of the Legislative Committee for the Alaska Realtors Association, has polled the membership of the association. I am told by Mr. Courtney that with the two amendments provided in my February memorandum, the association is in full support of the bill.

I urge the members of the committee to consider thoughtfully the provisions of HB 67 plus the proposed amendments.

Thank you again for the opportunity to appear before you to discuss this proposed legislation.

JJB/s13/1

JAY HAMMOND
GOVERNOR

LANGHORNE A. MOTLEY
COMMISSIONER

JULIUS J. BRECHT
DIRECTOR/ADMINISTRATOR

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS

MONTHLY BULLETIN

SEPTEMBER 1976

PART I - NOTICES

1. On October 1, 1976, Superior Court Judge Eben H. Lewis of the Third Judicial District in Anchorage signed a Temporary Restraining Order in the case of State of Alaska v. Rustic Wilderness, Inc., et al. The complaint for the restraining order and injunctive relief charges that the defendants in the course of their selling subdivided lots in the Willow area violated provisions of the Consumer Protection Act, AS 45.50; the Occupational Licensing Act, AS 08.88; and the registration and fraud sections of the Alaska Securities Act, AS 45.55. The Order restrains the defendants from making misrepresentations, advertisements, offering unregistered securities, disposing of corporate assets and monies, and destroying corporate records.

2. Defendant's appeal of the Permanent Injunction previously granted in State of Alaska v. Roger Y. Ford was dismissed by the Supreme Court of the State of Alaska on September 10, 1976. Please refer to prior bulletins for additional information in this matter.

MEMORANDUM State of Alaska

TO: Langhorne A. Motley
Commissioner
Department of Commerce and
Economic Development

DATE: October 15, 1975

FILE NO:

TELEPHONE NO:

FROM: Jon Tillinghast
Asst. Attorney General

SUBJECT: Amendments to Uniform Land Sales Practices Act

A case study will best demonstrate the genesis of the attached proposed bill. In May of this year, I was requested by the Department of Environmental Conservation to investigate a situation which had developed in Robe River Subdivision in Valdez. The story:

In 1972, an Alaskan subdivider acquired property in the Valdez area. He divided the land into quarter-acre lots, and filed a "paper plat" (i.e. no improvements on the property other than tractor-blade streets and boundary markers). The land lies adjacent to a sensitive anadromous stream, and has a very high water table.

This developer held an auction for this subdivision. It was advertised in the Anchorage media as a sale for "high, dry lots," with "streets in," and "suitable for residential development."

Of course, this was all inaccurate. Streets were not in. The tractor-trail streets were not of sufficient quality to be accepted by the City of Valdez for dedication. Thus, Valdez does not to this day provide 1)snow clearance (a must in Valdez); 2)school bus service (the kiddies must walk a mile in the snow to Richardson Highway); or police or fire service, except in dire emergencies when the roads in the subdivision are passable.

Nor are the lots high and dry, or suitable for residential housing. The lots are so small, and the water table so high, that on lot water and sewer systems cannot be approved by ADEC. The result--people must by 2 or 3 lots (selling, incidently, for $12,000-$17,000 each) for one house or trailer.

Of course, the buyers were not aware of these problems when they purchased. In a "boom" situation, where any property is at a premium and immigrants are blinded by the rush for the buck, it is all to common that lots are bought sight-unseen, or, at least, without careful soil and borings analysis, and title searches.

Now, of course, the developer has exited, and the buyers are left holding the swampy bag. And, just as surely, the developer did not go out of his way to be candid with these folk.

The Department of Law attempted to piece together a prosecution of the developer. The Consumer Protection Act was discussed. However, the misrepresentations of the developer occured three years ago--hardly the type of "imminent future harm" necessary to obtain an injunction. And these presentations were made before the Act was passed.

Yet, even assuming the Act was available, its utility in shaping of relief was questioned. We could enjoin future harm, yet we could do little to rectify past injury. Land--unlike other

consumer goods--is not fungible. Particularly in areas marked by a critical housing shortage, such as Valdez, replacement may not be available and, hence, compelled recission is of dubious value.

With land, then, especially, the remedy for such situations should be preventive in nature, rather than corrective. Obviously, the Uniform Land Sales Practices Act provides precisely that type of preventive remedy. Of course, as you are aware, that act applies only to instate solicitations for out-of-state land. A rather silly limitation, since I would assume that the Alaska land consumer is injured more by Alaska developers than those from the outside. The argument that an Alaska consumer can better inspect land located inside the state is of some academic interest. Yet, realistically, it is unusual for the small-lot buyer, particularly in the Valdez-type situation, to perform all the necessary subsurface and documentary investigations necessary to become aware of the Robe River-type problems. In a seller's market, the developer's edge extends beyond pricing--it includes timing of the sale ("By the time you perform these inspections, I'll have 10 other buyers willing to close"), and buyer attitudes ("Look, buddy, you need this land. If you don't buy this lot, there is nothing else for you in Valdez.")

Especially in light of the series of "booms" which this state can expect in coming years, this type of legislation seems imperative. Obviously, as the administering agency, your approval and support is necessary. The motivation of Law and ADEC for this bill evolved from the Robe River experience, and similar problems in the Kenai Borough. Please give this matter some thought--I would appreciate the opportunity to talk this over with you at your convenience.

Finally, other amendments are being prepared by Commerce and Julius Brecht of our office on the Land Sales Act, relating to the exemption threshold. If you decide to go with the coverage amendments attached, consideration should be given to putting both bills together in one package. The Governon's office wants consolidation of legislation, but sometimes politics dictates otherwise, and the Governor's staff recognizes this.

w/encl.

cc: Julius Brecht, Legal Assistant
Sandy Sagalkin, Asst. Attorney General
Ernst Mueller, Commissioner, Department of Environmental Conservation
Randy Bayliss, Environmental Field Officer, ADEC, Valdez

HB

308

Suspense: 4/1
4/12

Cy to (H) Comm.

file

TELEGRAM

ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 MAR 29 PM 5 33

#

12037 NL FAIRBA #

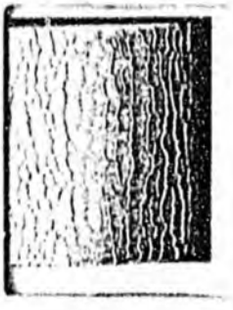
12037 NL FAIRBANKS ALASKA 55 03-29 315P AST

PMS HON FRED BROWN

JUN

STRONGLY URGE YOUR SUPPORT AND ACTION ON HB308 TO GET IT OUT OF COMMITTEE AND TO THE FLOOR OF THE HOUSE PLEASE WORK FOR ITS PASSAGE THIS BILL 308 IS MOST IMPORTANT TO AND WILL HAVE A DIRECT IMPACT ON THE ELECTRICAL INDUSTRY IN ALASKA AM INFORMED IT HAS THE SUPPORT OF THE IBEW REGARDS

J A KORNY CORNFEIND



fm 628

ALASKA DEPARTMENT OF LABOR

INTER-OFFICE ROUTE SLIP

MAIL STATION NO.

1. Joe McKinnon, Chairman

2. House Commerce Committee

3.

- ☐ Action
- ☐ Comment
- ☒ Information
- ☐ Contact Me
- ☐ Circulate
- ☐ Initial & Return
- ☐ Signature
- ☐ For Your File

Remarks

From A. J. Reed.
Reed will be at
the hearing tomorrow
at 9 A.M.

FROM Barbara Bogdal/Pikeck DATE 4/6/77

Form 4004 R 5/75

STATE
of ALASKA

MEMORANDUM

Mar 14 8 05 AM '77

TO: R.D. Molt, Director
Wage & Hour Division
Juneau

DATE : March 11, 1977

FROM: A.J. Reed
State Electrical Inspector

SUBJECT:

After reviewing the above subject, I would suggest the following changes, if in order:

Sec. 08.18.026 - Electrical Contractors sub. paragraph (c):

"If the relationship of the only electrical administrator with a registered electrical contractor is terminated, the registration is void 30 days after the next regularly scheduled examination unless the electrical contractor has hired a licensed electrical administrator in the interim."

I interpert this to mean that, hypothelically, a firm could lose their administrator shortly after the scheduled examination and have until the next to procure another. If they were to lose him in May for example, they would have the whole construction season until November to procure another administrator. Unless the board is going to meet more often than twice a year this would defeat the purpose of the requirements of having an administrator. I think this should be tightened up somewhat.

Also there is no provision for stopping a firm with an administrator from picking up contractors who do not have one (which we find from time to time) and putting them on their payroll. The only way I can make this clearer is to call it peddling their license of which we have several doing in the state at this time.

Also I have some input about their regulations. There are some items that will put an extra burden on the enforcement.

I am sending this to you, Russ, so that, in case something got by you, you could make your changes and also perhaps slow down the passage of this bill until we have time to add some input.

The Department of Commerce claims we were asked to be at the hearings, but the only thing I knew about the meetings was rumor until I received a copy of the bill.

I feel this is important and would appreciate your professional opinion.

73

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

April 11, 1977

Edmund Orbeck, Commissioner
Department of Labor

H. Phillip H oard
Commissioner

House Bill 308

As I mentioned to you, House Bill 308, relating to the licensing of electrical contractors, was introduced by the Rules Committee by request of the State Board of Electrical Examiners, an independent regulatory agency charged with developing standards for, and examining the qualifications, skill and ability of electrical contractors in this State. The board is jurisdictionally assigned to the Department of Commerce and Economic Development for all administrative and investigative services. Enforcement of the requirement for licensure is assigned to both the Department of Labor and this department. In no other manner is jurisdiction shared.

Four members of your staff, three identified as Russell Molt, Tony Reed and E. Lee Leland, all of Wage and Hour, and one unidentified woman were present for the House Commerce Committee hearing held April 7, 1977 at 11 a.m. Only one, Tony Reed, testified that day. His testimony was basically negative and in all probability damaged the bill's chances of passage.

In addition to negative comments concerning the bill, Mr. Reed testified that he had never been given an opportunity to review or discuss its provisions and had received no notice of any hearings, although he had heard the board held some. A point of fact, staff members of the Division of Wage and Hour had been personally contacted by members of the Division of Occupational Licensing's staff and advised of the date, time and place of a hearing in Juneau.

That hearing was attended by representatives from the National Electrical Contractors' Association, the International Brotherhood of Electrical Workers, local contractors and this department's staff. Representatives from your staff were conspicuously absent after Sharon Andrew had advised Messrs. Molt and Fenrow of the hearing. The provisions of the bill, as well as accompanying regulations, were thoroughly discussed and compromises reached in all areas of disagreement.

A substantial amount of time and work was devoted to finding reasonable solutions to some of the existing problems in regulating this industry and I am particularly concerned that a member of your staff should appear and testify before a major legislative committee without first advising the sponsoring agency of the substance of his testimony. Further, this legislation is outside the jurisdictional responsibility of the Department of Labor.

Ed, let's discuss this matter to assure that such does not recur. Also, if your department has a continuing interest in this matter, I would appreciate having an appropriate person contact Sharon Andrew.

Regards.

cc: Honorable Joseph McKinnon
Chairman, House Commerce Committee

HB

350

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

STATE OFFICE BUILDING / POUCH SA – JUNEAU 99811

March 23, 1977

The Honorable Joseph McKinnon
Chairman
House Commerce Committee
Alaska State Legislature
Room 628 - Court Office Building
Juneau, Alaska

Re: House Bill No. 350

Dear Mr. McKinnon:

House Bill No. 350, an Act relating to security for the collection of wages, was introduced in the House on March 15, 1977 and was referred to the House Commerce Committee.

For the consideration of the House Commerce Committee, I am enclosing a Fiscal Note prepared by Mr. Gary L. Jenkins, Director, Audit Division, Department of Revenue, Juneau concerning the proposed legislation.

Very truly yours,

R. D. Stevenson

R. D. Stevenson
Special Assistant

cc: Gary L. Jenkins, Director
Audit Division
Department of Revenue
Juneau, Alaska

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill No. 350

Title An Act relating to security for the collection of wages

Requested by House Commerce Committee Date 3/16/77

II. FISCAL DETAIL

Agency Affected Revenue

Program Category Affected Fiscal Services

Budget Request Unit(s) Affected Enforcement

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES		17.1	17.1	17.1	17.1	17.1
200 TRAVEL						
300 CONTRACTUAL		2.5	2.5	2.5	2.5	2.5
400 COMMODITIES		.2	.2	.2	.2	.2
500 EQUIPMENT		.6	.6	.6	.6	.6
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		20.4	20.4	20.4	20.4	20.4

FUNDING (Thousands of Dollars)

GENERAL FUND		20.4	20.4	20.4	20.4	20.4
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME		1	1	1	1	1
PART TIME						
TEMPORARY						

02-001B

STATE
of ALASKA

MEMORANDUM

TO: John R. Messenger
Deputy Commissioner
Department of Revenue

DATE : March 22, 1977

FROM: Gary L. Jenkins
Director
Audit Division

SUBJECT: House Bill No. 350

This bill would require a fish processor who did not have lienable property in the State in excess of $10,000 to file a security bond in the amount of $10,000 guaranteeing payment of wages and benefits to employees and/or independent fishermen for fish purchased from them. I see two major problems with this piece of legislation.

First, the bill provides for a dual control over the bonding by the Commissioner of Revenue and the Commissioner of Labor, which of itself would cause administrative problems. Further, the language of the legislation in defining the responsibilities of the two departments is both confusing and inconsistent. In Sec. 1, paragraph (a), the fish processor would be required to file a security bond with the Commissioner of Revenue; however, it assigns the tasks of determining if the security is satisfactory to the Commissioner of Labor. The bill continues in paragraph (b) to provide that the processor may file a cash deposit or other negotiable security acceptable to the Commissioner in lieu of the bond. In this case, the Commissioner who makes the determination whether the deposit or negotiable security is acceptable in lieu of the bond is the Commissioner of Revenue. Thus, the bill provides for the bond to be filed with the Commissioner of Revenue but subject to approval by the Commissioner of Labor, which is very cumbersome, then turns around and assigns to the Commissioner of Revenue the authority to accept other security in lieu of the bond, which is completely inconsistent. The bill has similar inconsistent provisions regarding the respective functions of the Commissioner of Revenue and the Commissioner of Labor in subsequent sections.

Second, we are not aware of any extraordinary problems in this area which would justify this legislation. At the present time, we require a fish processor to file a bond with the Department to guarantee payment of the fish processing tax and the fishermen from whom he buys if the fish are frozen and shipped out of state in the round. We have no record of any fisherman filing a claim against the current bonds that are required. If there is a severe problem in this area of which we are not aware, then remedial legislation should be enacted; however, from an operational point of view, I would recommend that the administration be placed in the Department of Labor which has the major interest in the area.

One other technical comment is in regard to the use of the words, "or buyer" in the proposal as to who would be subject to this law. At the present time, if an individual or a business is engaged in the process of buying and selling fish products only and does not do any processing of the fish, they would not come under AS 43.75. I would recommend that the words, "or buyer" be stricken from the law at any point which it might appear.

Cordova District Fisheries Union

Headquarters: Box 939, Cordova, Alaska

April 8, 1977

Representative Joseph McKinnon, Chairman
House Commerce Committee
Rouch V
Juneau, Alaska 99811

Dear Representative McKinnon,

We wholeheartedly support prompt passage of House Bill #350 amending "An act relating to security for the collection of wages".

This amendment is vitally necessary to protect fishermen from losses which are apparently not recoverable through the State at this time.

We have,during the past season, had several fishermen that were not paid for products sold to a processor. At this time they have no recourse open to them that would aid them in retrieving the amount owed, short of hiring an attorney and going through the courts. This is often times not economically justifiable.

Immediate action is highly desired. Thank you.

Sincerely,

Bob Blake
Chairman

bb/mh

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. 350
Title Act relating to security for collection of wages
Requested by House Commerce Committee Date 3-22-77

II. FISCAL DETAIL
Agency Affected Labor
Program Category Affected Administration of Justice
Budget Request Unit(s) Affected Wage & Hour Administration

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES	N/A	-0-	-0-	-0-	-0-	-0-
200 TRAVEL		-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL		-0-	-0-	-0-	-0-	-0-
400 COMMODITIES		-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT		-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES		-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC.		-0-	-0-	-0-	-0-	-0-
TOTAL		-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This bill will provide needed protection to persons furnishing labor in the business of fish processor or buyers, particularly those enterprises that are not domestic in the state, claims against the latter are difficult if not impossible to collect or require considerable time to resolve, creating a financial hardship to a claimant.

IV. DATE 22 March 1977 PREPARED BY Jon Haas, Finance Officer
AGENCY Labor
PHONE 465-2720

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

HB

356

"An Act relating to the water resources revolving loan fund."

COMMITTEE REPORT

3-16-77

FINANCE

HOUSE

_____ Date

Mr. Speaker:

The Committee on COMMERCE has had HB 356 under consideration. A majority of the members of the Committee

☐ recommends it do pass

☐ recommends it do not pass

☐ recommends it do pass with attached amendment(s)

☐ recommends it be replaced with CS for _____ and that CS for _____ do pass

☐ (and) recommends it be referred to the _____ committee

☐ reports it back without recommendation

☐ AND attaches a report of its intent

☐ (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

Carry Noyes - Do Pass

Joe L Hayes - Do Pass

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

_____
Chairman

60

AMENDMENT

OFFERED IN THE HOUSE: BY: Commerce Committee

To: _____ HOUSE BILL No. 358

SENATE BILL No. _____

PAGE: 1 LINE: 12

after "Alaska", insert a period (".");

delete rest of sentence on lines 11 and 12

HB 356

THE SOUTHEASTERN CONFERENCE

P. O. BOX 531
WRANGELL, ALASKA 99929

March 11, 1977

Representative Terry Gardiner
Chairman, House Judiciary Committee
Pouch V Mail Stop No. 3100
Juneau, Alaska 99811

Dear Sir: Terry

The Southeastern Conference wishes to express their appreciation to you for your interest and efforts in sponsoring legislation of economic importance to Southeast Alaska and those other communities needing support in the development of hydro and other water resource development.

As requested in our meeting held March 1, 1977, we are submitting back up material for the proposed changes in the Water Resources Revolving Loan Fund Act. Enclosed are the suggested changes in the Statutes and proposed appropriations for the next fiscal year, including a revised summary of funding requirements for FY 1978.

Very truly yours,

James R. Eide
President

JRE/jr

enclosures

PROPOSED AMENDMENTS

WATER RESOURCES REVOLVING LOAN FUND ACT

Sec. 45.86.010. There is established a separate fund, The Water Resources Revolving Loan Fund. Loans from this fund are to be used to develop and conserve in the public interest the water resources of Alaska, using State revenues from the Alaska Permanent Fund (mineral development).

Sec. 45.86.040 (b) is repealed and re-enacted to read:

Sec. 45.86.040 (b) The department shall forward all loan applications it recommends for approval to the Water Resources Revolving Loan Fund Committee established with the department and made up of the commissioner or his deputy, the director of division of energy and power development, and the director of division of business loans.

Sec. 45.86.060 shall be added as follows:

Sec. 45.86.060. CONDITIONS APPLICABLE TO PROJECT LOANS. (a) The term of the loan shall not exceed 50 years and the interest rate shall be not less than three, or more than five, percent a year on the unpaid balance. The repayment schedule shall be computed in a manner so that annual payments of principal and interest, termed debt service, are approximately equal over a period not to exceed 40 years. Repayment of the loan, principal and interest, will commence at the date of commercial operation of the project or ten years from the date the loan is made, whichever is sooner.

(b) Loans shall be utilized for feasibility studies, pre-construction engineering including the securing of permits and licenses necessary for construction and operation, design and construction of capital improvement projects.

(c) If, in the opinion of the Water Resources Revolving Loan Fund Committee, feasibility studies or preconstruction engineering establish that the project is not feasible from either a technical, economic or financial viewpoint, the department may not require repayment of loans made for this purpose, provided that repayment of all loans shall be required if design or construction of the project proceeds.

This Act takes effect immediately in accordance with_____.

JUSTIFICATION FOR AMENDMENTS

WATER RESOURCES REVOLVING LOAN FUND ACT

I. The change in Sec. 45.86.010 is to correctly indicate the proper fund from which the revolving fund would secure revenue for making the loans. When the Water Resources Revolving Loan Fund was first drafted, one of the sources of loan funds was tied to Alaska mineral lease bonus funds. This was passed by the Legislature, but vetoed by the Governor as being unconstitutional. Since then, voter approval of the permanent fund has made possible this vehicle for funding these projects.

Sec. 45.86.040 - the Loan Committee composition as now specified in the Statutes, was a high level group deemed necessary to consider loans for large projects such as the Susitna and Yukon Taiya projects. Projects of this nature would now come under the State Power Authority which, together with Federal support, would finance the large installations.

The formation of a committee within the Department of Commerce would be more appropriate to consider the financing of small hydro and water projects. These would be administered similar to the other business loans the Department handles.

Sec. 45.86.060 - The first draft of HB171 (copy attached) spelled out the conditions of loans consistent with long term low interest. However, it was determined that this type of condition could best be handled by regulatory provisions. As a result, the conditions now being applied to the loans are not in accord with the intent of the Legislation. Loans are for a term of seven years rather than long term of forty to fifty years and interest rates of 6% are hardly low. Interest is due and payable yearly and prior to the project generating revenues or the ability to meet debt service. This burden on small utilities preclude their involvement in the revolving fund.

Subsection (b) spells out the type of activities in the development of the property which would be eligible for loans under the revolving fund. Subsection (c) is an "advance planning fund" provision similar to H.U.D. 701. If the studies indicate the project is not feasible, the repayment of the loans for the studies may not be required. Here again is the intent to alleviate the financial burden for the small communities for those projects which turn out to be a "dry hole" and for which revenues cannot be realized.

II. Basis for the proposed appropriation bill FY 1978 for the Resources Revolving Loan. The proposed appropriations for FY 1978 are based on estimated community requirements for the specified projects over and above the funds made available in the 1977 appropriations. The attached list of funding requirements total $3,730,000, however, it appears that the applications for FY 1977 will leave a balance of $230,000 which can reduce the proposed appropriations to $3,500,000.

DRAFT

A BILL

For an Act entitled: "An Act making a special appropriation to the water resources revolving loan fund; and providing for an effective date."

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

Section 1. The sum of $ 3,500,000 is appropriated from the general fund to the water resources revolving loan fund.

Section 2. This Act takes effect July 1, 1977.

REVISED
3/3/77

APPROPRIATION TO WATER RESOURCES REVOLVING LOAN FUND
FISCAL YEAR 1978

SUMMARY OF ESTIMATED PRIORITY FUNDING REQUIREMENTS

COMMUNITY - OWNER	PROJECT NAME	SCHEDULED IN-SERVICE DATE	FUNDING REQUIREMENTS ($)
PETERSBURG - WRANGELL THOMAS BAY POWER COMMISSION	VIRGINIA LAKE HYDRO	NOVEMBER 1983	300,000
SITKA - CITY AND BOROUGH	GREEN LAKE HYDRO	OCTOBER 1981	1,600,000
KETCHIKAN - CITY	SWAN LAKE HYDRO OR LAKE GRACE HYDRO	JULY 1983	400,000
KODIAK - KODIAK ELECTRIC ASSOCIATION	TERROR LAKE HYDRO	JULY 1983	190,000
ANCHORAGE - MUNICIPALITY	MUNICIPAL WATER SUPPLY		200,000
CORDOVA - CITY	POWER CREEK HYDRO	JULY 1983	380,000
KENAI - BOROUGH	MUNICIPAL WATER SUPPLY		150,000
JUNEAU - ALASKA ELECTRIC LIGHT AND POWER COMPANY	AUTOMATING ANNEX CREEK HYDRO		480,000
CRAIG - KLAWOCK - HYDABURG MUNICIPALITIES	BLACK BEAR LAKE HYDRO		30,000
		SUBTOTAL	3,730,000
		LESS SURPLUS FUNDS FY 1977	230,000
		TOTAL	3,500,000

KETCHIKAN PUBLIC UTILITIES

334 FRONT STREET P. O. BOX 1019 KETCHIKAN, ALASKA 99901 TELEPHONE 907-225-3111

MUNICIPALLY OWNED
ELECTRIC WATER PHONE

February 11, 1977

Representative Oral Freeman
State Capitol
Pouch V
Juneau, Alaska 99811

Subject: Development of Hydroelectric Generating Plants in Southeast Alaska

Dear Oral:

Mr. N. L. Teague, City-Utilities Manager has requested that I submit to you some pertinent information regarding the advantages to Ketchikan, and Southeast Alaska as a whole, which would be gained by the installation of hydroelectric generating plants. I will use Ketchikan as an example.

We have three (3) small hydroelectric plants. To 1969 we were hydro oriented. Our first base load type diesel was placed in operation in 1970. We now have three (3) such units. I believe that a comparison of cost, hydro versus diesel generation in our system, is pertinent.

In 1976, the average operation and maintenance cost of producing one (1) kilowatt hour at the bus bar by hydroelectric generation was $ .0055 or 5.5 mils.

The average cost of operation and maintenance per kilowatt hour of generation by diesel was $ .0638.

A recap in the same vein, from 1970 to date, clearly points up that hydroelectric power is the greatest hedge against inflation since the Republicans.

TIME PERIOD - January 1, thru December 31, 1970:

Diesel = $ .01249/KWHR

Hydro = $ .00272/KWHR

Differential in cost/KWHR - Diesel greater by $ .00977

Differential in dollars - 2,718,600 KWHR x $ .00977 = $26,560.72

TIME PERIOD - January 1, thru December 31, 1971:

Diesel = $ .01689/KWHR

Hydro = $ .00336/KWHR

Differential in cost/KWHR - Diesel greater by $ .01353

Differential cost in dollars = $174,228.52

TIME PERIOD - January 1, thru December 31, 1972:

Diesel = $ .01476/KWHR

Hydro = $ .00365/KWHR

Differential in cost/KWHR - Diesel greater by $ .01111

Differential cost in dollars = $143,065.69

TIME PERIOD - January 1, thru December 31, 1973:

Diesel = $ .02144/KWHR

Hydro = $ .00388/KWHR

Differential in cost/KWHR - Diesel greater by $ .01756

Differential cost in dollars = $226,123.63

TIME PERIOD - January 1, thru December 31, 1974:

Diesel = $ .04125/KWHR

Hydro = $ .00534/KWHR

Differential in cost/KWHR - Diesel greater by $ .03591

Differential cost in dollars = $462,420.25

TIME PERIOD - January 1, thru December 31, 1975:

Diesel = $ .0430/KWHR

Hydro = $ .0051/KWHR

Differential in cost/KWHR - Diesel greater by $ .0379/KWHR

Differential cost in dollars = $491,763.87

TIME PERIOD - January 1, thru December 31, 1976:

Diesel = $ .0638/KWHR

Hydro = $ .0055/KWHR

Differential in cost/KWHR - Diesel greater by $ .0583/KWHR

Differential cost in dollars = $470,883.27

Note that 1976 differential cost in dollars is slightly less than 1975. This is due to a small hydro-electric plant (Silvis) being returned to service in 1976. The Silvis Plant had been destroyed by a landslide in 1969.

The Silvis hydro plant generated approximately 13% of our electrical system output in 1976. Without the Silvis Plant in operation, our differential cost in dollars would have been approximately $532,098.00 for 1976.

Look at what is happening in the major item needed for diesel generation. That "NON-RENEWABLE RESOURCE", diesel fuel c[illegible]

Costs for fuel delivered by barge to our S. W. Bailey diesel plant located ashore on Tongass Narrows, for example, are as follows:

Date	Cost per gallon	Cost of fuel oil/KWHR generated
1972	$ .1375	$ .0095
1973	$ .1930	$ .0133
1974	$ .3260	$ .0225
1975	$ .3610	$ .0249
1976	$ .3930	$ .0271
1977 (Feb.)	$ .4190	$ .0289

In a time span of just over four years and two months, our diesel fuel costs have increased 205 percent.

The industrial growth of the lower 48 States and most specifically the Pacific Northwest was made possible by the construction by the U. S. Government of large hydroelectric projects. In addition, it permitted a better living standard for the people at low energy cost.

The technology of transmission line construction permitted transmission line "grids" to be built from the large government projects to all points of the land or load centers.

Southeastern Alaska does not lend itself to the aforementioned methodology. We are situated in an archipelago that would strain the technology of transmission line construction and be vastly more expensive. It is one thing to serve load centers connected by land, another to serve load centers connected only by water.

It is therefore most logical to construct (large for us) hydroelectric projects as close to the load centers as possible, e.g. our Swan or Grace Lake projects. Short, interconnecting transmission lines could be installed between neighboring islands, e.g. Revillagigedo Island (Ketchikan) and Annette Island (Metlakatla).

Oral, it is safe to say that every power utility in Southeastern Alaska is municipally owned with the exception of Juneau, Alaska. It seems odd to us that Juneau is the only community that has a Federal hydroelectric project "on line" in our part of the State.

Government seems to speak with forked tongue. They advocate conservation of depletable natural resources and energy, and yet seem to balk at providing the help necessary to alleviate the situation in our portion of Alaska.

Also, Oral, any added expense to the Utilities or cities created by the construction of the hydroelectric projects should be deferred until the projects are "on line". I do not believe any of us can individually carry the burden of cost of generation by our existing means, plus pay any interest or principal payments in case of loans or bonds. Payment deferral is of utmost importance.

I have made this letter far longer than I had intended, Oral, and apologize for taking up so much of your valuable time.

I am attaching certain data that we hope you will find of interest.

Very truly yours,

Donald D Bowey

Donald D. Bowey
Assistant Utilities Manager

cc: N. L. Teague, City-Utilities Manager
Senator Robert Ziegler
Representative Terry Gardiner

Cost differential, Hydro vs. Diesel

Alaska Power Co. per KWHR.

Cost of generating by Prime Mover Type and Plant, Maintenance & operating cost by acct. Labor, fuel, oils, Parts, etc.

YEAR 1976

DIESEL

Acct. No's	KETCHIKAN	TOTEM INLET	BAILEY	TOTAL
546	- 0 -	2,454.98	4,259.75	6,744.73
547	2,200.00	21,404.83	181,942.23	205,549.08
548	2,099.19	11,003.24	71,995.64	85,098.07
549	87.55	517.16	3,789.01	4,393.72
551	- 0 -	- 0 -	1,445.90	1,445.90
552	- 0 -	- 0 -	15,408.49	15,408.49
553	7,429.11	7,232.17	185,038.96	199,700.24
554	- 0 -	3,378.11	5,078.78	8,456.89
	11,207.85	46,020.51	468,958.76	526,787.12

HYDRO

	KETCHIKAN	BEAVER FALLS	SILVIS	TOTAL
535	11,736.34	4,550.10	3,373.16	19,659.60
536	- 0 -	- 0 -	- 0 -	- 0 -
537	11,040.88	6,295.40	4,282.81	21,619.09
538	167,897.24	64,310.82	12,878.43	245,086.89
539	10,077.42	4,168.18	9,534.15	23,779.31
541	293.29	1,961.09	528.14	2,783.12
542	7,248.64	3,137.13	725.64	11,111.41
543	4,529.61	5,936.72	2,449.79	12,916.12
544	5,328.12	8,861.16	13,881.94	28,071.22
545	94.13	- 0 -	- 0 -	94.13
	318,306.83	99,099.20	47,654.46	365,191.89

HYDRO Power Plant	GENERATION KWHR	M & O COST DOLLARS	COST/KWHR CENTS
KETCHIKAN PLANT	17,693,700	$ 218,306.83	$ .01234
BEAVER FALLS	40,669,000	99,220.60	.00244
SILVIS	10,172,000	47,654.46	.00468
TOTAL	68,534,700	$ 365,181.89	$ .00533

AVERAGE COST PER KWHR GENERATED BY HYDRO. 5.3 MIL.

DIESEL			
KETCHIKAN PLANT	55,700	$ 11,807.85	$ .21123
TOTEM BIGHT	781,000	46,022.51	.05893
S.W. BAILEY	7,240,100	468,958.76	.06477
TOTAL	8,076,900	$ 526,787.12	$ .06522

AVERAGE COST PER KWHR. GENERATED BY DIESEL 65.2 MIL

AVERAGE COST PER KILOWATTHOUR OF TOTAL GENERATION BY DIESEL & HYDRO. (CONGLOMERATE)

Total generated 76,611,600 KWHR = $.01164 cents/KWHR.

TOTAL M & O COSTS. $ 891,969.01 OR 11.6 MIL/KWHR.

COST PER KWHR "SOLD". (GEN. LESS STATION USE & LOSSES) = $.0131 cents or 13.1 mill

SPACE

Hydro generated 89.46% of total generation

Diesel generated 10.54% of total generation

WATER YEAR WAS EQUIVALENT AT

SPACE → Sold at the average cost of 5.3 mil, or 65.2 mil

per KWHR. generated $.0053 cents, or 5.3 mil

delivered cost per KWHR.

Hypothesis:

Hydro → $\frac{68,534,700 \text{ KWHR}}{14.5 \text{ KWHR/GAL}} = 4,726,531$ gallons of fuel

4,726,531 gal. X $.41 = $1,937,876

added to labor, etc of Hydro would = $2,303,058

added to actual diesel generation cost of generating 8,076,900 KWHR. or,
$2,303,058 plus $526,787 = $2,829,845

$\frac{\$2,829,845 \text{ M\&O Costs}}{76,611,600 \text{ KWHR.}} = .03694 \text{ CENTS/KWHR.}$
OR
36.9 Mil.

The above Hypothesis of all diesel operation in 1976 would have meant, $\frac{36.9 \text{ Mil}}{11.6 \text{ Mil}} = 3.18:1$

or generation costs, Maintenance & generation only would have been 218% greater than it actually was by combination, or complements, of Hydro & Diesel.

The above is very conservative as it does not consider additional staffing which would have been necessary, the like for the generation lost from hydro, if all generation had been by diesel.

Time & staffing records & more in depth analysis.
& Narrative.

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

March 23, 1977

MEMO

TO: Joe McKinnon

FROM: Terry Gardiner T.G.

RE: HB 356, 357

Confirm your having them up for hearing on or about April 4 or 5.

The following Departments and people should be contacted for those hearings:

1.0 Department of Commerce

2.0 Department of Revenue

3.0 Energy Office - McKonkey

4.0 Jim Eide - City Manager of Wrangell

5.0 Bill Boardman
Mi. 10 North Tongass
P.O. Box 7736
Ketchikan, Ak. 99901

6.0 Jeff Currall
c/0 Chamber of Commerce
Box 7637
Ketchikan, Alaska 99901

7.0 Rocky Guitierriz, City Manager of Sitka

8.0 Pat Teague, City Manager of Ketchikan
P.O Box 1.0
Ketchikan, Alaska 99901

If you need any assistance in contacting any of these people please call me at any time.

HB

357

THE SOUTHEASTERN CONFERENCE

P. O. BOX 531
WRANGELL, ALASKA 99929

March 11, 1977

Representative Terry Gardiner
Chairman, House Judiciary Committee
Pouch V Mail Stop No. 3100
Juneau, Alaska 99811

Dear Sir: Terry

The Southeastern Conference wishes to express their appreciation to you for your interest and efforts in sponsoring legislation of economic importance to Southeast Alaska and those other communities needing support in the development of hydro and other water resource development.

As requested in our meeting held March 1, 1977, we are submitting back up material for the proposed changes in the Water Resources Revolving Loan Fund Act. Enclosed are the suggested changes in the Statutes and proposed appropriations for the next fiscal year, including a revised summary of funding requirements for FY 1978.

Very truly yours,

James R. Eide
President

JRE/jr

enclosures

PROPOSED AMENDMENTS

WATER RESOURCES REVOLVING LOAN FUND ACT

Sec. 45.86.010. There is established a separate fund, The Water Resources Revolving Loan Fund. Loans from this fund are to be used to develop and conserve in the public interest the water resources of Alaska, using State revenues from the Alaska Permanent Fund (mineral development).

Sec. 45.86.040 (b) is repealed and re-enacted to read:

Sec. 45.86.040 (b) The department shall forward all loan applications it recommends for approval to the Water Resources Revolving Loan Fund Committee established with the department and made up of the commissioner or his deputy, the director of division of energy and power development, and the director of division of business loans.

Sec. 45.86.060 shall be added as follows:

Sec. 45.86.060. CONDITIONS APPLICABLE TO PROJECT LOANS. (a) The term of the loan shall not exceed 50 years and the interest rate shall be not less than three, or more than five, percent a year on the unpaid balance. The repayment schedule shall be computed in a manner so that annual payments of principal and interest, termed debt service, are approximately equal over a period not to exceed 40 years. Repayment of the loan, principal and interest, will commence at the date of commercial operation of the project or ten years from the date the loan is made, whichever is sooner.

(b) Loans shall be utilized for feasibility studies, pre-construction engineering including the securing of permits and licenses necessary for construction and operation, design and construction of capital improvement projects.

(c) If, in the opinion of the Water Resources Revolving Loan Fund Committee, feasibility studies or preconstruction engineering establish that the project is not feasible from either a technical, economic or financial viewpoint, the department may not require repayment of loans made for this purpose, provided that repayment of all loans shall be required if design or construction of the project proceeds.

This Act takes effect immediately in accordance with _____.

JUSTIFICATION FOR AMENDMENTS

WATER RESOURCES REVOLVING LOAN FUND ACT

I. The change in Sec. 45.86.010 is to correctly indicate the proper fund from which the revolving fund would secure revenue for making the loans. When the Water Resources Revolving Loan Fund was first drafted, one of the sources of loan funds was tied to Alaska mineral lease bonus funds. This was passed by the Legislature, but vetoed by the Governor as being unconstitutional. Since then, voter approval of the permanent fund has made possible this vehicle for funding these projects.

Sec. 45.86.040 - the Loan Committee composition as now specified in the Statutes, was a high level group deemed necessary to consider loans for large projects such as the Susitna and Yukon Taiya projects. Projects of this nature would now come under the State Power Authority which, together with Federal support, would finance the large installations.

The formation of a committee within the Department of Commerce would be more appropriate to consider the financing of small hydro and water projects. These would be administered similar to the other business loans the Department handles.

Sec. 45.86.060 - The first draft of HB171 (copy attached) spelled out the conditions of loans consistent with long term low interest. However, it was determined that this type of condition could best be handled by regulatory provisions. As a result, the conditions now being applied to the loans are not in accord with the intent of the Legislation. Loans are for a term of seven years rather than long term of forty to fifty years and interest rates of 6% are hardly low. Interest is due and payable yearly and prior to the project generating revenues or the ability to meet debt service. This burden on small utilities preclude their involvement in the revolving fund.

Subsection (b) spells out the type of activities in the development of the property which would be eligible for loans under the revolving fund. Subsection (c) is an "advance planning fund" provision similar to H.U.D. 701. If the studies indicate the project is not feasible, the repayment of the loans for the studies may not be required. Here again is the intent to alleviate the financial burden for the small communities for those projects which turn out to be a "dry hole" and for which revenues cannot be realized.

II. Basis for the proposed appropriation bill FY 1978 for the Resources Revolving Loan. The proposed appropriations for FY 1978 are based on estimated community requirements for the specified projects over and above the funds made available in the 1977 appropriations. The attached list of funding requirements total $3,730,000, however, it appears that the applications for FY 1977 will leave a balance of $230,000 which can reduce the proposed appropriations to $3,500,000.

DRAFT

A BILL

For an Act entitled: "An Act making a special appropriation to the water resources revolving loan fund; and providing for an effective date."

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

Section 1. The sum of $ 3,500,000 is appropriated from the general fund to the water resources revolving loan fund.

Section 2. This Act takes effect July 1, 1977.

REVISED
3/3/77

APPROPRIATION TO WATER RESOURCES REVOLVING LOAN FUND
FISCAL YEAR 1978

SUMMARY OF ESTIMATED PRIORITY FUNDING REQUIREMENTS

COMMUNITY - OWNER	PROJECT NAME	SCHEDULED IN-SERVICE DATE	FUNDING REQUIREMENTS ($)
PETERSBURG - WRANGELL THOMAS BAY POWER COMMISSION	VIRGINIA LAKE HYDRO	NOVEMBER 1983	300,000
SITKA - CITY AND BOROUGH	GREEN LAKE HYDRO	OCTOBER 1981	1,600,000
KETCHIKAN - CITY	SWAN LAKE HYDRO OR LAKE GRACE HYDRO	JULY 1983	400,000
KODIAK - KODIAK ELECTRIC ASSOCIATION	TERROR LAKE HYDRO	JULY 1983	190,000
ANCHORAGE - MUNICIPALITY	MUNICIPAL WATER SUPPLY		200,000
CORDOVA - CITY	POWER CREEK HYDRO	JULY 1983	380,000
KENAI - BOROUGH	MUNICIPAL WATER SUPPLY		150,000
JUNEAU - ALASKA ELECTRIC LIGHT AND POWER COMPANY	AUTOMATING ANNEX CREEK HYDRO		480,000
CRAIG - KLAWOCK - HYDABURG MUNICIPALITIES	BLACK BEAR LAKE HYDRO		30,000
		SUBTOTAL	3,730,000
		LESS SURPLUS FUNDS FY 1977	230,000
		TOTAL	3,500,000

KETCHIKAN PUBLIC UTILITIES

334 FRONT STREET P. O. BOX 1019 KETCHIKAN, ALASKA 99901 TELEPHONE 907-225-3111

MUNICIPALLY OWNED
ELECIRIC WATER PHONE

February 11, 1977

Representative Oral Freeman
State Capitol
Pouch V
Juneau, Alaska 99811

Subject: Development of Hydroelectric Generating Plants in Southeast Alaska

Dear Oral:

Mr. N. L. Teague, City-Utilities Manager has requested that I submit to you some pertinent information regarding the advantages to Ketchikan, and Southeast Alaska as a whole, which would be gained by the installation of hydroelectric generating plants. I will use Ketchikan as an example.

We have three (3) small hydroelectric plants. To 1969 we were hydro oriented. Our first base load type diesel was placed in operation 1970. We now have three (3) such units. I believe that a comparison of cost, hydro versus diesel generation in our system, is pertinent.

In 1976, the average operation and maintenance cost of producing one (1) kilowatt hour at the bus bar by hydroelectric generation was $ .0055 or 5.5 mils.

The average cost of operation and maintenance per kilowatt hour of generation by diesel was $ .0638.

A recap in the same vein, from 1970 to date, clearly points up that hydroelectric power is the greatest hedge against inflation since the Republicans.

TIME PERIOD - January 1, thru December 31, 1970:

Diesel = $ .01249/KWHR

Hydro = $ .00272/KWHR

Differential in cost/KWHR - Diesel greater by $ .00977

Differential in dollars - 2,718,600 KWHR x $ .00977 = $26,560.72

TIME PERIOD - January 1, thru December 31, 1971:

Diesel = $ .01689/KWHR

Hydro = $ .00336/KWHR

Differential in cost/KWHR - Diesel greater by $ .01353

Differential cost in dollars = $174,228.52

TIME PERIOD - January 1, thru December 31, 1972:

Diesel = $ .01476/KWHR

Hydro = $ .00365/KWHR

Differential in cost/KWHR - Diesel greater by $ .01111

Differential cost in dollars = $143,065.69

TIME PERIOD - January 1, thru December 31, 1973:

Diesel = $ .02144/KWHR

Hydro = $ .00388/KWHR

Differential in cost/KWHR - Diesel greater by $ .01756

Differential cost in dollars = $226,123.63

TIME PERIOD - January 1, thru December 31, 1974:

Diesel = $ .04125/KWHR

Hydro = $ .00534/KWHR

Differential in cost/KWHR - Diesel greater by $ .03591

Differential cost in dollars = $462,420.25

TIME PERIOD - January 1, thru December 31, 1975:

Diesel = $ .0430/KWHR

Hydro = $ .0051/KWHR

Differential in cost/KWHR - Diesel greater by $ .0379/KWHR

Differential cost in dollars = $491,763.87

TIME PERIOD - January 1, thru December 31, 1976:

Diesel = $ .0638/KWHR

Hydro = $ .0055/KWHR

Differential in cost/KWHR - Diesel greater by $ .0583/KWHR

Differential cost in dollars = $470,883.27

Note that 1976 differential cost in dollars is slightly less than 1975. This is due to a small hydro-electric plant (Silvis) being returned to service in 1976. The Silvis Plant had been destroyed by a landslide in 1969.

The Silvis hydro plant generated approximately 13% of our electrical system output in 1976. Without the Silvis Plant in operation, our differential cost in dollars would have been approximately $532,098.00 for 1976.

Look at what is happening in the major item needed for diesel generation. That "NON-RENEWABLE RESOURCE", diesel fuel oil.

Costs for fuel delivered by barge to our S. W. Bailey diesel plant located ashore on Tongass Narrows, for example, are as follows:

Date	Cost per gallon	Cost of fuel oil/KWHR generated
1972	$ .1375	$ .0095
1973	$ .1930	$ .0133
1974	$ .3260	$ .0225
1975	$ .3610	$ .0249
1976	$ .3930	$ .0271
1977 (Feb.)	$ .4190	$ .0289

In a time span of just over four years and two months, our diesel fuel costs have increased 205 percent.

The industrial growth of the lower 48 States and most specifically the Pacific Northwest was made possible by the construction by the U. S. Government of large hydroelectric projects. In addition, it permitted a better living standard for the people at low energy cost.

The technology of transmission line construction permitted transmission line "grids" to be built from the large government projects to all points of the land or load centers.

Southeastern Alaska does not lend itself to the aforementioned methodology. We are situated in an archipelago that would strain the technology of transmission line construction and be vastly more expensive. It is one thing to serve load centers connected by land, another to serve load centers connected only by water.

It is therefore most logical to construct (large for us) hydroelectric projects as close to the load centers as possible, e.g. our Swan or Grace Lake projects. Short, interconnecting transmission lines could be installed between neighboring islands, e.g. Revillagigedo Island (Ketchikan) and Annette Island (Metlakatla).

Oral, it is safe to say that every power utility in Southeastern Alaska is municipally owned with the exception of Juneau, Alaska. It seems odd to us that Juneau is the only community that has a Federal hydroelectric project "on line" in our part of the State.

Government seems to speak with forked tongue. They advocate conservation of depletable natural resources and energy, and yet seem to balk at providing the help necessary to alleviate the situation in our portion of Alaska.

Also, Oral, any added expense to the Utilities or cities created by the construction of the hydroelectric projects should be deferred until the projects are "on line". I do not believe any of us can individually carry the burden of cost of generation by our existing means, plus pay any interest or principal payments in case of loans or bonds. Payment deferral is of utmost importance.

I have made this letter far longer than I had intended, Oral, and apologize for taking up so much of your valuable time.

I am attaching certain data that we hope you will find of interest.

Very truly yours,

Donald D. Bowey

Donald D. Bowey
Assistant Utilities Manager

cc: N. L. Teague, City-Utilities Manager
Senator Robert Ziegler
Representative Terry Gardiner

HB

668

02-001B (Rev. 10/76)

• STATE
of ALASKA

MEMORANDUM

COMMERCE & ECONOMIC DEVELOPMENT

TO: Jim Grandjean, Administrative Asst.
House Commerce Committee

DATE: May 16, 1977

FILE NO:

TELEPHONE NO:

CR for JB

FROM: Julius J. Brecht, Director
Division of Banking & Securities

SUBJECT: Small Loan Companies
Rate of Interest

We have no further statistical information on how this interest change would effect the small loan companies. In general, allowing them to charge a lower rate of interest. We are, of course, cutting into their income. The table will show how other states handle this matter. The present rate structure for Alaska is one of the larger rate structures, that is, 3%, 2%, 1%.

SUMMARY OF 1976 LEGISLATION AND ADDENDUM (January 1, 1977)

Christian T. Jones

ALABAMA	—	Usury Law: no limit over $100,000.
ARIZONA	—	Revolving Loan Law: no ceiling.
CALIFORNIA	—	Licensed loan rates extended to 1/1/79.
FLORIDA	—	Small Loan Law: 30% per year to $500, 24% to $1,000, 16% to $2,500; no rate reduction after maturity.
GEORGIA	—	Industrial Loan Law: 36½ mos. maximum maturity. Installment Loan Law: 7% per year add-on.
IDAHO	—	U3C: Dollar amounts increased 30%; 60% over original.
INDIANA	—	U3C: Dollar amounts increased (30% over original).
KENTUCKY	—	Small Loan Law: 3% to $500, 2% to $1,200, 1-1/2% to $1,500 (precomp); alternate add-on rates repealed.
MAINE	—	U3C: Dollar amounts increased (60% over original).
MARYLAND	—	Installment Loans: 18% per year to $3,500; 12% on entire amount over $3,500.
MASS.	—	Small Loan Law: 18% per year on unpaid balances or $10 per $100 per year add-on plus $15 fee (eff. 1/2/77).
MINNESOTA	—	Bank Revolving Credit: 1% per month plus $15 annual charge. Bank Consumer Loan Law: 12% per year simple interest.
PENNA.	—	Consumer Discount Act: ceiling increased to $5,000; 60-1/2 mos. maximum maturity. Small Loan Law repealed.
S. CAROLINA	—	U3C: Supervised Loans - 36% per year to $300, 21% to $1,000, 15% to $25,000; or 18%. Revolving credit permitted.
S. DAKOTA	—	Small Loan Law: 2-1/2% to $300, 2% to $1,000, 1-1/2% to $1,500, 1% to $2,500; over $2,500 to $5,000, 1-1/2% on entire balance: 10% per year 6 mos. after maturity; 60-1/2 mos. max. maturity over $2,500.
UTAH	—	U3C: same as Idaho.
VERMONT	—	Installment Loans: Add-on rate permitted up to 12 years.
VIRGINIA	—	Small Loan Law: 21 mos. maximum maturity to $500. Bank Loan Law: 7% per year add-on plus 2% fee. Home Mortgage Law: 8% per year add-on plus 2% fee.

STATE AND SUPERVISOR	MAXIMUM RATE	MAXIMUM MATURITY	PRECOMP. ADD-ON DISCOUNT	C&A	LOAN SIZE LIMIT	CREDIT LIFE AND DISABILITY INSURANCE WHERE PERMITTED	DATE LEGISLATURE CONVENES 1976 1977 1978	KIND OF LAW
ALABAMA Supervisor, Bureau of Loans, State Banking Dept.	3% to $200, 2% to $300. On loans of $75 or less $1 for each $5 loaned.	25 mos.	Precomp.	Yes	$300	Life, over $100, 75¢.	--- May 3 --- Preliminary 10-day session convenes on 2nd Tues. in Jan.	Consumer Credit Act
	Consumer Credit Act: $15 a year per $100 add-on to $500, $10 to $1000, and $8 to $2000; over $2000, $8 on entire balance. 1½% per month on revolving accounts.	24½ mos. to $300, 36½ mos. to $1000. None over $1000.	Add-on	No	None	Life, $1.00. Disability (14-day retro.): $2.20 - 12 mos. $3.00 - 24 mos. $3.80 - 36 mos.		Insurance Premium Financing
ALASKA Department of Commerce	3% to $400, 2% to $800, 1% to $1500. On loans of $50 or less 5%. Default fee of $3.	None	No	Yes	$1500	Life only, premiums actually paid out. NAIC	Jan. 12 Jan. 10 Jan. 9	Installment Loan Law
								Bank Credit Card Sales Financing
ARIZONA Superintendent of Banks	3% to $300, 2% to $600, 1½% to $1500, 1% to $2500.	24½ mos. to $1000, 36½ mos. to $2500.	Precomp.	No	$2500	Life, 60¢ (level term, $1.34). Disability (14-day retro.): $2.20 - 12 mos. $3.00 - 24 mos. $3.80 - 36 mos. NAIC	Jan. 12 Jan. 10 Jan. 9	Industrial Bank Law
	Installment Loan Act: 8% per annum add-on to $1000, 6% on any excess to $5000 ($10 min.)	None	Add-on	No	$5000			Installment Loans
								Bank Revolving Loan Law
								Revolving Loan and Credit Card Law
CALIFORNIA Commissioner of Corporations	2½% to $225, 2% to $625, 1½% to $1650, 1% to $10,000. Alternate rate: 1½% per mo. (temporary increase to 1/1/77)	24½ mos. to $1500, 36½ mos. to $2500, 48½ mos. to $4000, 60½ mos. to $6000, 84½ mos. to $10,000.	Precomp.	No	None	Life, 55¢. Disability (14-day retro.): $2.42 - 12 months $3.30 - 24 months $4.18 - 36 months (higher rates for real estate loans)	Jan. 5 Jan. 3 Jan. 2	Industrial Loan Law
	No max. above $10,000. Companion "Small Loan Law" is inoperative.							Commercial Banks
								Insurance Premium Financing Law

Compliance with Regulation Z satisfies sales finance disclosure provisions.

STATE AND SUPERVISOR	MAXIMUM RATE	MAXIMUM MATURITY	PRECOMP. ADD-ON DISCOUNT	C&A	LOAN SIZE LIMIT	CREDIT LIFE AND DISABILITY INSURANCE WHERE PERMITTED	DATE LEGISLATURE CONVENES 1976 1977	Kind of Law
COLORADO Attorney General	UCCC: 36% per year to $300, 21% to $1000, 15% to $25,000. When this combination yields less, maximum is 18% per year. (min. $15, $25 @ $500) Revolving credit rate is 18% per year.	25 mos. to $300, 37 mos. to $1000. None over $1000.	Yes	No	None (Regulation applies up to $25,000)	Life, 70¢. Disability (14-day retro.): $2.20 - 12 months $3.00 - 24 months $3.80 - 36 months NAIC	Jan. 7 Jan. 5 [illegible] Subects limited to [illegible] years.	Uniform Consumer Credit Code
	UCCC requires same disclosures as Regulation Z. Regulation Z disclosures deemed compliance with state disclosure.							
CONNECTICUT State Bank Commissioner	Add-on rate: $17 a year per $100 to $300, and $11 to $1800; over $1800 and if secured by real estate, $11 on entire amount. (Rate drops to 12% a year after deferred max. maturity)	24½ mos. to $1000, 36½ mos. to $1800. None over $1800.	Add-on	Yes	$5000	Life only, 50¢. NAIC	Feb. 4 Jan. 5 Feb. 5 Subjects limited to [illegible] years.	Industrial Bank Law Commercial Banks Savings Banks Savings and Loans Insurance Premium Financing Bank Revolving Credit
	General law requires same disclosures as Regulation Z. Granted FRB Exemption.							
DELAWARE State Bank Commissioner	Discount Act: 9% a year for 1st 36 months, 6% a year for remaining months; 2% service fee; 5% fine; various limitations.	36 mos. to $1500, 60 mos. to $5000, 84 mos. to limit.	Discount and fee	No	10% of capital over $10,000; otherwise $500	Life, 65¢. Disability (14-day retro.): $2.20 - 12 mos. $3.00 - 24 mos. $3.80 - 36 mos. NAIC (By regulation)	Jan. 13 Jan. 11 Jan. 9	Bank Consumer Loan Law Home Mortgage Loan Law Bank Revolving Credit
	Compliance with Regulation Z satisfies comparable provisions of sales finance and revolving credit laws.							
DISTRICT OF COLUMBIA Commissioners of District of Columbia	Small Loan Law is inoperative.						Not applicable	Installment Loan Law Insurance Premium Financing

CONSUMER FINANCE AND RELATED LOAN LAWS

STATE AND SUPERVISOR	MAXIMUM RATE	MAXIMUM MATURITY	PRECOMP. ADD-ON DISCOUNT	C&A	LOAN SIZE LIMIT	CREDIT LIFE AND DISABILITY INSURANCE WHERE PERMITTED	DATE LEGISLATION CONTINUED 1976	1977	1978	BANK OR S&L
FLORIDA State Comptroller	30% per year to $300, 24% to $600, 16% to $2500. (Rate drops to 10% a year 12 months after maturity.)	24½ mos. to $600, 36½ mos. to $2500	No	Yes	$2500	Life, 75¢. Disability (14-day retro.): $2.20 - 12 mos. $3.00 - 24 mos. $3.80 - 36 mos. NAIC	Apr. 6	Apr. 5	Apr. 2	
GEORGIA Industrial Loan Commissioner	Industrial Loan Act: 8% a year discount for 18 months, add-on for longer maturities; fee of 8% of first $600 and 4% of excess plus $1 per month; 5% for default of 5 days.	24 mos.	Discount and fee	Yes	$3000	Life, 83¢ decreasing term, $1.88 level term. Disability (3-day retro.): $3.60 per annum per $5 monthly benefit; (7-day retro.): $2.10 per annum per $5 monthly benefit.	Jan. 12	Jan. 23		
HAWAII Director of Regulatory Agencies, Deputy Bank Examiner	3½% to $100, 2½% to $300. Industrial Loan Act: 12% per annum discount for first 18 months, 9% for next 12 months, 6% for next 12 months, 3% for remaining months to 48 months; appraiser's fees; attorney's collection fees plus court costs; $10 transfer of equity fee; or 1½% per month on entire balance for maturities up to 72 mos.	20 mos. 72 mos.	No Discount	Yes Yes	$300 None	Life, 60¢. Disability (14-day retro.): $2.61 - 12 mos. $3.53 - 24 mos. $4.18 - 36 mos.	Jan. 21	Jan. 29	Jan. 2	

Regulation Z made controlling over state disclosure laws.

CONSUMER FINANCE AND RELATED LOAN LAWS

STATE AND SUPERVISOR	MAXIMUM RATE	MAXIMUM MATURITY	PRECOMP. ADD-ON DISCOUNT	C&A	LOAN SIZE LIMIT	CREDIT LIFE AND DISABILITY INSURANCE WHERE PERMITTED	DATE EFFECTIVE 1976
IDAHO Commissioner of Finance	UCCC: 36% per year to $390, 21% to $1300, 15% to $2,500. When this combination yields less, maximum is 18% per year. Revolving credit rate is 18% per year.	25 mos. to $390, 37 mos. to $1300. None over $1300.	Yes	No	$2,500 No limit if secured by real estate.	Life, 60¢. Disability (14-day retro.): $2.20 - 12 months $3.00 - 24 months $3.80 - 36 months NAIC	Jan. 12
	UCCC requires same disclosures as Regulation Z. Regulation Z disclosures deemed compliance with state disclosures.						
ILLINOIS Department of Financial Institutions	2% to $300, 2% to $600, 1% to $1500; or 1/12 of Annual Percentage Rate equivalent.	None	Precomp.	Yes	$1500	Life, 65¢. Disability (14-day retro.): $2.20 - 12 months $2.80 - 24 months $3.35 - 36 months $3.90 - 48 months NAIC	Jan. 14
	Consumer Installment Loan Act: Annual discount rates from 8% for maturities up to 30 months and declining for longer maturities; or 1.5476% per month. Loans over $800. (Banks may lend under this law.)	121 mos.	Discount or interest rate	No	$10,000 (over $800)		
	Regulation Z type disclosure provisions added to the regulatory laws noted herein.						
INDIANA Department of Financial Institutions	UCCC: 36% a year to $330, 21% to $1100, 15% to $30,000. When this combination yields less, maximum is 18% per year. Revolving credit permitted.	25 mos. to $330, 37 mos. to $1100. None over $1100.	Yes	No	None (Regulation applies up to $30,000)	Life, 65¢. Disability (14-day retro.): $2.20 - 12 mos. $3.00 - 24 mos. $3.80 - 36 mos. NAIC. UCCC restrictions	Jan. 17
	UCCC requires same disclosures as Regulation Z. Regulation Z disclosures deemed compliance with state disclosure.						
IOWA Superintendent of Banking	3% to $250, 2% to $400, 1% to $1000, (Rate set by State Banking Board.)	25 mos. to $300, 37 mos. to $1000.	Precomp.	Yes	$1000	Life, 75¢. Disability (14-day retro.): $2.20 - 12 mos. $3.00 - 24 mos. $3.80 - 36 mos.	Jan. 12
State Auditor	Industrial Loan Act: 9% per annum discount plus fee of $1 per $50 ($40 max.); 5% for default of 10 days.	None over $1000.	Discount and fee	Yes	20% of capital		

STATE AND SUPERVISOR	MAXIMUM RATE	MAXIMUM MATURITY	PRECOMP. ADD-ON DISCOUNT	C&A	LOAN SIZE LIMIT	CREDIT LIFE AND DISABILITY INSURANCE WHERE PERMITTED
KANSAS Consumer Credit Commissioner	36% per year to $300, 21% to $1000, 14.45% to $25,000; or 18% per year. Revolving loans permitted. (min. $5-$7.50 @ $75)	25 mos. to $300, 37 mos. to $1,000, None over $1,000.	Yes	No	$25,000 No limit if secured by real estate.	Life, 75¢. Disability (14-day retro.): $2.20 - 12 mo. $3.00 - 24 mos. $3.80 - 36 mos.
	UCCC requires same disclosures as Regulation Z. No penalties allowed if creditor complies with Administrator's rules.					
KENTUCKY Commissioner of Banking	3% to $300, 2% to $1000, 1% to $1200; or add-on rate, $20 a year per $100 on first $300, $16 to $800, $13 to $1200.	36½ mos.	Add-on	Yes	$1200	Life, 75¢. Disability (14-day retro.): $2.20 - 12 mos. $3.00 - 24 mos. $3.80 - 36 mos. NAIC
	Industrial Loan Act: 7% per annum add-on or discount plus fee of $1 per $50 to $2,000; 5% up to $5 per installment for default of 10 days. (See A.G. Op. No. 72-374 re rates.)	61 mos.	Discount and fee	Yes	$7500	
	General law requires same disclosures as Regulation Z. Reg. Z disclosure deemed compliance with state disclosure.					
LOUISIANA State Bank Commissioner	36% per year to $800, 27% to $2000, 21% to $3500, 15% on any remainder; or 18% per year. Revolving loans permitted. (min. $7.50-$15 @ $200) Rate drops to 8% per year 12 months after maturity.	None	Yes	No	$25,000	Life, $1.00. Disability (14-day retro.): $2.20 - 12 mos. $3.00 - 24 mos. $3.80 - 36 mos.
	Licensed lenders and others may charge above rates on sale contracts (other than auto) acquired within 35 days of sale.					
MAINE Superintendent of Bureau of Consumer Protection	18% per year. (min. $5-$7.50 @ $75) Revolving credit permitted. Unique restrictions make higher rates generally inoperative (30% per year to $300, 21% to $1000, 15% on remainder). Most licensees have ceased business.	25 mos. to $300, 37 mos. to $1000	Yes	No	$25,000 No limit if secured by real estate.	Life, 50¢. Disability (14-day retro.): $2.37 - 12 months $2.84 - 24 months $3.20 - 36 months NAIC
	General law requires same disclosures as Regulation Z. Granted FRB Exemption.					

STATE AND SUPERVISOR	MAXIMUM RATE	MAXIMUM MATURITY	PRECOMP. ADD-ON DISCOUNT	C&A	LOAN SIZE LIMIT	CREDIT LIFE AND DISABILITY INSURANCE WHERE PERMITTED	DATE RATE EFFECTIVE 1974
MARYLAND Administrator of Loan Laws	3% to $300, 2% to $500. (rate drops to 6% a year 6 months after maturity.)	30½ mos.	No	Yes	$500	Life, 70¢. Disability. (14-day retro.): $2.20 - 12 mos. $3.00 - 24 mos. $3.80 - 36 mos.	Jan. 14
Bank Commissioner	Industrial Finance Law: 18% per year. (Banks may be licensed under this law)	None	No	No	$3500	Life only. NAIC	
MASS. Commissioner of Banks	2½% to $200, 2% to $600, 1½% to $1000, ½% to $3000. Rate Fixing Board. (6% a year 12 months after maturity.)	None	Precomp.	Yes (by rule)	$3000	Life and Disability each 50¢ per $100 per year.	Jan. 7
	General Interest Law: 20% per year over $3000 except for certain home mortgage loans.	None		No	None (over $3000)		
	General disclosure law is almost a copy of Regulation Z. Granted FRB exemption.						
MICHIGAN Financial Institutions Bureau, Department of Commerce	2½% to $400, 1½% to $1500.	None	No	Yes	$1500	Life only, 60¢. NAIC	Jan. 14
	Compliance with Regulation Z satisfies consumer finance, sales finance, and home improvement law disclosure provisions.						

STATE AND SUPERVISOR	MAXIMUM RATE	MAXIMUM MATURITY	PRECOMP. ADD-ON DISCOUNT	C&A	LOAN SIZE LIMIT	CREDIT LIFE AND DISABILITY INSURANCE WHERE PERMITTED	DATE LEGISLATIVE CHANGES 1976 1977 1978
MINNESOTA Commissioner of Banks	2½% to $300, 1½% to $600, 1% to $1200 plus fee of $1 per $100. Indus. Loan Act: discount rates of 8% per year for 36 mos., 7½% to 42 mos., 7½% to 48 mos., 7% to 54 mos., 7% to 60 mos. plus fee of $1 per each $50 to $2000.	36½ mos. (by regulation) 60 mos.	Precomp. and fee Discount and fee	Yes Yes	$1200 10% of capital (10% on "marketable collateral".)	Life, 55¢. Disability $2.13 - 12 months $2.56 - 24 months $2.88 - 36 months NAIC (enjoined, existing rates may be charged)	Jan. 4
MISSISSIPPI State Comptroller of Banks	36% per year to $600, 33% to $1800, 24% to $4500, 12% over $4500.	None except 3 to 12 mos. to $99	Precomp.	Yes (by reg.)	None	Loans over $99 only. Life, $1. Disability (14-day retro.): $2.20 - 12 months $3.00 - 24 months $3.80 - 36 months (by regulation)	Jan. 6 Jan. 4
MISSOURI Commissioner of Finance	2.218% ($15 per $100 a year) to $500, 10% per year on balances over $500.	None	Precomp. No Def. Chg.	No	None	Life and Disability (14-day retro.)	Jan. 7 Jan. 3
MONTANA Department of Business Regulation	Add-on rate: $20 a year per $100 to $300, $16 to $500, $12 to $1000, and $10 to $7500. On loans of $90 or less $1 for each $5.	21 mos. to $300; 25 mos. over $300 to $1000; 37 mos. to $2500. None over $2500.	Add-on	No	$7,500	Life over $300, 75¢. Disability over $300 (14-day retro.): $2.20 - 12 mos. $3.00 - 24 mos. $3.80 - 36 mos. NAIC	Jan. 3
NEBRASKA Director of Banking	2½% to $300, 2% to $500, 1½% to $1000, 1% to $3000.	36 mos. except real estate security	Precomp.	Yes	$3000	Life, 64¢. Disability (14-day retro.): $2.00 - 12 months $2.70 - 24 months $3.40 - 36 months NAIC	Jan. 6 Jan. 5

Re Reg. Z and state disclosure compliance, see 1969 Missouri Attorney General Opinion No. 271.

General law requires disclosure of annual or monthly interest rate or annual add-on rate.

STATE AND SUPERVISOR	MAXIMUM RATE	MAXIMUM MATURITY	PRECOMP. ADD-ON DISCOUNT	C&A	LOAN SIZE LIMIT	CREDIT LIFE AND DISABILITY INSURANCE WHERE PERMITTED	DATE LAW EFFECTIVE 1976
NEVADA Superintendent of Banks	Add-on rates of 9% a year per $100 to $1000 and 8% to $2500. 17.74% per year on remainder of unpaid principal balance over $2500 to $10,000. Service charge of 1¢ per $1 on first $200 and ½¢ per $1 per month on next $200.	24½ mos. to $1000, 36½ mos. to $2500, 48½ mos. to $4000, 60½ mos. to $6000, 72½ mos. to $7500, 84½ mos. to $10,000.	Add-on Precomp.	Yes	$10,000	Life, 65¢. Disability (14-day retro.): $2.20 - 12 months $3.00 - 24 months $3.80 - 36 months NAIC	Jan.
NEW HAMPSHIRE Bank Commissioner	2% to $600, 1½% to $1500, 1½% on larger loans. (Rate drops to 6% a year 3 months after maturity.)	24 mos. to $600; 36 mos. to $1500; 48 mos. over $1500	No	Yes	$5000	Life, based on term: 47¢ - 12 mos. 89¢ - 24 mos. $1.29 - 36 mos. Disability (14-day retro.): $1.96 - 12 mos. $2.43 - 24 mos. $2.73 - 36 mos. NAIC	Jan.
	General law requires disclosure of "finance charges, expressed in dollars, rate of interest, or monthly rate of charge, or a combination thereof".						
NEW JERSEY Commissioner of Banking & Insurance	24% a year to $500, 22% to $1500, 18% to $2500.	36½ mos. to $1000, 48½ mos. to $2500. (by regulation)	No	Yes	$2500	Life, 44¢-64¢ depending on insurance volume. Disability (14-day retro.): $1.80 - 12 mos. $2.16 - 24 mos. $2.38 - 36 mos. NAIC	Jan. 13 Jan.
	Compliance with Regulation Z satisfies inconsistent disclosure provisions of laws noted herein.						

CONSUMER FINANCE AND RELATED LOAN LAWS

STATE AND SUPERVISOR	MAXIMUM RATE	MAXIMUM MATURITY	PRECOMP. ADD-ON DISCOUNT	C&A	LOAN SIZE LIMIT	CREDIT LIFE AND DISABILITY INSURANCE WHERE PERMITTED	DATE LEGISLATURE CONVENES 1976 1977	OTHER LAW
NEW MEXICO Commissioner of Banking	3% to $150, 2½% to $300, 1% to $2500; or 1½% on entire unpaid balance. (Rate drops to 10% a year one year after maturity, or entry of judgment, or 90 days after a bankruptcy adjudication followed by discharge or 90 days after borrower's death.	None	Precomp	Yes	$2500	Life, 65¢. Disability (14-day retro.): $2.35 - 12 months $3.25 - 24 months $4.15 - 36 months NAIC	Jan. ? Jan. 13 [illegible] Subject [illegible] years	[illegible] Installment Loans Law [illegible] Credit Cards [illegible] Financing Law
	Installment Loan Law. See opposite page.	None	Add-on	No	None			
	Regulation Z disclosure deemed compliance with sales finance disclosure provisions.							
NEW YORK Superintendent of Banks	2½% to $100, 2% to $300, 1½% to $900, 1% to $2500.	24½ mos. to $300, 36½ mos. to $1400, 48½ mos. to limit (by regulation)	Precomp	Yes	$2500	Life, 44¢-64¢ depending on insurance volume. Disability (14-day retro.): $2.00 - 12 months $2.40 - 24 months $2.65 - 36 months reduced 10, 15 or 20% when annual premiums are $7500 or more. NAIC	Jan. 7 Jan. 5 [illegible]	[illegible] Installment Loans Law [illegible] Banking Loan Law for Banks
	Regulatory laws noted herein require compliance with Regulation Z.							
NORTH CAROLINA Commissioner of Banks	3% to $300, 1½% to $1500. On loans of $95 or less, optional rate of $1 for each $5. (Rate drops to 6% per annum after maturity.)	25 mos. to $600, 37 mos. over $600	No	Yes	$1500	Life, level term permitted. Disability (14-day retro.): $2.35 - 12 months	Jan. [illegible]	[illegible] Installment Loans Law (sections of usury law) [illegible] Banking Loan and Credit Card [illegible] (sections of usury law) [illegible] Home Mortgage Loan Law [illegible] Financing Law
	Optional rate: Licensees who do not charge above rates may charge 15% a year "effective rate" ($10 per loan or $1 per payment min.) on loans to $5000.	60 mos.	Yes	Yes	$5000			
	"Motor vehicle" licensees: Add-on rate of $15 a year per $100 to $500, $11 to $1000, $9 to $1500; 16% a year simple interest on entire amount of loans beween $1500 and $5000.	48 mos.	See rate column	Yes	$5000			

CONSUMER FINANCE AND RELATED LOAN LAWS

STATE AND SUPERVISOR	MAXIMUM RATE	MAXIMUM MATURITY	PRECOMP. ADD-ON DISCOUNT	C&A	LOAN SIZE LIMIT	CREDIT LIFE AND DISABILITY INSURANCE WHERE PERMITTED	DATE LEGISLATURE CONVENES 1976 1977 1978	KIND OF LAW
NORTH DAKOTA Department of Banking and Financial Institutions	2½% to $250, 2% to $500, 1½% to $750, 1½% to $1000. Consumer Finance Act: 18% per year over $1000 to $2500. Revolving loans permitted.	24½ mos. None	Precomp No	No No	$1000 $2500	Life, 75¢. Disability (14-day retro.): $2.61 - 12 months $3.53 - 24 months $4.18 - 36 months NAIC	Jan. 4	Bank Consumer Loan Law Bank Credit Card Financing
OHIO Division of Securities in Dept. of Commerce	Add-on rate: $16 per year per $100 to $750, $11 to $1500, $9 to $3000, or equivalent simple interest rate. (eff. 2/20/76) Second Mortgage Act: $8 per $100 per year add-on plus "reasonable" service charge up to $200 or 5% of principal.	25½ mos. to $500, 37½ mos. to $1000, 49½ mos. over $1000 60 mos.	Add-on Add-on and fee	Yes No	$3000 $15,000	Life, 65¢-60¢. Disability (14-day retro.): $2.23 - 12 months $2.81 - 24 months $3.21 - 36 months Life, only.	Jan. 5 Jan. 3 Jan. 2	Bank Consumer Loan Law Bank Credit Card Financing Law Insurance Premium Financing Law
OKLAHOMA Administrator of Consumer Affairs	UCCC: 30% a year to $300, 21% to $1000, 15% to $25,000. When this combination yields less, maximum is 18% a year. Special rates for loans to $100. Revolving credit permitted. Regulation Z adopted by Consumer Affairs Commission under UCCC. Granted FRB exemption.	25 mos. to $300, 37 mos. to $1000, None over $1000.	Yes	No	None (Regulation applies up to $25,000)	Life, 85¢. Disability (14-day retro.): $2.20 - 12 months $3.00 - 24 months $3.80 - 36 months	Jan. 8 Jan. 4 Jan. 3	Uniform Consumer Credit Code
OREGON Superintendent of Banks	3% to $300, 1¾% to $1000, 1½% to $5000. Over $5000, 1½%. Regulation Z disclosure deemed compliance with sales finance disclosure provisions.	None	Precomp. (by rule)	Yes	None	Life, 60¢. Disability. (by regulation)	Jan. 10	Bank Consumer Loan Law Bank Credit Card Financing Insurance Premium Financing Law

CONSUMER FINANCE AND RELATED LOAN LAWS

STATE AND SUPERVISOR	MAXIMUM RATE	MAXIMUM MATURITY	PRECOMP. ADD-ON DISCOUNT	C&A	LOAN SIZE LIMIT	CREDIT LIFE AND DISABILITY INSURANCE WHERE PERMITTED	DATE LEGISLATURE CONVENES 1976 1977 1978	KIND OF LAW
PENNSYLVANIA Secretary of Banking	3% to $150, 2% to $300, 1% to $600. (Rate drops to 6% a year 24 months after date of loan.)	24 mos.	No	Yes	$600	Consumer Finance Act: Life only, 60¢.	Jan. 6 - Jan. 4 Jan. 3	Consumer & Sales Finance Loan Law
	Consumer Discount Company Act: 9½% per annum discount for 36 months, 6% for remaining period, plus max. fee of $15 ($1 for each $50 or fraction); 1½% per month for default or deferment. 2% per month for revolving accounts.	48½ mos.	Discount and fee	No	$3500	Discount Act: Life, 50¢ if over $600 or more than 24 months; other loans, 60¢. Disability (14-day retro.): $2.13 - 12 mos. $2.71 - 24 mos. $3.11 - 36 mos. NAIC		
PUERTO RICO Secretary of Treasury	20¢ a year per $1 to $300, 7¢ to $600 add-on.	None	Add-on	Yes	$600	No	Jan. 12 Jan. 10 Jan. 9	Small
RHODE ISLAND Director of Business Regulation	Rate on entire balance: 3% on loans to $300, 2½% on loans between $300 and $800, and 2% on larger loans.	25 mos. to $1000; 37 mos. over $1000	No	Yes	$2500	Life, 50¢. Disability (14-day retro.): $2.49 - 12 months $2.96 - 24 months $3.51 - 36 months NAIC	Jan. 8 Jan. 4 Jan. 3	Loan and Investment Company Law
	General Interest Law: 21% per annum (interest and expenses).	None		No	None			Usury Home Mortgage Loan Law Educational Loans General Lending Law

STATE AND SUPERVISOR	MAXIMUM RATE	MAXIMUM MATURITY	PRECOMP. ADD-ON DISCOUNT	C&A	LOAN SIZE LIMIT	CREDIT LIFE AND DISABILITY INSURANCE WHERE PERMITTED	DATE LEGISLATURE CONVENES 1976 1977 1978	END OF LAW
SOUTH CAROLINA State Board of Bank Control	Add-on rate: $20 a year per $100 to $100, $18 to $300, $9 to $1000; $7 on larger loans. Fee: not exceeding 6% or $12 to $1000; and 5% or $200 on larger loans; limited on refinancing. Special rate for loans to $150.	24½ mos. to $1000, 36½ mos. to $1500, 48½ mos. to $2000, 60½ mos. to $7500.	Add-on and fee	Yes	$7500	Life, 60¢. Disability ($100 or more-3-day retro.): $1.65 per year per $5 monthly benefit.	Jan. 13 Jan. 11 Jan. 9	Installment Loan Law Revolving Loan and Credit Law Insurance Premium Financing Law
SOUTH DAKOTA Dept. of Banking and Finance	2½% to $300, 2% to $600, 1½% to $1200, 1% to $2500. $2 min. charge in certain cases. (Rate drops to 8% per annum six months after maturity.)	24½ mos. to $1000; 36½ mos. over $1000	Precomp	No	$2500	Over $100, Life, 75¢. Disability (14-day retro.): $2.20 - 12 mos. $3.00 - 24 mos. $3.80 - 36 mos. NAIC	Jan. 6 Jan. 18 Jan. 3	Installment Loan Law Bank Revolving Loan and Credit Card Financing
	Superintendent of Banking authorized to "administer and enforce" Reg. Z.							
TENNESSEE Commissioner of Insurance and Banking	Industrial Loan Act: 7½% per annum discount plus fee of 4% or $2 to $20, 50¢ per $5 to $75, and $7.50 for larger loans, and monthly fee of $1.50 to $300 and $1 for larger loans.	36 mos.	Discount and fee	No	10% of net worth	Life, 65¢. Disability (14-day retro.): $2.39 - 12 mos. $3.16 - 24 mos. $3.69 - 36 mos.	Feb. 22	Bank Consumer Loan Law
	Compliance with Reg. Z deemed compliance with all state disclosure requirements.							
TEXAS Consumer Credit Commissioner	Add-on rates: $18 a year per $100 to $300, $8 to $2500. Special rates for loans to $100. Revolving credit permitted.	37 mos. to $1500, 43 mos. over $1500	Add-on	No	$2500	Over $100. Life 58¢ plus 50¢ fee. Disability: (14-day retro.): Coverage to $700: $2.25 - 12 months $3.00 - 24 months $3.80 - 36 months Coverage over $700: $1.95 - 12 months $2.60 - 24 months $3.30 - 36 months NAIC	Jan. 11	Savings & Loan Assn. & Credit Unions Home Mortgage Loan Law
	Consumer Credit Code, Ch. 4: $8 per year add-on. Revolving credit permitted.	None	Add-on	No	None			

CONSUMER FINANCE AND RELATED LOAN LAWS

STATE AND SUPERVISOR	MAXIMUM RATE	MAXIMUM MATURITY	PRECOMP. ADD-ON DISCOUNT	C&A	LOAN SIZE LIMIT	CREDIT LIFE AND DISABILITY INSURANCE WHERE PERMITTED	DATE LEGISLATURE CONVENES 1976 / 1977 / 1978	KIND OF LAW
UTAH Commissioner of Financial Institutions	UCCC: 36% a year to $390, 21% to $1300, 15% to $32,500. When this combination yields less, maximum is 18% a year. Revolving credit permitted.	25 mos. to $390, 37 mos. to $1300. None over $1300.	Yes	No	None (Regulation applies up to $32,500)	Life, 75¢. Disability (14-day retro.): $2.20 - 12 months $3.00 - 24 months $3.80 - 36 months NAIC.	Jan. 12 / Jan. 10 / Jan. 9 Subjects limited to even years.	Uniform Consumer Credit Code
	Regulation Z adopted "by reference" by Regulation No. 1 under UCCC.							
VERMONT Commissioner of Banking and Insurance	Add-on: $14 per $100 per year.	36¾ mos.	Add-on	Yes	$1500	Life only, 44¢-70¢ depending on insurance volume. NAIC.	Jan. 5	Installment Loan Law (section of usury law)
								Bank Credit Cards
VIRGINIA Commissioner of Banking (Delegated by State Corporation Commission)	2½% to $500, 1½% to $1500; or add-on rate, $17 a year per $100 to $500, $13 to $1000, $11 to $1500. (Rate drops to 6% a year 6 months after maturity, or after judgment, or 90 days after borrower's death or bankruptcy.) Rates and ceiling set by Commission.	21 mos. to $600, 31 mos. to $1000, 43 mos. to $1500	Add-on	Yes	$1500	Life, 78¢. Disability. NAIC	Jan. 14 / Jan. 12 / Jan. 11	Industrial Loan Companies Act.
								Bank Consumer Loan Law (section of usury law)
								Revolving Loan Law
								Home Mortgage Loan Law
								Insurance Premium Financing Law
WASHINGTON Supervisor of Banking	3% to $300, 1½% to $500, 1% to $1000. $1 per month min.	25½ mos.	Precomp	Yes	$1000	Consumer Finance Act: Life only. 60¢.	Jan. 10	Industrial Loan Act
	Industrial Loan Act: 10% per annum discount plus 2% fee ($2 min. fee) and 50¢ per month.	24 mos.	Discount and fee	Yes	2% of Capital and Surplus	Industrial Loan Act: Life, 60¢. Disability (14-day retro.): $2.20 - 12 months $3.00 - 24 months $3.80 - 36 months NAIC		General Interest Law
								Insurance Premium Financing Law

CONSUMER FINANCE AND RELATED LOAN LAWS

STATE AND SUPERVISOR	MAXIMUM RATE	MAXIMUM MATURITY	PRECOMP. ADD-ON DISCOUNT	C&A	LOAN SIZE LIMIT	CREDIT LIFE AND DISABILITY INSURANCE WHERE PERMITTED	DATE LEGISLATURE CONVENES 1976 1977 1978	KIND OF L...
WEST VIRGINIA Commissioner of Banking and Attorney General	36% per year to $200, 24% to $600, 18% to $1200. Revolving loans permitted (min. 50¢/mo.).	36½ mos.	Precomp.	Yes	$1200	Life, 65¢. Disability (14-day retro): $1.85 - 12 months $2.60 - 24 months $3.05 - 36 months	Jan. 14 Jan. 12 Jan. 11	Installment Loan Law (section of usury law) Industrial Loan Company Law Home Mortgage Loan La Bank Consum Loan Law Revolving Loans
WISCONSIN State Banking Department	Discount Loan Law, Sec. 138.09: 9½% per year discount on first $1000, 8% to $3000 up to 36 months or simple interest equivalent of discount rates; 18% per year on entire unpaid balance. Revolving credit permitted.	24½ mos. to $700, 36½ mos. to $3000. None over $3000.	Discount Precomp.	No	None	Life, 60¢. Disability (14-day retro.): $2.23 - 12 months $2.81 - 24 months $3.21 - 36 months	Jan. 13 Jan. 11 Jan. 17	Wisconsin Consumer Act Insurance Premium Financing
	Consumer Act requires Reg. Z and other disclosures. No penalties allowed if comply with Administrator's rules or interpretations.							
WYOMING State Examiner	UCCC: 36% per year to $300, 21% to $1000, 15% to $25,000. When this combination yields less, maximum is 18% per year. Revolving credit rate is 18% per year.	25 mos. to $300, 37 mos. to $1000. None over $1000.	Yes	No	None (Regulation applies up to $25,000)	Life, 60¢. Disability (14-day retro.): $2.20 - 12 months $3.00 - 24 months $3.80 - 36 months NAIC	Jan. 13 Jan. 11 Jan. 9	Uniform Consumer Credit Code
	UCCC requires same disclosures as Regulation Z. Granted FRB exemption.							

LAW OFFICES OF
FAULKNER, BANFIELD, DOOGAN & HOLMES
SUITE 201, 311 FRANKLIN STREET
JUNEAU, ALASKA 99801

TEL. 586-2210
AREA CODE 907

HERBERT L. FAULKNER (1882-1972)
NORMAN C. BANFIELD
FRANK M. DOOGAN
MICHAEL M. HOLMES
RANDALL J. WEDDLE
WILLIAM B. ROZELL

JAN VAN DORT
LAWRENCE T. FEENEY
CHARLES N. DRENNAN
PATRICK E. MURPHY
TOM BATCHELOR

March 18, 1977

Representative Joseph McKinnon
Alaska State House of Representatives
Pouch V
State Capitol Building
Juneau, Alaska 99811

Dear Mr. McKinnon:

Attached to this letter is the information which you requested from Kirk Henry relating to multiple loans at our meeting last Friday, March 11, 1977.

Jan Van Dort

JVD:md
enclosure
cc: Terry Gardiner
Richard Urion

HOUSEHOLD FINANCE CORPORATION

Analysis of Multiple Loans in Alaska A/O 3/16/77

	No. of Customers	1 Other	2 Other	3 Other	4 Other
Fairbanks	939	233	47	1	1
Anchorage 1	814	157	34	0	1
Anchorage 2	658	136	23	4	0
Mt. View	1,197	309	64	9	1
Total	3,608	602	168	14	3

(given over telephone by Kirk Henry 3/16/77)

LAW OFFICES OF
FAULKNER, BANFIELD, DOOGAN & HOLMES
SUITE 201, 311 FRANKLIN STREET
JUNEAU, ALASKA 99801

TEL. 586-2210
AREA CODE 907

HERBERT L. FAULKNER (1882-1972)
NORMAN C. BANFIELD
MICHAEL M. HOLMES
RANDALL J. WEDDLE
WILLIAM B. ROZELL
LAWRENCE T. FEENEY

JAN VAN DORT
CHARLES N. DRENNAN
TOM BATCHELOR

F. M. DOOGAN
OF COUNSEL

March 24, 1977

File HB 388

Representative Joseph McKinnon
Chairman, House Commerce Committee
Pouch V
State Capitol Building
Juneau, Alaska 99811

Re: Increasing small loan limits from $3500 to $5000

Dear Representative McKinnon:

I am enclosing a copy of a letter which I had recently received from Pacific Finance which shows that 40% of their customers have more than one loan with finance companies. Obviously, increasing the small loan limit in the manner we discussed would be of substantial benefit to these persons.

Jan Van Dort

JVD:md
enclosure
cc: Terry Gardiner
Rick Urion

421 Fourth Avenue Fairbanks, Alaska 99701
(907) 456-7729

A Service of
Transamerica Corporation

Pacific Finance Loans

MAR 23 1977

F. B. D. G. & H.

3-21-77

Jan Van Dort
Room # 201
311 Franklin Street
Juneau, Alaska

Mr. Van Dort,

I have been instructed to furnish you with the following information concerning the number of our customers who are open, (have existing loan), with another finance company.

168 customers are open with one other finance company.
61 customers are open with two other finance companys.
5 customers are open with three other finance companys.

That is a total of 234 of my customers that are open with one or more finance companys, or 40% of my total loan customers.

Sincerely,

Richard L. Mason

Richard L. Mason, Manager

cc; Sig Anderson, District Manager

LAW OFFICES OF
FAULKNER, BANFIELD, DOOGAN & HOLMES
SUITE 201, 311 FRANKLIN STREET
JUNEAU, ALASKA 99801

TEL. 586-2210
AREA CODE 907

HERBERT L. FAULKNER (1882-1972)
NORMAN C. BANFIELD
FRANK M. DOOGAN
MICHAEL M. HOLMES
RANDALL J. WEDDLE
WILLIAM B. ROZELL

JAN VAN DORT
LAWRENCE T. FEENEY
CHARLES N. DRENNAN
PATRICK E. MURPHY
TOM BATCHELOR

March 30, 1977

Representative Joseph McKinnon
Chairman, House Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 388

Dear Representative McKinnon:

I am enclosing a copy of a letter which I recently received from D. D. Wesselink and a chart showing the percentages of personal loan receivables. The letter and chart are self-explanatory.

Yours very truly,

J. Van Dort

Jan Van Dort

JVD:db
Enclosures

cc: Representative Richard Urion
H. Kirk Henry

HOUSEHOLD FINANCE
Corporation
AND SUBSIDIARY COMPANIES

Prudential Plaza • Chicago, Illinois 60601

March 22, 1977

Mr. Jon Van Dort
Room 201
311 Franklin Street
Juneau, Alaska 99801

Dear Mr. Van Dort:

Mr. H. K. Henry asked me to send you the attached table which shows the shares of the personal loan market held by various lenders in the states of Alaska, Idaho, Oregon, and Washington. I believe the table is self-explanatory and the footnotes explain the sources of the data.

It is interesting to note the consumer finance companies' share of the market is directly related to the loan law in the state. In Alaska, where the Small Loan Law has a relatively low $1,500 ceiling, consumer finance companies have the smallest share of the market. The relatively small market share in Washington can also be explained in terms of restrictive ceilings for the Small Loan Act and restrictive maturities for the Industrial Loan Act.

I hope you find this information useful. If I can be of any additional service, do not hesitate to contact me.

Sincerely yours,

D. D. Wesselink
Assistant Director of Research

bjf

cc: H. K. Henry

PERSONAL LOAN RECEIVABLES

Gross Amounts in Thousands of Dollars

	Consumer Loan Companies[1]		Commercial Banks and Mutual Savings Banks[2]		Credit Unions[3]		Total
	Receivables	% of Total	Receivables	% of Total	Receivables	% of Total	Receivables
Alaska	$10,727	5.1%	$15,245	7.3%	$183,111	87.6%	$209,083
Idaho	72,392	26.9	57,951	21.6	138,346	51.5	268,689
Oregon	151,213[4]	24.0	117,237	18.6	362,317	57.4	630,767
Washington	162,384[5]	13.6	348,005	29.2	681,922	57.2	1,192,311
Totals, 4 States	$396,716		$538,438		$1,365,696		$2,300,850

(1) As of 12-31-75 for Idaho, Oregon, and Washington, 12-31-74 for Alaska.

(2) Instalment loans to individuals for personal expenditures as of 12-31-75. From FDIC 1975 Report of Income.

(3) As of 12-31-75. From CUNA Yearbook 1976.

(4) Net Amount.

(5) Includes $103,920,000 Small Loan receivables, $58,464,000 Industrial Loan receivables.

Douglas Bisbee
Beneficial Finance

BENEFITS OF HB 668

1. For the Consumer:

   A. Increases loan ceiling from $1500 to $5000, making more cash available for many purposes.

   B. Increased ceiling eliminates need for 2 loans at high rate and creates interest savings for customer.

   C. Eliminates default charges

   D. Provides joint spouse ins coverage

   E. Closer regulatory control and penalties for violation

2. For the Industry:

   A. Provides alternate accounting method (actuarial) allowing evenly collected charges at stated APR throughout loan.

   B. Increases brackets to produce higher yield to offset dilution of income caused by higher ceiling and loss of default charges.

   C. Provides for alternate rate (18%) to stimulate competition and future use with revolving credit.

ALASKA

Analysis of Rate Application to Amortized Principal Balances
Equal Monthly Principal Reduction
Under Rate Structure
of
3% Per Month on First $400; 2% to $800; 1% above (365 day year)

Dilution of Rate

$1500 loan amortized @ $125 per month for 12 Months*

Principal Reduction	0 to $400	$400 to $800	over $800
$ 1500	$ 400	$ 400	$ 700
1375	400	400	575
1250	400	400	450
1125	400	400	325
1000	400	400	200
875	400	400	75
750	400	350	-
625	400	225	-
500	400	100	-
375	375	-	-
250	250	-	-
125	125	-	-
Action of the Principal	$ 9750	$ 4350	$ 3075	2325
% to Total Principal		44.62%	31.54%	23.84%
		x	x	x
Rate in Bracket		3.04167%	2.02778%	1.01389%
		=	=	=
Monthly Rate Earned in Bracket		1.36% plus	.64% plus	.24% = 2.24%*

$5000 loan amortized @ $416.67 per month for 12 Months*

Principal Reduction	0 to $400	$400 to $800	over $800
$ 5000.00	$ 400.00	$ 400.00	$ 4200.00
4583.33	400.00	400.00	3783.33
4166.67	400.00	400.00	3366.67
3750.00	400.00	400.00	2950.00
3333.33	400.00	400.00	2533.33
2916.67	400.00	400.00	2116.67
2500.00	400.00	400.00	1700.00
2083.33	400.00	400.00	1283.33
1666.67	400.00	400.00	866.67
1250.00	400.00	400.00	450.00
833.33	400.00	400.00	33.33
416.67	400.00	16.67	-
Action of the Principal	$32,500.00	$ 4800.00	$ 4416.67	$23,283.33
% to Total Principal		14.77%	13.59%	71.64%
		x	x	x
Rate in Bracket		3.04167%	2.02778%	1.01389%
		=	=	=
Monthly Rate Earned in Bracket		.45% plus	.27% plus	.73% = 1.45%

ALASKA

Analysis of Rate Application to Amortized Principal Balances
Equal Monthly Principal Reduction
Under Rate Structure
of
3% Per Month on First $400; 2% to $800; 1% above (365 day year)

Dilution of Rate at 1/3 Contract Length

Same Example Paid in Full @ 1/3 Contract Term*

	$ 1500	$ 400	$ 400	$ 700
	1375	400	400	575
	1250	400	400	450
	1125	400	400	325
Action of the Principal	$ 5250	$ 1600	$ 1600	$ 2050
% to Total Principal		30.48%	30.48%	39.04%
		x	x	x
Rate in Bracket		3.04167%	2.02778%	1.01389%
		=	=	=
Monthly Rate Earned In Bracket		.93% plus	.62% plus	.39% = 1.94%

* Same result would apply to other maturities within .01% per month

** For validation of premise see Flat Payment Amortized Schedules previously supplied.

Same Example Paid in Full @ 1/3 Contract Term*

	$ 5000.00	$ 400.00	$ 400.00	$ 4200.00
	4583.33	400.00	400.00	3783.33
	4166.67	400.00	400.00	3366.67
	3750.00	400.00	400.00	2950.00
Action of the Principal	$17,500.00	$ 1600.00	$ 1600.00	$14,300.00
% to Total Principal		9.14%	9.14%	81.72%
		x	x	x
Rate in Bracket		3.04167%	2.02778%	1.01389%
		=	=	=
Monthly Rate Earned in Bracket		.28% plus	.18% plus	.83% = 1.29%

* Same result would apply to other maturities within .01% per month.

** For validation of premise see Flat Payment Amortized Schedules previously supplied.

3.04107 % - 2.02778 % - 1.01389 % @ $ 400 / $ 800 365 DAY BASIS — ALASKA ANN. Mo.

Yield 64 Graduated Rs

% PER MONTH

PAYMENT (24 1405) - 80.99

TOTAL OF PAYMENTS - 1943.76

TOTAL OF CHARGE - 443.76

CASH ADVANCED - 1500.00

~~AMORTIZED APR - 2.25 26.99~~

REGULATION Z APR - 2.19 26.24 Annual % Rate

~~78THS APR - 2.17 26.10~~

~~CONSTANT RATIO APR 2.37 28.40~~

INST MO.	1ST BRKT 3	2ND BRKT 2	3RD BRKT 1	4TH BRKT	MONTHLY INT	MONTHLY YIELD	CUMULATIVE INT	CUMULATIVE YIELD	PRINC REDUC	UNPAID MONTHLY	BALANCE CUM	
										1500.00	1500.00	
1	12.17	8.11	7.10	0.0	27.38	1.83	27.38	1.83	53.61	1446.39	2946.39	21.9
2	12.17	8.11	6.55	0.0	26.83	1.85	54.21	1.84	54.16	1392.23	4338.62	
3	12.17	8.11	6.00	0.0	26.28	1.89	80.49	1.86	54.71	1337.52	5676.14	
4	12.17	8.11	5.45	0.0	25.73	1.92	106.22	1.87	55.26	1282.26	6958.40	
5	12.17	8.11	4.89	0.0	25.17	1.96	131.39	1.89	55.82	1226.44	8184.84	
6	12.17	8.11	4.32	0.0	24.60	2.01	155.99	1.91	56.39	1170.05	9354.89	
7	12.17	8.11	3.75	0.0	24.03	2.05	180.02	1.92	56.96	1113.09	10467.98	
8	12.17	8.11	3.17	0.0	23.45	2.11	203.47	1.94	57.54	1055.55	11523.53	23.2
9	12.17	8.11	2.59	0.0	22.87	2.17	226.34	1.96	58.12	997.43	12520.96	
10	12.17	8.11	2.00	0.0	22.28	2.23	248.62	1.99	58.71	938.72	13459.68	
11	12.17	8.11	1.41	0.0	21.69	2.31	270.31	2.01	59.30	879.42	14339.10	
12	12.17	8.11	0.81	0.0	21.09	2.40	291.40	2.03	59.90	819.52	15158.62	24.
13	12.17	8.11	0.20	0.0	20.48	2.50	311.88	2.06	60.51	759.01	15917.63	M
14	12.17	7.28	0.0	0.0	19.45	2.56	331.33	2.08	61.54	697.47	16615.10	
15	12.17	6.03	0.0	0.0	18.20	2.61	349.53	2.10	62.79	634.68	17249.78	
16	12.17	4.76	0.0	0.0	16.93	2.67	366.46	2.12	64.06	570.62	17820.40	
17	12.17	3.46	0.0	0.0	15.63	2.74	382.09	2.14	65.36	505.26	18325.66	
18	12.17	2.13	0.0	0.0	14.30	2.83	396.39	2.16	66.69	438.57	18764.23	
19	12.17	0.78	0.0	0.0	12.95	2.95	409.34	2.18	68.04	370.53	19134.76	
20	11.27	0.0	0.0	0.0	11.27	3.04	420.61	2.20	69.72	300.81	19435.57	
21	9.15	0.0	0.0	0.0	9.15	3.04	429.76	2.21	71.84	228.97	19664.54	
22	6.96	0.0	0.0	0.0	6.96	3.04	436.72	2.22	74.03	154.94	19819.48	
23	4.71	0.0	0.0	0.0	4.71	3.04	441.43	2.23	76.28	78.66	19898.14	
24	2.39	0.0	0.0	0.0	2.39	3.04	443.82	2.23	78.60	0.06	19898.20	26.7

ALASKA

HFC CHARGE-OFF FOR 1975, 1976, 1977

YEAR	CHARGE-OFF		COLLECTIONS		NET	
	$	% of Loan Account	$	% of Loan Account	$	% of Loan Account
1975	79,445	2.43	12,880	.39	66,565	2.04
1976	82,578	2.45	17,759	.53	64,819	1.92
1977	72,309	1.99	14,497	.40	57,812	1.59

BENEFICIAL FINANCE CHARGE-OFF FOR 1975, 1976, 1977

YEAR	CHARGE-OFF		COLLECTIONS		NET	
	$	% of Loan Account	$	% of Loan Account	$	% of Loan Account
1975	114,877	1.80	29,735	.48	85,142	1.32
1976	151,344	2.28	21,705	.36	129,639	1.92
1977	201,560	2.64	20,602	.24	180,958	2.40

The proposed brackets in HB 668 of (3%-2%-1%) ($500 - $1,000) yield exactly 18% at $4,696 on a four year contract and $4,548 on a five year contract.

My file on HB668

THE LEGISLATURE OF THE STATE OF ALASKA
NINTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 668
Title Relating to the Small Loans Act
Requested by _____ Date 1/20/78

II. FISCAL DETAIL
Agency Affected Commerce & Economic Development
Program Category Affected Public Protection
Budget Request Unit(s) Affected Banking & Securities

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400 COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify)	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

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

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE 1/24/78 PREPARED BY Julius J. Brecht, Director
AGENCY Banking & Securities, Small Loans & Corporations

File
HB668

HOUSEHOLD FINANCE
Corporation
AND SUBSIDIARY COMPANIES

February 23, 1978

Honorable Joseph H. McKinnon, Chairman
House Commerce Committee
State Capitol
Juneau, AK 99801

Dear Representative McKinnon:

On February 8, 1978, you gave me the opportunity to testify before the House Commerce Committee on House Bill 668 which amends the Alaska Small Loans Act.

The intent of Section 9 of this Bill is to authorize licensees under this act to offer joint spouse credit life insurance and credit accident and health (disability) insurance.

The language currently being used is not sufficient. Line 7 on page 5 allows insurance on the "borrower or the spouse co-maker." This could easily be interpreted to allow only single life insurance on either the borrower or the spouse, which is the current situation. To avoid confusion, I am attaching the language which was recommended originally to permit this coverage to be offered.

At the same hearing, I recommended that Section 14, which imposes a new civil penalty, be amended to require an administrative hearing. Therefore, I recommend that after the word "shall" on line 25, on page 6 that the following phrase be inserted: "after a hearing at the direction of the Commissioner". Stylistic drafting tradition may require reference to be made to Alaska's Administrative Procedures Act.

I am still interested in seeing that a thirty and one-half month maximum maturity be retained for loans between $500 and $1000 in section 8 on page 5. I am also enclosing a summary of the 1977-78 HFC Customer Survey for your files or the use of your staff. The original questionnaires which were used in this survey will be made available for copying if you determine this is necessary.

Thank you again for the opportunity to testify before your Committee.

Sincerely,

HOUSEHOLD FINANCE CORPORATION

H. Kirk Henry
Division Public Relations Manager
8570 S.E. 73rd Street
Mercer Island, WA 98040

HKH:mis
Encl.
cc: J. Brecht
T. Findley
D. Bisbee

(2) premiums actually paid out for insurance on [the life or] pledged property of the borrower[;] or credit insurance on the life of one or more borrowers, or credit accident and health insurance to provide indemnity in the event of disability for payments becoming due on the indebtedness.

ALASKA CUSTOMER QUESTIONNAIRE

The maximum loan size permitted by the Alaska Small Loans Law is $1,500.

1) Should the Legislature be asked to increase the maximum loan size?

Yes 85% No 15%

Answer the following question ONLY if you answered "YES".

2) The Legislature should increase the maximum permitted loan to:

a) $2,500 - 37% b) $5,000 - 31% c) $7,500 - 4% d) $10,000 9%

e) Unlimited - 19%

(Circle one)

3) I am: a) Married b) Unmarried c) Separated (Circle one)

4) Currently HFC is permitted to offer credit life insurance. This pays the balance and the unearned interest to the estate in the event of the death of the primary wage earner.

If you were to borrow money in the future, would you want the total amount of your loan covered by credit life insurance if either spouse died?

Yes 91% No 9%

5) Credit accident and health (disability) insurance makes the loan payments when the primary wage earner is ill, disabled or under the care of a doctor (usually in excess of 14 days).

If you were to borrow money in the future, would you want your payments covered by credit accident and health (disability) insurance?

a) Yes 84% b) No 16% c) Military* 0

* This coverage is not available to members of the military because income continues when ill or disabled.

Thank you for taking the time to respond. You may use the reverse side of this page to make any comments on HFC, our services or our personnel.

1977-78 HFC CUSTOMER SURVEY

In 1977, H.B. 388 which would increase the maximum loan size under the Alaska Small Loans Act from $1,500 to $5,000 passed the House of Representatives 34 - 5 and "carried over" to the 1978 legislative session in the Senate Commerce Committee.

During the Fall of 1977 a member of the Alaska Senate made the comment that "none of his constituents had ever asked to have the maximum loan size of the Alaska Small Loans Act increased."

The Household Finance Corporation Public Relations Department decided to devise a customer questionnaire to be mailed to a random sample of HFC customers to determine if they thought the $1,500 maximum loan size should be increased.

Following discussions with the HFC Research Department, it was decided to sample on a random basis 15% of our customers who borrowed amounts between $1,000 and $1,500. As of September 30, 1977 seventy-three percent (73%) of our Alaska accounts were originally made for amounts in this range.

Branch office instructions were prepared which directed each manager to select "every other ledger card" until ninety-four (94) ledger cards had been selected in each branch. The managers were then directed to address an envelope and a letter of explanation to each customer, include the pre-addressed and stamped envelope and mail the contents to each randomly selected customer.

The branch offices completed this assignment during December, 1977 and the first week of January, 1978.

Questionnaires received on or before January 20, 1978 were included in the results of the survey.

376 Questionnaires were mailed (4 x 94)

107 Questionnaires were returned

28.4% The Response Rate

The customer "explanatory letter" described the survey and indicated that HFC was making a random sample survey of Alaska customers who borrow more than $1,000 to determine their opinions about the maximum size loan we are permitted to offer, as well as two questions about credit insurance.

MAXIMUM LOAN SIZE QUESTIONS

The "Alaska Customer Questionnaire" stated that "The maximum loan size permitted by the Alaska Small Loans Act is $1,500." Question one said "Should the Legislature be asked to increase the maximum loan size?" Ninety-one (91) customers or eighty-five percent (85%) replied that the maximum loan size should be increased. Sixteen (16) customers or fifteen percent (15%) said the maximum loan size should remain the same. Customers who indicated that the maximum loan size should be increased in question one were asked to select a new maximum loan size from the following: Twenty-five hundred dollars ($2,500); Five thousand dollars ($5,000); Seventy-five hundred dollars ($7,500); Ten thousand dollars ($10,000); and "Unlimited."

Thirty-four (34) or thirty-seven percent (37%) indicated that twenty-five hundred dollars ($2,500) should be the maximum loan size.

Twenty-eight (28) or thirty-one percent (31%) indicated the ceiling should be $5,000.

Four (4) customers or 4% responded that the maximum loan size should be $7,500. Eight (8) customers or nine percent (9%) selected $10,000 and seventeen (17) customers or nineteen percent (19%) indicated the maximum loan size should be "Unlimited."

Therefore fifty-seven (57) customers or sixty-three percent(63%) of those who indicated the maximum loan size should be increased selected amounts equal to or in excess of the $5,000 ceiling in HB 388.

CREDIT INSURANCE QUESTIONS

The Alaska Small Loans Act currently authorizes credit life insurance to be offered on an optional basis. This coverage pays the balance of the loan to the estate in the event of the death of the primary wage earner.

Questions three and four were designed to determine what percentage of our eligible customers would be interested in having their loans paid by "joint spouse credit life insurance" if either spouse died.

Seventy-four (74) of the eighty-one (81) married customers or ninety-one percent (91%) responded that in the future they "wanted their loan covered by credit life insurance if either spouse died."

Credit accident and health insurance, sometimes called disability insurance, makes the loan payments when the primary wage earner is ill, disabled or under the care of a physician. Currently licensees under the Alaska Small Loans Act are not permitted to offer this coverage.

This insurance is not available to members of the military or federal government employees because their income continues when they are ill or disabled.

Therefore question five described the coverage and asked our customers if they "were to borrow money in the future" would they want their payments covered by credit accident and health (disability) insurance?

Sixty-eight (68) or eighty-four percent (84%) of the eighty-one (81) eligible customers responded "yes". Thirteen (13) or sixteen percent (16%) responded "no". Twenty-four (24) members of the military or governmental employees were not eligible for the coverage. Two (2) customers did not respond to the question.

ALASKA CUSTOMER QUESTIONNAIRE

The maximum loan size permitted by the Alaska Small Loans Law is $1,500.

1) Should the Legislature be asked to increase the maximum loan size?

Yes 85% No 15%

Answer the following question ONLY if you answered "YES".

2) The Legislature should increase the maximum permitted loan to:

a) $2,500 - 37% b) $5,000 - 31% c) $7,500 - 4% d) $10,000 9%

e) Unlimited - 19%

(Circle one)

3) I am: a) Married b) Unmarried c) Separated (Circle one)

4) Currently HFC is permitted to offer credit life insurance. This pays the balance and the unearned interest to the estate in the event of the death of the primary wage earner.

If you were to borrow money in the future, would you want the total amount of your loan covered by credit life insurance if either spouse died?

Yes 91% No 9%

5) Credit accident and health (disability) insurance makes the loan payments when the primary wage earner is ill, disabled or under the care of a doctor (usually in excess of 14 days).

If you were to borrow money in the future, would you want your payments covered by credit accident and health (disability) insurance?

a) Yes 84% b) No 16% c) Military* 0

* This coverage is not available to members of the military because income continues when ill or disabled.

Thank you for taking the time to respond. You may use the reverse side of this page to make any comments on HFC, our services or our personnel.

MAXIMUM CONSUMER LOAN LAW LIMITS

The maximum limits of consumer loans made by consumer finance companies in 49 states and Canada are shown below. The State of Arkansas has no regulatory laws. With the national trend toward larger consumer loans, there are 38 states that permit consumer finance companies to lend the consumer $5,000 or more:

Maximum Loan	Number	States
$ 1,200	1	West Virginia
1,500	4	Alaska, Michigan, Vermont, Virginia
2,500	3	Florida, New York, Washington*
3,000	2	Georgia, Nebraska
3,500	1	North Dakota
5,000	4	Arizona, Connecticut, Pennsylvania, South Dakota
6,000	1	Maryland
7,500	3	Kentucky, Montana, North Carolina
10,000	2	Illinois, Nevada
15,000	1	Ohio
Loan amount limited by net worth	4	Delaware, Iowa, Minnesota, Tennessee
No maximum loan size or $25,000 or over	23	Alabama, California, Colorado, Hawaii, Idaho, Indiana, Kansas, Louisiana, Maine, Massachusetts, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, Oklahoma, Oregon, Rhode Island, South Carolina, Texas, Utah, Wisconsin, Wyoming, Canada

*Also has an Industrial Loan Law with a maximum loan size limited by a percentage of net worth which is chartered on a limited basis.

11/1/77

PERSONAL LOAN RECEIVABLES

(Gross Amounts in Thousands of Dollars)

	Consumer Loan Companies(1)		Commercial Banks and Mutual Savings Banks(3)		Credit Unions(4)		Total
	Receivables	% of Total	Receivables	% of Total	Receivables	% of Total	Receivables
Alaska	$10,331	3.4%	$15,955	5.2%	$279,612.	91.4%	$305,898
Idaho	94,193(2)	30.0	57,678	18.3	162,510	51.7	314,381
Oregon	171,902(5)	21.8	142,211	18.0	474,814	60.2	788,927
Washington	171,512(6)	11.3	463,560	30.5	887,085	58.2	1,522,157
Totals, 4 States	$447,938		$679,404		$1,804,021		$2,931,363

(1) As of 12-31-76 for Alaska, Oregon and Washington.

(2) Idaho receivables represent average from June, 1976 data and June, 1977 data due to fiscal year changing from December to June as of December 1975.

(3) Instalment loans to individuals for personal expenditures as of 12-31-76. From FDIC 1976 Report of Income.

(4) As of 12-31-76. From CUNA yearbook 1977.

(5) Net amount.

(6) Includes $94,796,000 Small Loan receivables, $76,716,000 Industrial Loan receivables.

HOUSEHOLD FINANCE
Corporation
Consumer Finance Division
Prudential Plaza • Chicago, Illinois 60601

December 2, 1977

Mr. Thomas W. Findley
Room 201
311 Franklin Street
Juneau, Alaska 99801

Dear Mr. Findley:

Upon Mr. H. K. Henry's request I am sending you the attached table which shows the shares of the personal loan market held by various lenders in the states of Alaska, Idaho, Oregon and Washington.

The attached table verifies that the consumer finance companies' share of the market is directly related to the loan law in the state. In the state of Alaska which has a loan ceiling of $1,500, one of the lowest loan ceiling of the states mentioned, it can be seen that the consumer finance companies only account for 3.4% of the total receivables. The relatively small market share in Washington can also be explained in terms of the restrictive Small Loan ceiling of $1,000 which was in effect until September, 1977 and the restrictive maturities for the Industrial Loan Act.

If you have any questions pertaining to this data, or would be interested in any additional information, please do not hesitate to contact me.

Sincerely yours,

M. A. Mayr

M. A. Mayr
Research Analyst

mlc

cc: H. K. Henry
D. R. Buckey

Household Finance Company's 1977 Alaska Net Operating Income was 9.91% of loan account before interest costs and Federal Income taxes.

This was down 1.09% of loan account from 1976.

Salaries increased .54% of loan account.
Branch expenses increased 1.15% of loan account.

Year end average loan account was	$4,466,000
	X .0991
Net Operating Income (Before interest & taxes)	$ 442,581
Interest cost was 6% of loan account .06 x $4,466,00 =	$ 267,960
Before Federal Income Tax	$ 174,621

$174,621 ÷ 2 = $87,310 = Net income after Federal Income Tax

87,310 ÷ 4,466,000 = 1.95% return on cash assets.

H.B. 668

$500 — 2 years = $ 4.80 inc or $ .20 per mo

$1,000 — 2 years = $25.44 inc or $2.12 per mo.

$1,000 3 years $41.76 or $1.16 per mo

$ 1,500 2 years $44.88 $1.87 per mo

$ 1,500 3 years $71.28 $1.98 per mo

Comparison of Present Rate + Proposed Rate

1 VII 3/7/75

SAVINGS THROUGH LOAN CONSOLIDATIONS

(Based on loans with 24-month maturities.)

PRESENT LAW	HOUSE BILL 668	POTENTIAL SAVINGS
One loan of $1,500 and One loan of $500	One $2,000 loan	$ 75.36
Two loans of $1,000	One $2,000 loan	$125.76
One loan of $1,500 and One loan of $1,000	One $2,500 loan	$141.12
Two loans of $1,000 and one loan of $500	One $2,500 loan	$254.64

Other loan combinations, or 12-month, 36-month or longer maturities on larger amounts could be cited, but the savings to consumers would be comparable to the illustrations shown above.

It is evident that higher prices that consumers now pay for all other goods and services can no longer be satisfied through loans which are limited to $1,500 or less. Recent expansion of our economy, coupled with our improved standard of living, means that consumer finance borrowers, when properly qualified, need and can financially handle loans in larger amounts.

SAVINGS THROUGH LOAN CONSOLIDATIONS

(Based on loans with 36-month maturities.)

PRESENT LAW	HOUSE BILL 668	POTENTIAL SAVINGS
One loan of $1,500 and One loan of $500	One $2,000 loan	$121.68
Two loans of $1,000	One $2,000 loan	$200.52
One loan of $1,500 and One loan of $1,000	One $2,500 loan	$222.12
Two loans of $1,000 and One loan of $500	One $2,500 loan	$405.72
Two loans of $1,500	One $3,000 loan	$249.12

Other loan combinations or longer maturities on larger amounts could be cited, but the savings to consumers would be comparable to the illustrations shown above.

TESTIMONY OF JULIUS J. BRECHT, DIRECTOR
DIVISION OF BANKING & SECURITIES
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

BEFORE

HOUSE COMMERCE COMMITTEE

March 6, 1978

Good morning, Mr. Chairman and members of the committee. My name is Julius J. Brecht, and I am Director of Banking & Securities within the Department of Commerce & Economic Development. I want to thank you for allowing me to appear before you to offer comment on HB668.

As you know this bill makes several changes to the Alaska Small Loans Act, (ASLA), AS06.20. The ASLA was enacted in 1955 and has not been substantially changed since that time. I concur with the sponsor of the bill that a comprehensive review of ASLA is in order. The bill before this committee is the result of such a review coordinated between the sponsor and the Division of Banking and Securities.

The bill has been reveiwed by representatives of the three finance corporations who presently operate offices in the State. Those three corporations are in support of all of the provisions of the bill.

I have had the following documents distributed to the members of the committee for their information: (1) a memorandum dated December 27, 1977 giving a section-by-section analysis of the bill; (2) a fiscal note prepared by myself dated January 24, 1978; and (3) a copy of my written testimony on this bill.

The major provisions of the bill include: (1) raising the loan cap from $1500 to $5000; (2) raising the liquid assets requirements from $10,000 to $20,000; (3) raising the license bond requirement from $1000 to $5000; (4) changing the interest steps on loans from $400 to $500, $800 to $1000, and $1500 to $5000, respectively; (5) providing for an alternative interest rate of up to 18% per annum; (6) providing an exception from the prohibition against compounding to allow refinancing of loans; (7) providing for the computation of interest on a loan based on an actuarial method; (8) providing limitations on the period of a loan based on the amount of the loan; (9) providing for credit-life insurance and disability insurance on the life of the spouse-co-maker on a loan as well as the borrower; and (10) providing civil remedies for violation of the loan cap and interest provisions of ASLA.

In summary, the provisions of this bill are in my opinion long overdue. Licensees under ASLA provide a service in which Alaskan borrowers have demonstrated continued interest. The provisions of this bill will ensure continued service in the best interest of the Alaskan borrower and will provide a realistic interest charge structure in light of the rise in the cost-of-living since the matter was last considered in 1969.

I therefore support the provisions of this bill and stand ready to answer any questions that the committee may have concerning this legislation.

02-0018 (Rev. 10/76)

STATE of ALASKA

MEMORANDUM

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

TO: Members of the Committee

DATE: December 27, 1977

FILE NO:

TELEPHONE NO:

SUBJECT: HB 668
Small Loans Act Bill
Narrative Supplement

FROM: Julius J. Brecht
Director
Div. of Banking & Securities

The proposed legislation before you provides for a number of changes to the Alaska Small Loans Act (ASLA), AS 06.20. The ASLA became law in 1955 and has not been substantially changed since that time.

The major provisions of the bill include: 1) raising the loan cap from $1,500 to $5,000; 2) raising the liquid assets requirement from $10,000 to $20,000; 3) raising the licensee bond requirement from $1,000 to $5,000; 4) changing the interest steps on loans from $400 to $500 and $800 to $1,000; 5) providing for an alternate interest rate of up to 18% per annum; 6) an exception from the prohibition against compounding; 7) provision for computation of interest for a loan on an actuarial basis; 8) limitations on the period of a loan; 9) provision for credit-life on the spouse-co-maker of a loan; and 10) civil remedies for violation of the loan cap and interest provisions of ASLA.

The following is a section-by-section review of the provisions of the bill.

Section 1. (AS 06.20.010). This section and sections 3,6,7,10, 11, 12 and 13 of the bill raise the statutory maximum amount of a loan from $1,500 to $5,000. The loan cap was last amended in 1969 from $1,000 to $1,500. Since that time, the cost-of-living and the cost-of-business have increased, and the trend in other states has been to increase the loan cap. At the present time only six states have a loan limit of $1,500 or less, i.e., Washington, West Virginia, Virginia, Vermont, Michigan and Alaska. Sixteen states allow loans of up to $5,000. It is therefore, my view that the ASLA loan cap should be raised to $5,000 provided the other provisions of this bill are also enacted.

Sections 2 and 4 (AS 06.20.040, 06.20.060). These sections raise the minimum liquid assets requirement for establishing a small loan office from $10,000 to $20,000. The increase is proposed in light of the increase of the loan cap (see section 1) and inflation.

Section 3. (AS 06.20.050). This section raises the minimum bonding of a licensee from $1,000 to $5,000. The increase is proposed in light of the increase of the loan cap and inflation.

Section 4. (AS 06.20.060). See section 2.

Section 5. (AS 06.20.090(b)). This section requires a licensee to notify the department in advance of any change of location of his place of business. This change is necessary to ensure that the department is aware of the location of all licensees at all times. For example, bank examiners must know the location in order to conduct surprise examinations.

Section 6. (AS 06.20.200(a)). See section 1.

Section 7. (AS 06.20.230). In (a) of this section changes are made to the interest steps from $400 (3%/month for loan amounts less than $400), $800 (2%/month for amounts between $400 and 800) and $1,500 (1%/month for loan amounts from $800 to $1,500) to $500, $1,000, and $5,000, respectively. In (b) of this section, provision is made for an alternate interest rate of 1-1/2%/month on the unpaid principal balance. Representatives of the finance corporations doing business in this State have submitted data to me that documents the need for these changes in order that the corporations may cover the increased expense of doing business in Alaska. There are at present 13 licensees doing business in Alaska with total loans outstanding as of December 31, 1976 of over $12 million. There is then a demonstrated public interest in this form of financial service. It is my view, based on the information that the finance corporations have submitted to me, that the proposed changes of this section are necessary to ensure their continued service to the public.

Section 8. (AS 06.20.250). In (a) of this section, provision is expressly made for refinancing of loans and inclusion of interest due on the previous loan in the principal amount payable under the refinanced loan. However, the past due interest may be included in the principal for only up to 60 days prior to the refinancing. This procedure allows the licensee to aid a customer who has gotten behind in his payments. At the same time the amendment makes clear that the refinancing is not compounding of interest in violation of the section.

Under (b) of this section, a licensee may compute interest on a loan on an interest bearing or actuarial basis at the rates specified in AS 06.20.230 (see section 7 of the bill) or at a single annual interest rate that would earn the same finance charge as that computed using section 230 assuming the debt is paid according to the terms of the loan agreement. The provisions for computing interest by an acturial method are based on the law of the State of Oregon. The method allows the licensee to collect that amount of interest which he discloses in the loan agreement on a day-to-day basis. If a customer takes the full time period provided in the loan agreement to pay back the loan, then the amount of interest collected is the same under the present law and the proposed actuarial method. This provision is proposed to allow the licensee to collect the interest that he discloses in the loan agreement. Only three states out of a total of about 47 having small loan acts provide for the calculation of interest on the unpaid balance of a small loan and require that the interest charged be graduated in a manner similar to that set out in section 230 (Florida, Michigan and Alaska). Approximately 44 allow for the actuarial method.

Under (c) of this section, limits are placed on the maximum time period of a loan as a function of the amount of the loan. For example, a loan of $2,000 may not be paid out over a time period greater than 48-1/2 months. The proposal follows the law of the State of California. This provision is proposed to ensure that a customer does not end up with a loan agreement which forces him to make monthly payments consisting of large interest payments and very little payment on the principal.

Section 9. (AS 06.20.260). The present law provides that a licensee may offer credit-life insurance or credit-disability insurance on the co-maker-spouse of the borrower. The present law only provides for such insurance on the borrower. Similar credit life laws are found in at least 35 other states.

Section 10. (AS 06.20.280). See section 1.

Section 11. (AS 06.20.290). See section 1.

Section 12. (AS 06.20.300). See section 1.

Section 13. (AS 06.20.310). See section 1.

Section 14. (AS 06.20.320). Under (a) of this section, penalties are provided against a licensee or lender who makes a contract or loan, the making of which or collection of which causes a violation of (1) the limitations on the maximum interest that may be charged (AS 06.20.230), (2) the prohibition against splitting up loans (AS 06.20.240), (3) computation and payment of interest (AS 06.20.250), (4) the limitation on charges in addition to interest (AS 06.20.260), (5) the provision for maximum charges under the chapter (AS 06.20.280), (6) the provision for the purchase of wages for $1,000 or less (AS 06.20.290), (7) the provision for maximum charges by a non-licensee on loans (AS 06.20.300), or (8) makes a loan in violation of the interest rates specified in the chapter (AS 06.20.310). The penalties are to require the licensee or lender to reimburse that portion of the interest and charges in excess of that provided under the chapter, or in the case of repeated violations, to adjust the contract or loan agreement interest rate down to the contract rate specified in AS 45.45.010(a). That rate is 6% per annum. This provision is proposed to give the Commissioner authority to ensure compliance with the provisions of the chapter in the best interest of the borrowing public. Under (b) of this section, the misdemeanor penalty is extended to cover violations of AS 06.20.280 and 290. Section 280 prohibits a licensee from charging a rate of interest in excess of that provided by the chapter, and further prohibits a licensee from assessing other charges not expressly provided under the chapter. It also prohibits a licensee from allowing a loan balance to exceed the limit of $5,000 provided by the chapter. Section 290 makes clear that certain types of compensation to the licensee shall be considered interest for purposes of AS 06.20.230. This provision is proposed to extend the misdemeanor penalty to violations which are otherwise covered or referred to in the other sections cited in (b) of this section, e.g. AS 06.20.230 and 260.

Section 15. (AS 06.20.900). This section defines the terms "commissioner" and "department" as used in the chapter.

Section 16. (AS 06.20.260). This section repeals AS 06.20.260(a)(4) which allows a licensee to assess a default charge of up to $3.00 for each default on a loan payment in addition to the interest rate structure provided under AS 06.20.230. Alaska appears to be the only State in the union that has a statute providing for the calculating of interest on the unpaid balance and in addition providing interest for default charges. That is, the default charge is normally associated with a statute that provides for a pre-computation of the interest on a loan. In this context, when a borrower is late on a loan payment, the lender has no recourse other than through the assessment of a penalty, i.e., a default charge. However, if the statute provides for the calculation of interest based on the unpaid balance, and a borrower is late on a payment, then the loan continues to accrue interest for the lender. There is no need for a default charge.

In summary then, the Small Loans Act Amendment Bill before you makes a number of changes to ASLA in the best interest of the Alaskan borrower and provides a realistic interest charge structure in light of the rise in the cost-of-living since the matter was last considered in 1969.

I stand ready to answer any questions that you may have concerning this legislation.

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 668
Title Relating to the Small Loans Act
Requested by _____ Date 1/20/78

II. FISCAL DETAIL
Agency Affected Commerce & Economic Development
Program Category Affected Public Protection
Budget Request Unit(s) Affected Banking & Securities

EXPENDITURES (Thousands of Dollars)

		FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100	PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200	TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300	CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400	COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500	EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600	LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700	GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
	TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify)	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

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

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE 1/24/78 PREPARED BY Julius J. Brecht, Director
AGENCY Banking & Securities, Small Loans & Corporations
PHONE 465-2521

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/76)

HB

703

02-001B Rev. 10/76

STATE of ALASKA

MEMORANDUM

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

TO: Members of the Committee

DATE: December 28, 1977

FILE NO:

TELEPHONE NO:

FROM: Julius J. Brecht, Director
Division of Banking & Securities

SUBJECT: HB 703
Savings Association Act
Amendment Bill Narrative
Supplement

The proposed savings association legislation before you provides a number of changes to the Alaska Savings Association Act (ASAA) AS 06.30. The present law was enacted in 1961 and has undergone little change since that time. A large portion of the provisions of this bill are then of a "housekeeping" nature and are proposed to streamline the administration of ASAA, i.e., to provide clear, unambiguous procedures and guidelines by which state-chartered savings associations will be regulated in this state.

The major provisions of the bill include (1) detailed association chartering procedures; (2) branch office application procedures; (3) establishment of stock savings associations; (4) procedures for conversion from a mutual savings association to a stock association; (5) fixed interest savings accounts; and (6) updating of the loan provisions.

The following is a section-by-section review of the provisions of the bill.

Section 1. (AS 06.30.015). This section adds two new paragraphs to the powers of the commissioner. The proposed powers are to require an association to establish a reserve or charge off an asset classified as a loss in an examination report. In addition, an association would be required to charge off all debts more than 6 months past due unless they are adequately secured and the association is in the process of collection. These provisions are similar to AS 06.05.015(10) and (11) of the Alaska Banking Code and are necessary to ensure the sound condition of an association.

Section 2. (AS 06.30.025). This section repeals reference to inconsistencies with the FSLIC requirements. Obviously the commissioner cannot adopt regulations that would require or allow state-chartered savings associations to engage in activity that would jeopardize their insurance of accounts through FSLIC. That is, these associations must under AS 06.30.365 have such insurance as a pre condition to conducting a savings association business in this state. The deleted language is unnecessary and undermines the authority of the state to regulate state-chartered institutions.

Section 3. (AS 06.30.030). These amendments are proposed to set a policy that the commissioner shall administer the chapter in the best interest of a sound and competitive banking and savings system.

Section 4. (AS 06.30.035). The existing law relating to the incorporation and certification of savings associations is burdensome and difficult to administer. It in effect is a one step process, i.e., once the commissioner approves the petition for incorporation, the association may conduct a savings business. The procedure is as a practical matter more complex. What is needed is a two step process: 1) approval of incorporation by the department which allows the incorporators to organize the association; and 2) issuance of certificate of authority by the department, which allows the association to carry on a savings business. The amendments to AS 06.30.035, 45, and 60 provide a clear, reasonable, and workable procedure for the establishment of a state-chartered savings association in this state. This procedure is similar to that which was adopted by the Oregon Legislature in 1975 (ORS 722.014-028).

Under this section, applicants would submit their articles of incorporation with their application for incorporation of the association. The application would be investigated by the department, and if approved, filed and a certificate of incorporation issued. Under (e) of the section, the applicant would pay all reasonable investigation expenses incurred by the department, thereby relieving the Alaska taxpayer of an unfair burden. If the department does not act within 30 days, the application is considered accepted, and the time period of up to one year for approval or denial of the application by the department begins.

Under this section, the organizers may form a mutual savings association (capital base is the deposits of the association) or a stock association (capital base is the stock of the association sold to the public).

Section 5. (AS 06.30.040). The present law sets out an example of acceptable bylaws for an association. However, the contents are somewhat dated, e.g., reference to savings books, and unnecessary, e.g., requiring the commissioner's approval of amendments. Bylaws are the rules of conduct of business of a board of directors and should be determined by them within certain limits. However, requiring prior approval of the commissioner involves the department too much in the management of the association. The proposed amendment outlines the minimum requirements for bylaws acceptable under the law. It is my view as a matter of legal drafting that detail such as is presently found in Section 40 of the chapter is unnecessary and inappropriate in a statute. The approach proposed in this amendment is more workable for the incorporators and follows that of the 1975 recodification of the Oregon Savings Association Act (ORS 722.022).

Section 6. (AS 06.30.045). This section sets out the procedure for an association to obtain a certificate of authority to conduct a savings association business. The department would issue the certificate if in the case of a stock association the capital and surplus required by the department have been fully paid in cash in the amount required by the department and a list of stockholders is submitted to the department. Similarly, for a mutual association, the initial subscription of the individual subscribers would have to be fully paid in cash in an amount required by the department. In addition, for either type of

association, a copy of the adopted by-laws would have to be filed with the department and insurance of accounts through FSLIC would have to be obtained, and the association would have to have complied with all requirements of the chapter. The procedure is similar to that which was adopted by the Oregon Legislature in 1975 (ORS 722.036).

Section 7. (AS 06.30.060(b)). This section updates the minimum capital requirements for establishing a mutual association. The provisions are similar to that of the Federal Home Loan Bank Board which reviews applications for FSLIC insurance.

Section 8. (AS 06.30.060(e)). This section is amended to provide explicit guidelines for the establishment of an expense fund in the context of a mutual savings association and a stock association. The amount of the expense fund is left to be specified by the department. The expense fund is to be used by the organizers to pay the expenses of organizing the association. The size of the fund reasonably necessary to cover the expenses can be established by regulation.

Section 9. **(AS 06.30.060(f))**. This section provides that contributions made to the expense fund may be paid back after the additions required by AS 06.30.445 to the surplus and reserve account have been made. Section 445 is being amended under Section 24 of this bill and provides that at the close of each calendar year after the payment of all expenses, an association must before declaring a dividend, transfer to a general reserve or surplus account an amount equal to at least 10% of its net earnings until it equals at least 12% of the savings liability. The change to section 60(f) is proposed to base the payment to the contributors on the association's turning a profit and not on an arbitrary amount as provided in the present law. The 1975 recodification of the Oregon Savings Association Act follows this approach (ORS 722.044(2)).

Section 10. (AS 06.30.060(h)). This section provides the minimum capitalization required to establish a stock association. The requirements are the same as for a mutual association. Minimum savings subscriptions are also required.

Section 11. (AS 06.30.090). This section repeals any reference to a change of location of an association. The procedure for changing a location, or establishing a new branch or agency is set out in AS 06.30.335 (see section 21 of the bill). The section also repeals AS 06.30.090(4) and (5) because they are unnecessary. Paragraph (3) requires the commissioner to issue a certificate of approval. The working relationship between the department and FHLBB need not be reenforced by statute for the reasons stated in Section 2 of this analysis.

Section 12. (AS 06.30.105). This section sets out clear and reasonable guidelines for proxy solicitations in the context of mutual savings associations and stock associations.

Section 13. (AS 06.30.110). This section is amended to make clear that the prohibition against charges specified in the section does not prevent payment being made for the purchase of stock in a stock association.

Section 14. (AS 06.30.115). This section is amended to provide specifically that a stockholder of a stock association has a right to inspect the general books and records of the association except for the loan and savings records of other members.

Section 15. (AS 06.30.140). The maximum number of directors allowed is changed from 15 to 25. Present Alaska corporation law (AS 10.05) and the banking code (AS 06.05) provide for the higher maximum. The higher maximum gives the association more flexibility in establishing a board of directors or adding to it.

Section 16. (AS 06.30.145). (a) of this section amends the minimum required savings account for a director of a mutual savings association to $1,000. This number is thought to be more realistic in light of the Alaska cost-of-living and cost-of-doing-business. Under (b) of this section, a similar requirement is established for stock associations. Under (c) of the section, each director must take an oath that he will perform the duties of his office and that the oath will be filed with the department each year. A similar provision is found in the Alaska Banking Code (AS 06.05.435).

Section 17. (AS 06.30.270). This section is amended to apply explicitly to mutual savings associations and to stock associations. A stock association must maintain a record of stocks and stock transfers.

Section 18. (AS 06.30.280). This section expands and/or makes specific the powers of an association, e.g., paragraphs 6, 7, 8, 9, 10, 13, 14, 16 and 18 are new.

Paragraph 6 makes clear that an association may declare and pay dividends.

Paragraph 7 allows an association to sell mortgage loans to federal agencies or other savings associations. Under this provision, state-chartered associations would be allowed to package their loans. This process has become the practice in the savings association industry throughout the country in the time since ASAA was enacted. It allows an association subject to heavy loan demand to sell mortgages to another institution whose loan demand is not as heavy. The purchaser-association turns a profit in the transaction through the rate differential (the rate of interest on an older loan may be lower than the rate at the time of the transaction) or a discount on the loan purchased.

Paragraph 8 allows an association to collect and protect their collateral position on a loan. For example, on a second mortgage, the association might take a second deed of trust on a house and/or an assignment of a savings account to secure a loan. This practice is followed in the savings industry.

Paragraph 9 allows an association to offset debts against a member's savings account. This practice is generally followed in the bank and savings association industry.

Paragraph 10 allows an association to obtain insurance on mortgages in the best interest of the borrower. For example, an association may wish to ensure the differential between the regulatory maximum specified in AS 06.30.500 and the amount desired by the borrower, as allowed by that section. In this way, the down payment on a home or mobile home loan may be reduced.

Paragraph 13 is a general statement to make clear that an association may make loans in accordance with the chapter.

Paragraph 14 allows an association to deposit its surplus cash in a bank account thus enabling the association to write checks to customers against their accounts. The paragraph also allows an association to deposit its securities with a correspondent bank for safekeeping. This practice is generally followed in the savings association business.

Paragraph 16 allows an association to act as an escrow agent. It is the practice in Alaska for a bank to act as an escrow agent on loans made through the bank. This provision is particularly useful to savings associations whose primary business is that of providing home loans.

Paragraph 18 allows an association to dissolve and wind up its business. The provision is an obvious necessity when an association wishes to wind up its operation voluntarily.

Sections (4), (9), (10), and (11) of the present law, AS 06.30.280 are not reenacted for several reasons.

Paragraph 4 allows a savings association to take property by gifts, devise, or bequest and is inapplicable and inappropriate to a savings association business.

Paragraph 9 allows an association to insure its accounts in accordance with provisions of the chapter and is unnecessary in that insurance of accounts is mandated by AS 06.30.365.

Paragraph 10 allows an association to qualify as a member of the FHLB and is unnecessary, i.e., an association becomes a member of the FHLB by obtaining insurance of accounts through FSLIC as required by AS 06.30.365.

Paragraph 11 allows an association to become a member of a trade association which promotes savings associations. Membership in a trade association should be a business decision of the board of directors and is, in my view, not a power of the association and is an inappropriate subject of a statute.

Section 19. (AS 06.30.295). The present law prohibits the payment by an association of a fixed rate of interest on accounts. When the Alaska law was enacted in 1961, a fixed rate of interest was not generally allowed on the federal level or in other states. However, in the 17 years since that time, the savings association industry has changed dramatically. Fixed rate of interest and/or fixed term accounts are now allowed for federally-chartered savings associations. These types of accounts must be allowed for state-chartered institutions if they are to compete effectively with their federal counterparts for the Alaskan depositor. This section provides that authority.

Section 20. (AS 06.30.330). The present law in effect provides that federally chartered savings associations may engage in any activity allowed for a state-chartered association. The proper place to provide for powers of federal associations is in the federal law not in the state law. The state law cannot be enforced on behalf of federal institutions and is misplaced in being made a part of the ASAA. The proposal is then to repeal the second sentence in this section referring to federal associations.

Section 21. (AS 06.30.335). This section sets out a clear procedure for the establishment of a branch or agency of an association or for the change of location of the home office, branch, or agency of an association. This section generally follows the applicable proposed application procedures for a new association found in Sections 4 and 6 of this bill. The cost of the investigation incurred by the department would be paid by the association. The rights conferred by a certificate of authority must be exercised by the association within one year from the date of issuance or else the certificate lapses.

Section 22. (AS 06.30.375). Two minor drafting changes are made in this section. The first allows a depositor to open a savings account with the equivalent of cash, e.g., a check, as well as cash. The second change gives the depositor the right to "receive" not "participate" in dividends.

Section 23. (AS 06.30.430). This section requires an association to submit upon request of the department a report of inactive savings accounts. The section also allows for a service charge for reasonable costs incurred in maintaining inactive accounts. Similar provisions are found in the Alaska Banking Code, AS 06.05.

Section 24. (AS 06.30.445). This amendment reorganizes the present statement of section 445 and deletes unnecessary "grandfather" language. The section sets out reasonable reserve and surplus account requirements. Under (c) of the section provision is made to include any federal insurance reserve fund of an association in the general reserve account specified in (a) of the section. The reserve calculations must not include allocations for specific losses (see section 9 of this analysis for further discussion of the reserve requirements). The intent of the section is to provide a strong capital base established in a timely manner.

Section 25. (AS 06.30.455). This section is amended to provide expressly for fixed rate of interest savings accounts in conformance with the proposed amendment to AS 06.30.295 (see section 19 of this bill). The thrust of the amendment is to allow associations to pay dividends as prescribed by FHLBB.

Section 26. (AS 06.30.495). The amendment to section 495 allows an association to make a loan secured by a savings account whether or not the borrower is the owner of the account provided the association obtains a lien or pledge of the savings account as a security for the loan. For example, a father may wish to pledge his savings account against a loan made by the association to the father's son or other family member. Within the narrow limits of lending on savings accounts, this service is provided in a number of states.

Section 27. (AS 06.30.500). This section amends the present restrictive limitations on home loans that have become out-of-date. The proposed language in paragraphs 1-4 and 7 follows a number of provisions of the Alaska Mutual Savings Bank Act at AS 06.15.250. The language was used because of the similarity between savings associations and savings banks and the apparent success of the savings bank law. The limits on investment in mortgages executed to a given mortgagor is set at $75,000 or 2% of the assets of the association whichever is greater. The limitation for multiple family dwellings is set at $100,000 or 2% of assets whichever is greater. Paragraphs 5 and 6 are from the present ASAA law. These amendments will allow state-chartered savings associations to compete effectively with other financial institutions.

Section 28. (AS 06.30.505(a)(1)). This section changes the maximum lending limitation from $45,000 to $75,000 to conform to the changes made to AS 06.30 500 (see section 27 of this analysis).

Section 29. (AS 06.30.505(c) and (d)). This section provides for loans on mobile homes within certain limitations which are similar to regulations of the FHLB which apply to federal and state-chartered associations.

Section 30. (AS 06.30.555). This section provides that an association may make or acquire a loan by a second lien on improved real estate under certain conditions. Similar provisions are contained in the Oregon Savings Association Act recodified in 1975 (ORS 722.322(3)).

Section 31. (AS 06.30.615). This section is amended to make clear that a stock association may invest an amount less than the sum of its capital stock and surplus as well as its undivided profits and reserve accounts in real estate including buildings and appurtenances as is reasonable for the transaction of its business. The present law is written in terms applying only to mutual savings associations.

Section 32. (AS 06.30.615(b)(7)). This section provides that an association may invest in stock of a wholly-owned subsidiary corporation which has as its purpose the ownership and management of the association's real property. Similar provisions are extended to banks under the Alaska Banking Code, AS 06.05.

Section 33. (AS 06.30.616). This section is new and provides that an association may invest in the capital stock of a service corporation, e.g., a computer processing center, organized under the corporation laws of Alaska under limited conditions. Furthermore, an association may invest in a service corporation whose activities consist of purchasing and disposing of loans and making certain investments authorized by state and federal law. Under (b) of the

section a further restriction is placed on the amount that an association may invest in service corporations, i.e., not more than 5% of its total assets. Similar provisions are contained in the Oregon Savings Association Act recodified in 1975 (ORS 722.004(25) and 308).

Section 34. (AS 06.30.625). This section sets a deadline for the submission of annual reports by the association to the department. The section also requires that the report must be signed by at least three directors in addition to the president and treasurer. This provision will ensure responsible participation by the directors and follows similar language found in the Alaska Banking Code.

Section 35. (AS 06.30.760). This amendment makes clear that section 760 applies to a mutual association converting to a federal association.

Section 36. (AS 06.30.775(a)). This amendment makes clear that section 775(a) applies to a federal association converting to a state-mutual association.

Section 37. (AS 06.30.776). This section is new and applies to the conversion of a state-chartered mutual association to a state-chartered stock association.

Section 38. (AS 06.30.836). This section is new and gives the department authority to dissolve an association formed for the purposes of doing a savings association business but which for some reason has not received its certificate of authority and which the department determines should not open for business. A similar provision is proposed for the Alaska Banking Code (Sec. 06.05.466 of SB 98).

Section 39. (AS 06.30.910(1)). This section is amended to make clear that the chapter applies to mutual and stock associations.

Section 40. (AS 06.30.910(3)). This section makes clear that the commissioner or his designee shall administer ASAA. A similar provision may be found in the Alaska Securities Act at AS 45.55.130(1).

Section 41. (AS 06.30.910(5)). This section makes clear that the term 'dividend' may be applied in the context of a return on a savings account or a return on shares of stock. The term is used throughout the chapter and is defined by the context in which it is used in each case.

Section 42. (AS 06.30.910(11)). This section redefines the term "improved real property" in more succinct terms. It is based on the present definition in ASAA and uses language from the FHLB regulations (12 CFR 545.6-14(h)) and is similar to language found in the Alaska Banking Code (AS 06.05.207(f)).

Section 43. (AS 06.30.910(13)). This section redefines the term "member" to include a stockholder in a stock association. The definition is similar to that found in the regulations of FHLB (12 CFR 555.9).

Section 44. (AS 06.30.910(20)). The term "department" is defined.

Section 45. Several sections of chapter 30 are repealed.

(1) AS 06.30.050 sets out a filing procedure to be followed by the commissioner in processing petitions for incorporation. This section is replaced by the provisions of Sec. 06.30.035 (see section 4 of the bill).

(2) AS 06.30.055 establishes the period of corporate existence for an association. This section is replaced by the provisions of Sec. 06.30.035(1) (see section 4 of the bill).

(3) AS 06.30.340 deals with the handling of applications for branch offices. The section is replaced by the provisions of Sec. 05.30.335.(see section 21 of the bill).

(4) AS 06.30.345 deals with the handling of change of location applications. The section is replaced by the provisions of Sec. 06.30.335. (see section 21 of the bill).

(5) AS 06.30.350 deals with the revocation of a branch office approval. The section is replaced by the provisions of Sec. 06.30.335. (see section 21 of the bill).

(6) AS 06.30.435 and 490 provide for bonus plans, which were discarded by the industry sometime ago. The FHLB no longer provides for them in regulating federal savings associations.

(7) AS 06.30.830 states the obvious in reverse order, i.e., it says that state savings associations and their members must pay the same taxes as federal associations and their members. The provision has no place in state law. The taxation levied on state institutions will be set by state taxation law and is in no way dependent on how a federal institution is taxed by the Federal Government.

(8) AS 06.30.860 provides an exemption from the state's securities laws. This exemption is unnecessary and redundant. Under the Alaska Securities Act at AS 45.55.140(a)(3), a security issued by state or federal banks or savings associations representing an interest in, or debt of, or guaranteed by the association is exempt from registration under the Act. The appropriate place in the Alaska statutes to state an exemption from the Alaska Securities Act is in the Act itself under Title 45 not under the Banking and Financial Institutions Title (Title 6). No similar language is found in the Alaska Banking Code at AS 06.05.

(9) AS 06.30.885 provides that obligations to an association contracted prior to the date of enactment of ASAA are enforceable. The statute of limitations has long since run its course in the intervening 17 years. Furthermore, since the first state-chartered savings association application has only recently been approved, the section has no effect and should be repealed.

(10) AS 06.30.890 provides that the rights and duties matured, penalties incurred, and proceedings begun prior to the effective date of ASAA are not affected. The statute of limitations has long since run its course in the intervening 17 years. Furthermore, since the first state-chartered savings association application has only recently been approved, the section has no effect and should be repealed.

(11) AS 06.30.900 provides that this chapter is totally controlling on all aspects of savings associations. This drafting approach is to say the least short sighted in that the legislature may at a later time completely change a portion of the law in another chapter or title, e.g., require that security offerings of banks and associations be registered under the Alaska Securities Act, and not think to change AS 06.30.860. The newer pronouncement of the legislature should prevail, however, one does have the loose end of section 900. My recommendation is that section 900 be repealed as an unworkable and ineffective restraint on the legislature's prerogative to enact changes in statutes.

(12) AS 06.30.905 states that subsequent legislation shall not impliedly repeal provisions of the chapter. My recommendation is that this section be repealed for the reasons stated in discussing the repeal of AS 06.30.900.

In summary, the savings association bill before you is basically a housekeeping measure to aid in the better administration of ASAA and to provide state-chartered savings associations a fair chance to compete with their federal counterparts and other financial institutions for deposits in order to make home loans for Alaskans.

I urge the committee to consider thoughtfully the provisions of the bill. I stand ready to answer any questions that you may have concerning this legislation.

JJB/kfm 5/2

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS *POUCH D – JUNEAU 99811*

February 28, 1978

Honorable Joe McKinnon, Chairman
House Commerce Committee
Alaska Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. McKinnon:

Re: Comments on HB 703

During the course of the past two weeks several questions have been raised concerning various portions of HB 703. I thought it might be helpful to you if I briefly outlined my comments in these matters. The "sec." numbers below refer to the bill section numbers.

Sec. 7. The Federal Home Loan Bank Board has established minimum capitalization requirements in a three-tiered manner, a copy of which is attached. I have no objection to the proposal, from one or more of the member's of the committee, to replace the present two-tier language of the bill with the FHLBB's three-tiered system.

Sec. 15. One or more of the members of the committee questioned the need for the second to the last sentence of AS 06.30.140 found at lines 1-2 on page 15 of the bill. I have no objection to the repeal of that language. However, I suggest that language be inserted to provide for the filling of vacancies on a board between annual meetings, e.g., "If authorized by a vote of the members, vacancies on the board of directors may be filled by a simple majority vote of the remaining directors. [THE DIRECTORS MAY ELECT ALL DIRECTORS]." appointed ma and these persons so

Sec. 18. Under Sec. 06.30.280(12), the term "hypothecate" is used in addition to the term "pledge." The two terms have similar meanings, i.e., hypothecate means to pledge security but not to transfer possession, while pledge implies a transfer of possession.

Sec. 24. Some question has been raised as to the practicality of Sec. 06.30.445(a), i.e., that a savings association would find it difficult to meet the reserve requirements of the subsection. I suggest that the

08-H14LH

Oregon Savings Association Act provision for reserves be used in place of Sec. 445(a) and(c). A copy is attached for your consideration. It appears to be a workable formula and one with which the Oregon Supervisor of Savings Associations has had no trouble.

Sec. 27. The limitations in Sec. 06.30.500(1) on first mortgages found on lines 2-3 of page 24 of the bill were questioned by one or more of the members. The FHLBB regulations on this limitation were recently changed to $90,000 per unit for Alaska. I would suggest that the pertinent part of lines 2-5 read as follows: "or $90,000 on a single family dwelling or $90,000 per unit on a multiple family dwelling ... by regulation." This change should reflect the cost of housing in this State while at the same time provide a prudent guideline for State-chartered savings associations.

The use of the term "regular lending area" in restricting home mortgages under Sec. 06.30.500(5) was also questioned. I see no reason for this restriction and suggest that Sec. 500(5) be deleted. In this way, an association may make loans on property located in the State as provided under Sec. 500(3), which is a reasonable restriction to encourage home mortgage lending in the State.

Sec. 28. The term "regular lending area" is used in Sec. 06.30.505(a)(2). I suggest that Sec. 505(a)(2) be repealed for the reasons stated in the previous paragraph.

Sec. 29. The policy of savings associations making loans on inventory financing of mobile home dealers was questioned by a member of the committee. This sort of financing is provided by banks in this State. If the provision were deleted from Sec. 06.30.505(c) at lines 10-12 of page 26 of the bill, then prospective homeowners in smaller communities may suffer in that mobile homes may not be as readily available on a case by case basis as opposed to a retail sales outlet. The FHLBB allows such financing authority for federally-chartered savings associations.

The reference to Sec. 510 in Sec. 06.30.505 on line 14 of page 26 is correct and should not be changed to Sec. 505. Sec. 510 refers to loans insured through the United States or other political subdivisions and, therefore, should not be included in the restrictions set out in Sec. 505(d).

Sec. 37. The need for provision in State law for the conversion of mutual associations to stock associations was questioned by two witnesses who appeared before the committee on February 23, 1978. Both of those witnesses are associated with a federally-chartered mutual savings association doing business in the State. They further questioned the advisability of such a provision in that the FHLBB has grappled with the conversion issue for some time, without successful resolution, especially the possibility of windfalls to depositors, stockholders, and/or management. Several exhibits were introduced to support their allegations.

My simple response to the issues which were raised by these witnesses concerning conversion is that there is a need for the provision in State

law. More than 30 states have provided for stock savings associations and have not been intimidated by the alleged failure at the federal level to resolve the issue of conversion.

I use the word "alleged" because my discussions with officials of the FHLBB, both in the Seattle regional office and in Washington, D. C., as well as discussions with Mr. William Bergman, Executive Director of the National Association of State Savings & Loan Administrator's, and Frank Gailor, general counsel for NASS & LA, indicate that they believe that the FHLBB regulations have proven to be sound and have protected depositors, customers, and stockholders involved in conversions.

Congress provided for a period during which FHLBB could process applications from federally-chartered mutual associations to convert to federally-chartered stock associations. That law expired June 30, 1976. The FHLBB received upwards of 90 applications prior to that date and was not able to complete all of them before that date. The result has been a disagreement between Senator Proxmire of the Senate Banking Committee who maintains, based on a GAO audit that FHLBB no longer has authority to process the applications, and FHLBB which holds the contrary. This controversy is what is reported in the American Banker article of July 21, 1977. There has never been a controversy over the authority of the State to enact legislation to allow savings associations to convert from mutual to stock organizations. Furthermore, the article in the American Banker of August 12, 1977, reported by Kenneth Virch should be read in context. That is, Mr. Virch is associated with the Council of Mutual Savings Institutions, an organization whose primary purpose in the estimation of Mr. Gailor (see NASS & LA's testimony in support of HB 703 dated February 14, 1978) is to lobby against provisions for stock savings associations.

In summary, it is the considered opinion of a number of officials of FHLBB that the "experiment" to allow conversions of federal mutuals to federal stock associations was a success, that the benefits of converting to stock associations are obvious in that it injects additional capital into the association which can in turn be used to make more loans to prospective homeowners, that the regulations adopted by the FHLBB have proven adequate and that no evidence has been presented of cases where insiders or others have enjoyed windfalls due to conversions.

The two witnesses cautioned against provision in state law for conversions because the matter is extremely complex and should be studied, e.g., by the Alaska League of Savings and Loan Associations, before the Legislature acts. However, I would draw your attention to the proposed language of Sec. 06.30.776 which provides that the commissioner "may provide by regulation for the procedure to be followed in the conversion." Perhaps the word should be "shall" rather than "may." In any case, it is very likely that the department would look closely to the proven regulations which the FHLBB has already adopted in this area, i.e., 12 CFR 563.b, a copy of which was supplied to the committee by Mr. Eddie Turner. Those regulations would very likely have to be followed in a conversion anyway. Those regulations set out a reasonable procedure for conversion that has in fact

worked in 30 cases. See for example the "Notice of Special Meeting of Members, Proxy Statement and Plan of Conversion to a Federally Chartered Stock Association" for First Federal Savings & Loan of Fresno submitted by Mr. Turner.

The FHLBB regulation at 12CFR 563.b provides detailed guidelines for conversion. They include the requirement that the reserve account of the mutual must be made a separate portion of the net worth of the newly converted stock association and that upon liquidation of the stock association at some time in the future, the depositors of record on the date of conversion shall have priority to the extent of that net worth and receive a pro rata share of it.

For example, assume one has a $100 million mutual savings association with a reserve account of $5 million which is to be converted to a stock association. Assume further that $6 million in stock subscriptions are sold. The association is converted and has a net worth of $11 million. Assume it operates for one day, has no earnings and liquidates. The depositors at the date of conversion would get back pro rata portions of the $5 million and the stockholders would have priority on return of the balance of the net worth of the association, i.e., $6 million.

In this way there is no windfall to the stockholders of the stock association or to its management. Furthermore, purchase of shares in the new stock association is limited. That is, each depositor at the time of conversion is entitled to a pro rata right to purchase stock plus ten times that amount. Management is entitled to a similar purchase up to fifteen times their pro rata right. There has been no showing or evidence in the view of officials of FHLBB that these provisions have been abused. Furthermore, Mr. Douglas Faucette, Director of the Securities Division within the Office of General Counsel of FHLBB in Washington, D. C., stated to me that no accusations have been filed by FHLBB against any person pursuant to the 30 conversions that have been processed alleging windfall profits as a result of those conversions.

In addition to the federal regulations, the commissioner could look to such provisions as appear in the Oregon Savings Association Act at ORS 722.064, a copy of which is attached. They set out a procedure that supplements the FHLBB's regulations.

In summary, then, there is no reason for the Alaska Legislature to delay in providing for stock savings associations in this State. There is certainly no reason to delay in providing for conversion from a mutual to a stock association. The FHLBB experiment has shown the great amount of interest in conversion by federal associations and also that those conver-

sions can be accomplished without windfalls and in the best interest of the depositors, new stockholders, management, and old and new customers of the stock association.

A prime example of the potential gain to Alaskan homeowners is the experience of American Savings & Loan of Miami Beach, which went from $250 million to $500 million in assets within two years of conversion. This information was obtained from the Director of the Securities Division within the Office of General Counsel of FHLBB in Washington, D. C.

I would, therefore, urge you and the committee to consider thoughtfully the ramifications of not prividing for stock associations in this State and, furthermore, the possible stifling effect on the growth of the savings association industry in this State by not allowing for conversion of mutual associations to stock associations. I stand ready to discuss this bill further at your convenience.

Sincerely,

Julius J. Brecht
Director

Enclosures

JJB:lc4:15

Exhibit E
Schedule 1

Minimum Capital Requirements
Applicants for Insurance of Accounts

and

Permission to Organize a Federal S&LA

	Stock Applicant		Mutual Applicant
Population of Area 1/	Total Stock and Paid-in Surplus 2/	Amount of Withdrawable Savings 3/	Amount of Withdrawable Savings 4/
Under 25,000	$500,000 (100)	$250,000 (175)	$500,000 (350)
25,001 - 100,000	$1,000,000 (200)	$500,000 (350)	$1,000,000 (750)
Above 100,000	$2,000,000 (400)	$1,000,000 (700)	$2,000,000 (1,000)

This schedule is only a minimum and the Board may impose higher requirements to reflect likely savings growth, operating results and other factors relating to the risk exposure to the Insurance Corporation.

1/ In determining population, the area will be defined as the SMSA, if the association is located in an SMSA. In a non-SMSA, the population will be based on the delineated service area or the county in which the association is located, whichever is greater.

2/ Generally, the amount of paid-in surplus should be approximately 20 percent of the amount of permanent stock required. The figures in parenthesis indicate the minimum number of stockholders.

3/ The figures in parenthesis indicate the minumum number of subscribers to withdrawable accounts. The association will be required to raise 50% of the amount in cash prior to the granting of final approval of insurance and the remainder within 60 days of the granting of insurance.

4/ The association will be required to raise 100% of the amount in cash prior to the granting of final approval of insurance. The association will also be required to pledge 20% of the amount or $250,000, whichever is less, with the FHLB as a guarantee against operating deficits. The figures in parenthesis indicate the minimum number of subscribers to withdrawable accounts.

722.142 General reserve for losses and net worth requirements. (1) A savings association shall establish and maintain a general reserve account for losses and other net worth accounts adequate to assure solvency of the association.

(2) (a) Each savings association shall accumulate and maintain as a net worth account a general reserve for the sole purpose of absorbing losses. At the annual closing date following the anniversary of its certificate of authority and each annual closing date thereafter, the general reserve shall have a minimum balance not less than an amount fixed by rule.

(b) The supervisor by rule shall fix the required minimum amount of general reserve accounts of associations. The rule shall provide a uniform schedule of minimum levels to be reached during the first 20 or more years of an association's operation for the purpose of achieving an orderly accumulation of the general reserve account.

(3) The supervisor may permit an association to cure a deficiency in its general reserve account by requiring the board of directors of the association to earmark earned surplus, voluntarily pledged savings accounts of a mutual association, or capital surplus or stated capital of a stock association, as part of its general reserve account in the amounts needed to cure the deficiency. Amounts so earmarked shall be held for the same purpose as the general reserve to the extent the earmarked amounts are needed to maintain the required reserve account level. An association shall not pay dividends or interest from the reserve account or other funds earmarked for the purpose of meeting the reserve account requirement.

(4) Every savings association shall build up and maintain its net worth so that at the close of business on any annual closing date its net worth accounts shall equal not less than the dollar amount determined in accordance with the rules to be adequate to assure solvency of the association. The rules shall provide for an adjustment of the net worth requirement during the first years of an association's operation in accordance with paragraph (b) of subsection (2) of this section. If an association fails to establish or maintain the general reserve or the net worth requirements of this section, the supervisor may in accordance with ORS 722.464 require the association to take appropriate corrective action.

(5) An association may establish reserve accounts, in addition to the general reserve, as its board of directors may authorize, and make transfers to and charge such reserve accounts.

(6) Losses as they are determined, not charged to other reserve accounts, shall be charged to the general reserve until the general reserve account is exhausted. After exhaustion of the general reserve, any remaining losses not charged to other reserve accounts shall be charged as determined:

(a) In the case of a stock association, to earned surplus, then capital surplus and then stated capital; or

(b) In the case of a mutual association, to earned surplus and then the expense fund, if any.

(7) Any insurance reserve required by an insurer of the savings accounts of an association shall be considered part of the general reserve for the purpose of subsection (2) of this section.

TESTIMONY OF JULIUS J. BRECHT, DIRECTOR

DIVISION OF BANKING & SECURITIES

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

BEFORE

HOUSE COMMERCE COMMITTEE

February 6, 1978

Good morning, Mr. Chairman and members of the committee. My name is Julius J. Brecht, and I am Director of Banking & Securities within the Department of Commerce & Economic Development. I want to thank you for allowing me to appear before you to offer comment on HB 703.

As you know, this bill makes several changes to the Alaska Savings Association Act (ASAA), AS 06.30. The ASAA was enacted in 1961 and provides for the chartering of savings and loan associations whose primary service is home mortgage lending to the Alaskan public. The ASAA has had little revision since that time. However, in the intervening 17 years, major changes have been made in the federal law and regulations affecting federally-chartered savings associations. As a result, institutions chartered under ASAA are at a decided disadvantage in the financial marketplace. The net effect is that a state-chartered association would find it very difficult to compete with its federally-chartered counterparts. There is, however, renewed interest in state-chartered savings associations.

I, therefore, concur with the sponsor of this bill that a comprehensive review of ASAA is in order. The bill before this committee is the result of such a review, coordinated between the sponsor and the Division of Banking & Securities.

I have had the following documents distributed to members of the committee for their information:

1. a memorandum dated December 28, 1977, which gives a section-by-section analysis of the bill;

2. a fiscal note prepared by myself dated February 2, 1978, and

3. a copy of a written statement of testimony before this committee.

Those documents will give a detailed analysis of the provisions of the bill. However, the major provisions of the bill include:

1. revised association chartering procedures;

2. revised branch, agency, and change of location application procedures;

3. provisions for the establishment of stock savings associations;

4. procedures for the conversion from a mutual savings association to a stock association;

5. provision for fixed interest savings accounts; and

6. provisions to update lending requirements.

A number of the proposed changes are based on proposed changes to the Alaska Banking Code found in SB98, e.g., the chartering and branching procedures. The division will then be using a common procedure, when appropriate, in dealing with new bank or new savings association applications or branch applications from banks or associations and thereby allow for timely processing of applications in the best interest of the applicant, the institution, and the Alaska taxpayer.

A number of the proposed changes are based on the present Alaska Banking Code, e.g., reserves for bad debts, filing fees, inactive accounts, and conditions on the submission of annual reports. A number of the proposed changes come from the recently recodified Savings Association Act of the State of Oregon, e.g., incorporation procedure, bylaws, certificate of authority, conditions on the payment of dividends, second liens, and service corporations. A number of the changes are based on the federal law and regulations of the Federal Home Loan Bank Board, e.g., minimum capital requirements and fixed rate of interest accounts.

The bill has been reviewed by the staff of the Federal Home Loan Bank, the federal insurer of accounts of both federal and state-chartered savings associations in this State. While the federal agency cannot offer official comment on the bill, I have been informed that the staff of that federal agency in Seattle sees no conflict between the provisions of the bill and federal laws or regulations. In addition, the bill has been reviewed by representatives of an association that has recently been given conditional approval to incorporate as a state-chartered savings association. They are in full support of all of the provisions of the bill.

In summary, the bill before this committee is basically a long overdue housekeeping measure. It will aid in the better administration of ASAA and provide state-chartered savings associations a fair chance to compete with their federal counterparts and other financial institutions. The bill will inject competition into the financial marketplace and thereby ensure better service to Alaskans seeking home loans.

I, therefore, support the provisions of the bill and stand ready to answer any questions that the Committee may have.

JJB/sa3/8,9

To: The House Commerce Committee

From: Eddie J. Turner

Subject: House Bill 703

It appears that the one area of concern regarding HB 703 is competitive competition.
Competitive competition is the American way of life in business and is good for the consumer customer. It allows a freedom of choice as to where to deposit their savings and where to secure a mortgage loan for their home or business.
Freedom of choice has been very limited to residents outside of a metroplitan trade area and for a long time this was true of all residents of Alaska, as they were dependent on Seattle, Washington for most all of their needs.
We have progressed beyond this step-child era to a mature statehood status and it is difficult for some to realize or accept this true fact that our wants, needs and desires are no different than residents of other states in this United States of America.
Profits are the measurement of success or failure in a free enterprise economy.
The Federal Insurance Reserve requirements for a Federal Association establishes only the minimum amount and the Federal Supervisory Authorities encourage Federal Associations to exceed this amount and have stronger reserves for the protection of the account holders and members. One association, First Federal Savings of Anchorage has approximately 10% in reserves, almost double the minimum requirement of 5% after 20 years.
A draft of HB 703 has been reviewed by the Federal Home Loan Bank of Seattle and in my discussions with them, they commented only on the reserve requirements being excessive.
Overall, the bill that you are now considering is very comprehensive and thorough and Mr. Brecht and his staff should be commended for their efforts. We have received excellent cooperation from this Department. My main concern about the context of HB 703 is from an operational point of view that we can be competitive with our Federal counterparts and compatable with the other financial institutions in the State of Alaska. Mr. Brecht has to also view the context of HB 703 from a supervisory aspect in addition to operational. I feel that we are in agreement with nearly every section of this bill. In addition, I have researched, studied and compared the State Statutes of nearly 15 other States, including Washington, Oregon, California, Arizona and Hawaii, and have determined to my satisfaction that HB 703 is comparable to the other State Statutes and is not at variance with Federal Statutes and Regulations.

House Bill No. 703
"An Act relating to Savings Associations"

In 1961, Chapter 30 of the Banks and Financial Institutions Statutes titled the Alaska Savings Association Act was enacted. The basic context was from a model savings and loan act formulated by the United States Savings and Loan League. Since that time, the statutes have not been updated and modernized to allow a State Savings and Loan to be competitive with its Federal counterparts.

As a matter of sound public policy, there should be both state and federally chartered savings and loans and each should have the option to choose between the mutual and stock forms of ownership in keeping with our free enterprise economic system.

Thirty states currently have stock savings and loan associations and this year there are four other states besides Alaska considering stock legislation.

Prior to 1975, all Federal Associations were mutually owned and could only convert to a state stock association. In 1975, a federal stock charter for federal associations was developed by their regulatory authorities because they felt it was important that associations have the ability to choose freely the form of organization under which they wish to operate.

The proposed changes in the Alaska Savings Association Act are parallel in many respects to the Federal Regulations because of FSLIC Insurance of Accounts requirements.

A local savings and loan association, organized to serve the surrounding community, can best provide for the promotion of savings and economical home financing to the unserved or underserved residents because of the involvement in community affairs.

It is therefore very important that the residentsof Alaska be given the freedom of choice in their investment of funds.

Stock Conversions
Where are we now.

Reason for permitting conversions:

As a matter of sound public policy, both State and Federally chartered savings and loan associations should have the option to choose between the mutual and stock forms of ownership.

(1) Increased equity base to support savings growth.
(2) Additional funds for housing.
(3) Beneficial effect on industry structure.
(4) Fostering of faster growth and more effective comprtition.
(5) Forestalling supervisory action.
(6) Fostering sound and aggressive performance.
(7) Allowing Freedom of choice.

The Federal Home Loan Bank's sale-of-stock regulations are designed to eliminate the windfall aspect of conversion, while providing the accountholder with the right to a share in the equity of the converting mutual association in the event of a subsequent complete liquidation.

Conversion has no effect on insurance of savings accounts.

In a converted stock association, exclusive voting rights are in the sotckholders unless, in the case of State-chartered stock associations, State law requires otherwise. This change in voting rights has only a minor effect on accountholders, since most accountholders in a mutual association sign proxies of indefinite duration at the time their savings accounts are opened and these permit one or more directors of the association to exercise the accountholders' voting rights.

A STATUS REPORT

Stock Conversions— Where We Are Now

by Charles E. Allen

This report will describe the status of mutual to stock conversions of federally insured savings and loan associations as of February 15, 1976. It also will discuss the reasons why associations need to have the option to convert on a sale-of-stock basis. In addition, it will summarize the Federal statutory provisions and the regulations of the Federal Home Loan Bank Board which permit conversions on a sale-of-stock basis.

Current Filings

The Board has received 43 mutual to stock conversion applications from savings and loan associations in the following States: 9 from Florida; 8 from California; 6 from Texas; 2 each from Arizona, Colorado, Illinois, Maryland, New Jersey, and Wisconsin; and 1 each from Kansas, Michigan, Mississippi, Ohio, New Mexico, Tennessee, Utah, and Washington. Of the 43 associations applying to convert, 33 are federally chartered associations and 10 are State-chartered. Based on total asset size, 7 of the conversion applicants have assets in excess of $500 million, 12 between $100 million and $500 million, 7 between $50 million and $100 million, and 17 less than $50 million.

Eleven associations have amended their conversion applications under the Board's revised sale-of-stock regulations which became effective in June 1975. This includes one association converting on a free distribution basis in accordance with a statutory grandfather provision, but otherwise complying with these regulations. In addition, six associations have filed original conversion applications under the revised regulations. Of these 13 conversion applications, 7 have been approved by the Board and the other 11 are being processed. The timing of application processing by the Board is primarily dependent on the actions of the converting association. There has been no significant delay attributable to the Board or its staff in processing conversion applications under the revised regulations.

Of the 25 applications which have not been amended under the revised conversion regulations, 15 associations plan to file amended applications, 8 have not advised the Board whether they intend to proceed, and 2 plan to withdraw their conversion applications. In addition, a number of associations have informally indicated that they are in the

---

EDITOR'S NOTE: *Mr. Allen, who had been General Counsel for the Board from May 1972 until his recent return to private law practice, had written this article for the Journal before his resignation.*

process of preparing sale-of-stock conversion applications. These include several minority associations.

Approved Conversions

On October 10, 1975, the Board approved the first mutual to stock conversion of a savings and loan association under its sale-of-stock regulations. The Board has now approved six conversions involving a sale of stock. These conversions are demonstrating the workability and desirability of the Board's sale-of-stock approach in this matter and are materially increasing the net worth of the converting associations without a windfall to any group. At the same time, no association is being forced to convert.

The Board also has approved a free distribution conversion of one of three associations entitled, on a grandfather basis, to convert without a sale of stock in accordance with a Congressionally mandated provision in the National Housing Act. Of the other two grandfathered associations, one is expected to amend its conversion application and the other to withdraw.

Reasons for Permitting Conversions

As a matter of sound public policy, both State and federally chartered savings and loan associations should have the option to choose between the mutual and stock forms of ownership. The primary reasons for allowing such a choice include the following:

(1) **Increased equity base to support savings deposit growth.** In the savings and loan industry, equity capital is critical because of its ability to provide leverage for increased deposit growth. Based on a Federal insurance reserve requirement of 5 percent of savings deposits, $1.00 in new equity capital can support $20.00 in new deposits for home mortgage lending and other services. Mutual associations can increase their equity base only out of retained earnings. In geographical areas of rapid growth and greatest housing needs, retained earnings are often inadequate to provide the equity base to support the available increase in savings deposits. Hence, the financing of housing—the primary function of savings and loan associations—is not fully provided without the potential to convert.

Although the Board has allowed long-term subordinated debentures issued under section 563.8-1 of the Insurance Regulations to meet up to 20 percent of the net worth requirement of section 563.13(b), it has, as a matter of policy, consistently rejected requests to permit such debentures to be used to satisfy any part of the Federal insurance reserve requirement of section 563.13(a), which is based on section 403(b) of the National Housing Act. There also is substantial doubt as to whether the Board has authority under the statute to do so. Debentures of this type cannot be regarded as equity capital against which losses can be charged, but are debt that must be repaid at maturity and that usually bears a rate of interest that severely limits its usefulness.

(2) **Additional funds for housing.** The sale of capital stock provides additional funds that otherwise would not be invested in S&L's. In the case of larger associations, the sale of stock also provides a device to obtain additional funds from other areas. These additional funds will increase an association's ability to make more housing loans.

(3) **Beneficial effect on industry structure.** The sale of capital stock operates to improve the efficiency of the S&L industry. For example, the merging of mutual associations often can be complicated by their unequal net worth positions if one association is contributing more resources to the proposed merger than the other. In contrast with the case of mutual associations, differences in the valuation of stock institutions are made quite manageable simply by pricing the stocks relative to their proportionate contribution to the merger.

(4) **Fostering of faster growth and more effective competition.** The sale of capital stock has additional advantages from a competitive standpoint—a factor of major importance because of the substantially increased competition between S&L associations and commercial banks since the early 1960's and because of the growing complexity of S&L operations. Stock associations, for instance, are able to offer additional means for attracting and compensating, through stock option plans more skilled and more aggressive S&L managers.

(5) **Forestalling supervisory action.** The ability to raise common stock equity capital is especially important in forestalling supervisory action. One of the principal reasons for the weakness of some associations and the need for supervisory action is the inadequacy of net worth to absorb writedowns of bad loans and foreclosed real estate. The supervisory situation is improved, moreover, by the existence of a body of stockholders who have their funds at risk and who form a clear and explicit group to whom the management is responsible for sound and proper performance.

(6) **Fostering sound and aggressive performance.** In the past, there has been some aversion to con-

A STATUS REPORT

versions of mutuals to stock associations because of a belief in the unsoundness of the practices of some stock associations. It has been shown, however, that the operating differences between the stock and mutual forms of organization are not great. Stock associations appear to exhibit a faster rate of growth, are somewhat more profitable over the long run, and possibly have lower cost ratios when other factors are held constant. They do appear to incur a somewhat higher level of risk than mutual associations, although factors other than the form of organization appear most important in determining the degree of risk.

(7) Allowing freedom of choice. From the public policy standpoint, and in keeping with our free enterprise economic system, it is important that associations have the ability to choose freely the form of organization under which they wish to operate. Since conversions can be accomplished in a safe and equitable manner under the Board's sale-of-stock regulations, there is no need to restrict associations to the mutual form of organization. This is especially true for federally or State-chartered associations in States which allow S&L's to operate in either the mutual or stock form.

Statutory Provisions

Conversion of Federal mutual associations to the stock form of ownership is permitted on an equitable basis under the third unnumbered paragraph of section 5(i) of the Home Owners' Loan Act. The first sentence of paragraph (3) of section 402(j)

J. Ralph Stone Nominated as FHLBB Member

J. Ralph Stone, of Santa Rosa, Calif., a California savings and loan association executive, was nominated by President Ford on February 6 to be a Member of the Federal Home Loan Bank Board.

Mr. Stone was named by the President to succeed former Board Chairman Thomas R. Bomar, who resigned as of June 20, 1975, to become president and managing officer of American Savings and Loan Association of Miami Beach, Fla.

Mr. Bomar's term would have expired on June 30, 1978. A hearing on Mr. Stone's nomination was held by the Senate Banking, Housing, and Urban Affairs Committee on March 1.

Board Member Garth Marston, a Republican, has been Acting Chairman of the Federal Home Loan Bank Board since being named to that post by President Ford on July 7, 1975. The Board's third Member is Grady Perry, Jr., a Democrat.

At the time of his nomination, Mr. Stone was executive vice president of Great Western Savings and Loan Association, of Beverly Hills, Calif., and vice president of Great Western Financial Corporation. Previously, he was a director, president, and chairman of the board of Santa Rosa Savings and Loan Association, serving successively in those positions beginning in 1943. He was named executive vice president of Great Western in 1968 when that association bought out Santa Rosa Savings and Loan Association.

Born in Sebastapol, Calif., on June 11, 1910, Mr. Stone was graduated from the University of California at Berkeley with a B.A. degree in economics in 1931 and became a partner in a retail furniture establishment, a connection he still maintains. From 1961 to 1967, he was a director of the California Savings and Loan League, serving as vice president from 1966 to 1967 and as president from 1967 to 1968. He was chairman of the capital stock committee of the United States Saving and Loan League from 1967 to 1968 and has been a member of the League's legislative committee since 1962.

Mr. Stone was elected a director of the Federal Home Loan Bank of San Francisco in 1968 and was twice reelected to that post in 1970 and 1972. In 1975, he was named chairman of the Advisory Committee to the President of the Bank.

of the National Housing Act permits a converting Federal mutual association to retain its Federal charter. However, the second sentence of paragraph (3) prevents the Board from permitting the conversion of Federal mutual associations to the stock form in States not authorizing the operation of State-chartered stock associations, except in the District of Columbia, Puerto Rico, or States in which all federally insured associations are federally chartered. Section 402(j) also recognizes the Board's authority over the conversion of State-chartered mutual institutions to the stock form.

Section 402(j) imposes a limited statutory moratorium—which expires on June 30, 1976—on nonsupervisory conversions. Before this date, the Board is authorized to approve 43 conversion applications, plus 8 applications that had been submitted for filing before May 22, 1973. There is no limitation on the number of conversion applications which the Board may approve after June 30, 1976, but the other provisions of section 402(j) continue in effect. These provisions include factors to be considered in putting conversions into effect and a requirement to report annually to Congress on the exercise of the Board's conversion authority.

Section 402(j) supports the Board's sale-of-stock approach to conversions and makes specific reference to the Board's conversion regulations, which at the time of the amendment of section 402(j), in October 1974, already required this method of conversion. Section 402(j) also recognizes the sale-of-stock requirement by providing a grandfather exception from this requirement for three Federal associations which had given written public notice to their accountholders, before May 22, 1973, of adoption of a free stock distribution plan of conversion. This statutory exception permits a free distribution to accountholders of such associations only as of a record date that is prior to the date of the public notice.

Paragraph (4) of subsection 402(j) limits judicial review of the Board's final approval of a plan of conversion to a petition in the appropriate United States Court of Appeals. The petition must be filed within 30 days of the later of (1) the mailing of the proxy statement or (2) publication in the Federal Register of notice of the Board's final approval.

Regulatory Provisions

The Board has determined that a method of conversion which provides a so-called windfall distribution of stock to accountholders of a converting mutual savings and loan association would create strong incentives for significant shifts of savings funds from other associations and that these shifts would unacceptably threaten the financial stability of these associations. The Board also has determined that a method of conversion which provides a

The following table sets forth certain information with respect to the approval of the plan of conversion by the Board and by the members of the converting association and information concerning the subscription offering.

Name	Date of FHLBB approval	Date of members meeting	Votes cast in favor	Votes cast against	Dates of subscription offering	Percentage of shares sold in subscription offering
Franklin Savings Association (Austin, Tex.)	10/10/75	11/03/75	89,969 (61.3%)	4,019 (2.7%)	11/20/75 to 12/15/75	100% to account holders and borrowers
American Savings and Loan Association of Florida (Miami Beach, Fla.)	11/3/75 (amendment 2/4/76)	12/17/75	725,123 (60.7%)	109,199 (9.1%)	2/6/76 to 3/4/76	(1)
Sweetwater Savings Association (Sweetwater, Tex.)	12/3/75	1/30/76	182,550 (58.2%)	7,868 (2.6%)	2/10/76 to 3/6/76	(2)
Standard Federal Savings & Loan Association (Gaithersburg, Md.)	12/19/75	1/28/76	282,716 (56.7%)	36,981 (7.4%)	2/6/76 to 3/3/76	(3)
First Federal Savings & Loan Association of Fresno (Calif.)	12/19/75	1/28/76	725,863 (72.9%)	32,287 (3.2%)	1/30/76 to 2/19/76	(3)
Prudential Federal Savings & Loan Association of Salt Lake City (Utah)	12/19/75 (amendment 1/9/76)	3/5/76	—	—	(3)	(3)
First Federal Savings & Loan Association of Conroe (Tex.)	2/4/76	2/27/76	—	—	—	(3)

[1] Underwritten public offering of any unsubscribed shares.
[2] Management syndicated to purchase any unsubscribed shares.
[3] Free distribution conversion; subscription offering of shares to be sold for the accounts of depositors allocated fewer than 100 shares who elect to have their shares sold.

A STATUS REPORT

windfall distribution would tend to force individual mutual associations to convert to the stock form irrespective of whether they, or the communities they serve, would be benefited thereby. The Board therefore found that no method of conversion can be considered equitable unless windfall distributions are eliminated. These findings were based, to a significant extent, on a study entitled "The Impact of 'Free Distribution' Conversion Windfalls on the Savings and Loan Industry" dated February 28, 1974, and prepared by the Board's Office of Economic Research. Copies of this study are available to the public.

Thus, the Board's sale-of-stock conversion regulations *are* designed to eliminate the windfall aspect of conversion, while providing the accountholder with the right to a share in the equity of the converting mutual association in the event of a subsequent complete liquidation. Here are some of the principal provisions of these regulations:

1. **Approval of Plan of Conversion.** The plan of conversion must be approved by a two-thirds vote of the board of directors of the converting association and by a majority of all votes eligible to be cast at a meeting of members called for that purpose. Only proxies solicited for this purpose may be voted. A proxy statement making full Securities and Exchange Commission type disclosure is required for soliciting proxies. Final approval of the plan by the Board is required before soliciting proxies.

2. **Plan of Conversion.** The plan of conversion must provide for a sale of all shares of capital stock being issued at a total price equal to the estimated pro forma market value of the shares, based on an independent appraisal. Each eligible accountholder must receive, without payment, nontransferable subscription rights to purchase the greater of 10 times his pro rata portion of the total shares being sold or 100 shares. In the event of an oversubscription by eligible accountholders, shares would be allocated primarily on a pro rata basis, based on qualifying deposits. An eligible accountholder is a savings accountholder on the eligibility record date, which must be at least 90 days before adoption of the plan

The following table summarizes certain financial information concerning each converting association whose plan of conversion has been approved by the Board.

Name	Asset size	Net worth [a]	Pro forma net worth [a]	Net income	Pro forma net income
Franklin Savings Association (Austin, Tex.)[1]	$ 33,565,000	$ 413,000 (1.45%)	$ 1,583,000 or $7.42 per share (5.56%)	$ 103,000 (9 mos.)	$ 173,000 or $.81 per share (9 mos.)
American Savings and Loan Association of Florida (Miami Beach, Fla.)[2]	$454,471,000	$14,064,000 (3.6%)	$20,603,000 or $41.20 per share (5.3%)	$1,420,000	$1,803,000 or $3.62 per share
Sweetwater Savings Association (Sweetwater, Tex.)[3]	$ 34,623,000	$ 1,294,000 (4.4%)	$ 1,894,000 or $22.99 per share (6.4%)	$ 79,000	$ 116,000 or $1.41 per share
Standard Federal Savings & Loan Association (Gaithersburg, Md.)[4]	$ 53,974,000	$ 746,000 (1.50%)	$ 2,396,000 or $9.58 per share (4.83%)	$ 253,000	$ 352,000 or $1.41 per share
First Federal Savings & Loan Association of Fresno (Calif.)[5]	$124,232,000	$ 3,712,000 (3.6%)	$ 6,037,000 or $13.74 per share (5.8%)	$ 431,000	$ 593,181 or $1.35 per share
Prudential Federal Savings and Loan Association of Salt Lake City (Utah)[6]	$507,095,000	$29,966,000 (8.4%)	$29,106,000 or $11.41 per share (8.1%)	$2,774,000 (9 mos.)	$2,774,000 or $1.09 per share (9 mos.)
First Federal Savings and Loan Association of Conroe (Tex.)[7]	$ 37,560,000	$ 1,676,000 (5.01%)	$ 2,556,000 or $19.36 per share (7.68%)	$ 130,000	$ 189,000 or $1.43 per share

[1] Asset and net worth at June 30, 1975, and net income for the 9 months then ended.

[2] Asset and net worth at December 31, 1975, and net income for the year ended September 30, 1975; net income was $451,000 for the 3 months ended December 31, 1975. Pro forma and net proceeds calculations are based on $14.50 per share, the maximum price in the $10.72 to $14.50 price range; such calculations assume a sale of all shares in the subscription offering, and therefore do not include underwriting commissions of up to 8 percent of the offering price.

[3] Asset and net worth at September 30, 1975, and net income for the year then ended.

[4] Asset and net worth at September 30, 1975, and net income for the year ended June 30, 1975; net income was $81,000 for the 3 months ended September 30, 1975.

[5] Asset and net worth at October 31, 1975, and net income for the year ended June 30, 1975; net income was $2,776,000 for the 4 months ended October 31, 1975. Pro forma and net proceeds calculations are based on $5.80 per share which is the average price within the $5.01 to $6.60 price range.

[6] Asset and net worth at September 30, 1975, and net income for the 9 months then ended. Pro forma net worth reflects estimated conversion costs, but not any payments in respect to fractional shares or supplemental payments which as a maximum

by the board of directors of the converting association. Qualifying deposits refer to the savings accounts of an eligible accountholder on the record date. An eligible accountholder's pro rata portion is determined by multiplying the total number of shares to be sold by a fraction of which the numerator is the amount of his qualifying deposit and the denominator is the total amount of qualifying deposits of all eligible accountholders.

Plans of conversion may provide, as part of the subscription offering, for shares not purchased by eligible accountholders to be offered to directors, officers, and employees up to 20 percent of the total offering in the case of converting associations with total assets of less than $50 million—with this percentage decreasing to 10 percent in the case of an association with total assets of more than $500 million.

All shares not purchased in the subscription offering must be sold. The plan of conversion may provide for these unsubscribed shares to be offered to those eligible accountholders desiring to purchase more than 10 times their pro rata portion or to other accountholders and borrowers. The unsubscribed shares also may be sold in a public, underwritten offering or in a private distribution that includes a management syndicate. If unsubscribed shares are to be sold in a private distribution, the plan must provide eligible accountholders with subscription rights of 15 times, rather than 10 times, their pro rata portion of the shares being sold. If shares are to be sold in a private distribution, the plan also must provide for each accountholder and borrower to be offered up to 100 shares before the sale.

A converting association may, in its plan of conversion, limit the number of shares being purchased in the subscription offering by an eligible accountholder, or any group of eligible accountholders acting in concert, to 1 percent of the total offering. The plan also may require a minimum purchase of 25 shares.

The plan of conversion must provide for a sale of the shares without any discount from the pro forma market price established by the independent appraisal. The plan must also provide that all shares purchased by directors or officers as part of the subscription offering or otherwise in connection with the conversion not be sold for a period of 1 year and that the stock certificates be so legended.

Conversion has no effect on insurance of savings accounts. The plan of conversion must provide for continued Federal insurance of savings accounts and membership in the Federal Home Loan Bank System. A plan of conversion has no effect on savings account balances, interest rates, or maturities. An accountholder continues to have the same account in the converted stock association as he had before the conversion in the mutual association. The only differences are with respect to voting and liquidation rights.

In a converted stock association, exclusive voting rights are in the stockholders unless, in the case of State-chartered stock associations, State law requires otherwise. This change in voting rights has only a minor effect on accountholders, since most accountholders in a mutual association sign proxies of indefinite duration at the time their savings accounts are opened and these permit one or more directors of the association to exercise the accountholders' voting rights.

A converting association must create a liquidation account in an amount equal to the net worth of the association at the latest practicable date before conversion. Each eligible accountholder has a pro rata inchoate interest in a portion of the liquidation amount based on the amount of his qualifying deposits on the eligibility record date. His proportionate interest cannot increase, but will be reduced by a subsequent decrease in his deposit balance. The function of the liquidation amount is to establish a priority on liquidation, and not to otherwise

Number of shares	Price per share	Estimated net proceeds	Proposed quarterly cash dividend
213,333	$ 6.00	$1,170,000	None
500,000	$14.50 (maximum)	$6,539,000	$.19 per share
82,353	$ 8.50	$ 600,000	None
250,000	$ 7.00	$1,650,000	None
439,394	$ 5.80 (average)	$2,325,000	$.08 per share
2,552,000	(Free distribution)		$.06 per share
132,000	$ 7.50	$ 880,000	

would reduce pro forma net worth to $11.21 per share. At January 5, 1976, appraisal indicated market value range of $11,561,000 to $15,644,000 or $4.53 to $6.13 per share.

[a] Asset and net worth at September 30, 1975, and net income for the year then ended.

[b] Net worth and pro forma net worth are shown as percentages of savings.

NOTE: The above financial information is based on financial statements (some of which are unaudited) and other financial data contained in the proxy statement and/or offering circular of the converting association.

A STATUS REPORT

restrict the use or application of any of the net worth accounts of the converted association. No payment to the accountholder would be made except in the case of a complete liquidation of the association. A merger or sale of assets in which savings accounts and other liabilities are assumed by the surviving association would not be viewed as a complete liquidation for this purpose, and the liquidation amount would be assumed by the surviving association.

A converting association must enter into an agreement with the Board that, for a 3-year period following conversion, no company engaged in an unrelated business activity shall be permitted to acquire control of the association. A similar charter provision without the 3-year time period is optional for State-chartered associations and mandatory for Federals. The charter provision also may provide for amendment only by a favorable vote of 75 percent of the total votes eligible to be cast.

Management employment contracts and qualified stock option plans also may be adopted at the meeting at which the conversion plan is voted.

3. **Proxy Statement.** The conversion regulations contain extensive disclosure requirements for proxy statements used to obtain approval of plans of conversion. No proxy statement, form of proxy or other proxy soliciting material may be used until its use has been authorized by the Board. Disclosure includes a summary of the plan of conversion, use of proceeds from the sale of the stock, a description of the business of the converting association, information concerning the qualifications, remuneration and transactions with its directors and officers, and full audited financial statements.

4. **Notice Requirements.** An association considering the adoption of a plan of conversion is required to maintain this consideration on a confidential basis. Promptly after adoption of a plan of conversion by its board of directors, a converting association is required to notify its members of the action by publishing a notice in a newspaper of general circulation in each community in which it has an office, or by mailing a letter to each member. The association also may issue a press release with respect to the action. The association also is required to have a copy of its plan available for inspection by its members at each of its offices. After filing its conversion application with the Board and being advised that its application is not materially incomplete, the association is then required to publish a newspaper notice in each community with respect to the filing of its application. The notice must say that written comments from members on the plan of conversion will be considered by the board if filed within 20 business days.

5. **Offering Circulars.** The final offering circular for the subscription offering and the final offering circular for any public offering or private distribution of unsubscribed shares must be declared effective by the Board before its use. The offering circulars must contain substantially the same information required for the proxy statement and may be in a "wraparound" form with the proxy statement attached. The offering circulars also must provide certain additional information as to the offering. A final circular for the subscription must accompany or precede each order form for purchase of shares in the subscription offering.

6. **Pricing.** The proxy statement must set forth an estimated subscription price or price range. The range should normally be no more than 15 percent above and below the average of the minimum and maximum prices in the range. The Board reviews the price information in considering whether to give approval to the conversion. In this connection, the regulations provide guidelines for the independent appraisal that the converting association must file as the basis for the determination of pro forma market value.

A maximum subscription price must be stated on each order form used in the subscription offering. This price must be within the price range stated in the Board's approval of the plan of conversion. If either the maximum subscription price or the actual subscription price is not within this range, the association must obtain an amendment to the Board's approval. Before having its final offering circular declared effective by the Board, an association may be required to provide an updated appraisal.

Summing Up

Sale-of-stock conversions are a workable and desirable option for certain associations. There are sound public policy reasons for allowing this choice. Sale-of-stock conversions are proceeding under careful and extensive regulation by the Board. These regulations are sufficient to prevent windfalls to accountholders, management, and investors. No association that prefers to remain a mutual is being forced to convert. Most mutual associations will continue as mutuals. There is no need for any statutory limitation on the number of conversions which the Board may approve.

GAILOR & ELIAS, P.C.
ATTORNEYS AND COUNSELLORS AT LAW
700 E STREET, S. E.
WASHINGTON, D. C. 20003

FRANK R. GAILOR
JACK K. ELIAS
TIMOTHY D. HATZ
SIMON H. TIREYAS
STEPHEN A. BLUMENTHAL

TELEPHONE
(202) 543-1700

March 7, 1978

Julius J. Brecht, Director
Division of Banking, Securities
Pouch D
Juneau, Alaska 99811

Dear Julius:

Thank you for your call today. In my capacity as General Counsel to National Association of Savings and Loan Supervisors I am pleased to respond to the report you received that stock conversions had provided a means for organized crime to acquire control of savings and loan associations.

Based upon my experience, I can state flatly that: (1) I have no knowledge of any such development occurring at any time in connection with the conversion of any institution; (2) I am certain that no such circumstance has arisen since the early 1950's when I took an active interest in this subject matter, and (3) that such a circumstance could not occur under the Federal rules and regulations now in effect respecting savings and loan stock conversions.

On the latter point, I would refer you to §563b.3(c) of the Rules and Regulations for Insurance of Accounts issued by the Federal Savings and Loan Insurance Corporation. That regulation is captioned "required-provisions in plans of conversion". It provides, in pertinent part, as follows: "The Plan of Conversion shall...provide for an eligible record date which shall not be less than 90 days prior to the date of adoption of the plan by the converting insured institution's Board of Directors...". The import of language last quoted is that those eligible to purchase stock issued in connection with a conversion are those with funds on deposit not less than 90 days before the Board of Directors adopts the plan of conversion and as a consequence gives the first public notice of the intention of the institution to convert.

Very truly yours,

Frank R. Gailor

FRG:jh

BARNES & HANNAH (Continued)

OF COUNSEL

Neal P. Hannah, born Lima, Ohio, November 11, 1905; admitted to bar, 1931, District of Columbia; 1936, U.S. Supreme Court; 1956, Maryland. Preparatory education, Dartmouth College (B.S., 1927); Washington University (J.D., with highest honors, 1931). Assistant Counsel, Federal Home Loan Bank Board, 1932-1933; Counsel, Home Owners' Loan Corporation, 1933-1935; Counsel, Federal Savings and Loan Insurance Corporation, 1934-1935; Counsel, Federal Home Loan Bank Board, 1935-1936; Counsel, Reconstruction Finance Corporation, 1936-1937; Counsel, Federal Deposit Insurance Corporation, 1937-1938; Counsel, Federal Home Loan Bank Board, 1938-1939; Counsel, Federal Savings and Loan Insurance Corporation, 1939-1940; Counsel, Federal Home Loan Bank Board, 1940-1941; Counsel, Federal Home Loan Bank Administration, 1942-1947; Counsel, Federal Savings and Loan Insurance Corporation, 1942-1947; Counsel, Federal Home Loan Bank Board, 1942-1947; Counsel, Federal Home Loan Bank Administration, 1947-1948; Counsel, Federal Savings and Loan Insurance Corporation, 1947-1948; Counsel, Federal Home Loan Bank Board, 1947-1948. *Member:* The District of Columbia Bar; Federal (Member, House of Delegates, 1939-1940; 1946-1947; 1968-1972; 1977—; Chairman, Section of Corporation, Banking and Business Law, 1973-1975) Bar Associations.

CARLTON ELIAS, P.C.

Savings and Loan, Banking and Related Trials
Administrative Practice
Before Federal Courts and Agencies

700 E STREET, S. E.
WASHINGTON, D. C. 20003
(202) 543-1700

Frank R. Eaton, born Estelline, South Dakota, May 19, 1940; admitted to bar, 1970, District of Columbia. Preparatory education, South Dakota State University (B.S., with honors, 1962) and Syracuse University (M.P.A., with distinction, 1963); legal education, George Washington University (J.D., with honors, 1970). *Professional Affiliations:* Phi Kappa Phi; Maxwell Fellow. *Co-Author:* "Savings and Loan Conversions-An Overview," 1973. Analyst, Office of Secretary of HUD, 1965-1966. Administrative Assistant to U.S. Representative R. E. Hosmer, 1966-1970. General Counsel, National Association of Stock Savings and Loan Supervisors, 1971—. *Member:* The District of Columbia Bar; Federal (Chairman, Savings and Loan Association Law Committee, 1973-1975; Member, National Council, 1974-1975) and American (Member, Sections on: Administrative Law; Antitrust Law; Corporation, Banking and Business Law) Bar Associations. [Capt., Adjutant General Corps, U.S. Army, 1962-1968]

Jack I. Elias, born Brooklyn, New York, March 3, 1918; admitted to bar, 1950, District of Columbia. Preparatory education, Bernard M. Baruch College of the City University of New York (B.B.A., 1941); legal education, George Washington University (LL.B., 1949). Co-Author: "Savings & Loan Conversions-An Overview," 1973; "Federal Home Loan Bank Board Rules and Regulations—Mutual-to-Stock Conversions," 1976. Member of Staff, Securities Exchange Commission, 1953-1958. Director, Holding Company Section of Federal Home Loan Bank Board, 1958-1972. *Member:* The District of Columbia Bar; Federal and American Bar Associations.

Timothy B. Mayo, born Pittsburgh, Pennsylvania, May 16, 1944; admitted to bar, 1970, Missouri; 1973, District of Columbia. Preparatory education, University of Virginia (B.A., 1966); legal education, George Washington University (J.D., with honors, 1969) and Georgetown University (LL.M., 1975). Associate General Counsel, Federal Home Loan Mortgage Corporation, 1971-1972. *Member:* The District of Columbia Bar; The Missouri Bar; American Bar Association.

Steven H. Treese, born Brooklyn, New York, August 16, 1940; admitted to bar, 1966, New York; 1972, District of Columbia; 1974, U.S. Supreme Court. Preparatory education, Clarkson College; legal education, Brooklyn Law School (LL.B., 1932). Co-Author: Chapter on Federal Home Loan Bank Board, West's Federal Practice Manual, 1970, continues with Annual Pocket Part 7. Attorney, Housing & Home Finance Agency, 1951-1954. Attorney, Office of General Counsel and Executive Assistant to Chairman, Federal Home Loan Bank Board, 1956-1969. Special Counsel, Government Oper., U.S. League of Savings Associations, 1969-1975. *Member:* The District of Columbia Bar; Federal (Member, Executive Committee, 1968—; President, 1973-1974) and American (Member, House of Delegates, 1975, 1976 and 1977) Bar Associations.

Stephen A. Bloomfield, born Jersey City, New Jersey, April 27, 1948; admitted to bar, 1974, New Jersey; 1976, District of Columbia. Preparatory education, Vanderbilt University and Johns Hopkins University (B.A., 1970); legal education, Rutgers University (J.D., 1974). Editor-in-Chief, Rutgers Journal of Computers and the Law, 1973-1974. Author: "The Development of the Central Market System: Revolution-One Step at a Time," 3 Rutgers Journal of Computers and the Law 232, 1974. *Member:* The District of Columbia Bar; Federal and American Bar Associations.

REPRESENTATIVE CLIENTS: Atlantic Financial Corp.; Bright Industries, Inc.; Dove, Inc.; Ideal Federal Savings and Loan Association; First Texas Financial Corp.; Freedom Financial Corp.; Hallet Construction Co.; Interstate Financial Corp.; J.C. Financial Corp.; Palmetto Corp.; Conley Bill Co.; R. H. Daniels Co.; The National Association of State Savings and Loan Supervisors; Houston First Financial; Metropolitan Federal Savings and Loan of Detroit; Virginia United Savings and Loan; Keystone Federal Savings and Loan of Puerto Rico; Sierra Federal Savings and Loan of Sierra Madre; Bill Crockett; National Capital Bank.

AN ACT TO AUTHORIZE THE ADMINISTRATOR OF THE SAVINGS AND LOAN DIVISION TO APPROVE THE CONVERSION OF A MUTUAL SAVINGS AND LOAN ASSOCIATION TO A STOCK OWNED ASSOCIATION

The General Assembly of North Carolina enacts:

Section 1. A new §54A-4 of the General Statutes is enacted to read as follows:

"§54A-4. Conversion of a Mutual Savings and Loan Association to a Stock Owned Savings and Loan Association. The Administrator of the Saving and Loan Division shall promulgate rules and regulations governing the conversion of a savings and loan association from mutual owned to stock owned. These rules and regulations shall include requirements that:

(1) The conversion shall neither impair the capital of the converting association nor diminish its ability to continue safe and proper operations.

(2) The rights, liabilities, obligations and relations of any person to the converting association shall not be altered as a result of its conversion.

(3) The conversion shall be fair and equitable to all members and employees of the converting association.

(4) The citizens of the communities or counties served by the converting association and the

citizens of North Carolina in general shall not be adversely affected by the conversion.

(5) Conversion of an association shall only be accomplished pursuant to a plan approved by the Administrator. Said plan shall be approved by an affirmative vote of the Board of Directors of the converting association and after full and fair disclosure an affirmative vote of 51 percent of the total votes which members of the converting association are eligible and entitled to cast.

(6) The plan of conversion shall provide that:

a. all shares of stock issued in connection with the conversion shall be made available to the members of the converting association.

b. a uniform date shall be fixed by the Administrator for determination of the members to whom stock shall be made available.

c. stock shall be made available to members based upon a formula approved to be fair and equitable by the Administrator and fully disclosed to the members of the converting association.

No member, officer, director, attorney or employee

of a converting association shall initially acquire more than 10 percent of the stock made available in connection with the conversion. No business association or group of persons acting in concert (other than the association's board of directors) shall initially acquire more than 30 percent of the stock made available in connection with the conversion.

Section 2. §54A-1 of the General Statutes is amended by striking the last sentence.

To: Julias J. Brecht, telecopy # 907-586-2165

National Association of
State Savings & Loan Supervisors

1001 CONNECTICUT AVENUE N.W. SUITE 800 WASHINGTON, D.C. 20036 • (202) 452-1520

February 14, 1978

Julius J. Brecht, Director
Division of Banking and Securities
Pouch D
Juneau, Alaska 99811

Re: Stock Savings and Loan Associations

Dear Mr. Brecht:

This is in response to a request of last Friday for the views of the National Association of State Savings and Loan Supervisors, 1/ with respect to stock savings and loan associations. The National Association of State Savings and Loan Supervisors ("NASSLS") does not as a matter of policy take positions on the desirability of legislation pending in the several states. It, therefore, neither supports nor opposes the provision of authority for stock

---

1/ The members of the National Association of State Savings and Loan Supervisors regulate state chartered savings and loan institutions in the several states and territories. They supervise approximately 2900 institutions having assets in excess of $140 billion. The officers of the Association are R.J. McMahon, President of the Association and Commissioner of Savings and Loan Associations, Wisconsin; Richard J. Francis, First Vice President of the Association and Commissioner of Finance, Michigan; and Alvis J. Vandygriff, Second Vice President and Commissioner of Savings and Loans, Texas.

savings and loan associations under Alaska law. As the General Counsel of NASSLS, I am, however, pleased to digest and provide materials which we have assembled on this subject. They follow.

Thirty states have stock savings and loan associations ("stock S&LAs"). In recent years, Florida, New Jersey, North Carolina, Tennessee, and Wisconsin, have authorized stock S&LA's. This year, the legislatures of not only Alaska, but also, Maryland, Alabama, Missouri, and West Virginia will consider stock S&LA legislation. In 1973, the Congress provided authority for Federal S&LA's (all of which theretofore were mutually owned) to convert to stock S&LA form of ownership. 2/ Pursuant to that authority 32 mutual S&LA's have, with the approval of their respective members and the Federal Home Loan Bank Board ("FHLBB") converted to stock form of ownership. At December 31, 1976, there were 732 stock S&LA's operating in the several states with aggregate assets of $86.7 billion. On that date, stock S&LA's held 22.1 percent of the total assets of all S&LA's.

From time to time there have been charges that S&LA's of the stock form involve a higher element of risk to the safety of depositors' funds and, therefore, require more careful general supervision. We are not aware of any definitive empirical basis for these assertions. We suspect that Professor Hestor may have accurately portrayed the situation. In his report, which was released by the FHLBB in 1968, he concluded:

> "... for a number of reasons, theory lends precious little insight into expected differences between stock and mutual associations. It is likely that stock associations will be more aggressive than mutuals in exploiting opportunities. It seems plausible that stock associations should be observed to grow faster and take more risks..."

2/ 12 U.S.C. 1725(j)(3).

Professors Bingham and Pettit, too, were wont to go beyond theoretical generalization in attempting to differentiate between the performance and risks of stock and mutual S&LA's:

> "Key differences include the possibility of obtaining capital gains in the stock sector, differences in the way control is exercised, possible differences in retirement ages, possible differences in nepotism, differential ability to raise new capital, possible danger of undue emphasis on short run profits in the stock sector, differential ability to retain management personnel (stock options), and differential willingness and ability to merge. In our judgment none of these factors should be very important in the aggregate, but when the effects of all of them are added up the net effect should be to cause the stock sector to (1) exhibit the faster rate of growth, (2) be somewhat more profitable in the long run, (3) possibly have lower cost ratios when other factors are held constant, but (4) show up as somewhat riskier than mutuals..." "Effect of Structure on Performance in the Savings and Loan Industry", Study of the Savings and Loan Industry", prepared for the FHLBB, Vol. III, p. 1202.

The most recent empirical stucy of the comparative performance of stock and mutual S&L A's was prepared by Donald M. Kaplan, Director of the Office of Economic Research of the FHLBB. It found that "(S)tock chartered associations are more profitable than mutuals...".

It may be of interest to note that in those states in which State chartered associations predominate, the laws provide for stock S&LA's. California, Ohio and Texas (which respectively rank 1, 4 and 6 among the states in S&LA assets) provide for stock associations; in those states, S&LA's are the prevalent form of S&LA. This condition permits the legislatures of those states to influence the availability of mortgage credit, specifically, and consumer protection, generally, through their control of legislation affecting State S&L's.

I trust this will prove helpful and hope you will feel free to call on NASSLS or me should you wish further assistance.

Very truly yours,

National Association of State
Savings and Loan Supervisors

By: Frank R. Gailor
Frank R. Gailor, Esq.
General Counsel

cc: NASSLS Directors

FRG/aw

States which have authorized savings and loan associations to issue negotiable order of withdrawal.

Connecticut
Maine
Massachusetts
New Hampshire
Rhode Island
Vermont
Wisconsin *

* Only state chartered associations permitted.

February 18, 1978

Mr. Joseph H. McKinnon
Pouch V
Juneau, Alaska 99811

Dear Mr. McKinnon:

We appreciate the courtesy that was extended to us last wednesday by you and the committee in regards to House Bill No. 703.

Enclosed are some suggestions in regards to this bill, which I feel are necessary for an association to operate efficiently.

If we can be of further assistance, please do not hesitate to contact us.

Sincerely;

Eddie J. Turner

Eddie J. Turner
1331 W. 26th. St. #10
Anchorage, Alaska 99503
Phone: #279-2962

H B No. 703

Sec. 3. AS 06.30.030 Line 27 Page 1

Delete: (banking and savings)
Substitute: savings and loan

Sec. 4. AS 06.30.035 Line 19 Page 3

The amount of the expense fund should be defined, either by a dollar amount or percentage of capitalization.

Sec. 4 AAS 06.30.035(n) Lines 9 thru 15 Page 7

This subsection should be deleted. The appropriate place for securities regulation is in the Alaska Securities Act (AS 45.55).

Sec. 7 AS 06.30.060(b) Lines 1 thru 4 Page 10
AS

The subscription requirements should be modified to read as follows:

(1) in communities having less than 25,000 inhabitants, the minimum sum of $500,000;

(2) in communities having between 25,001 and 100,000 inhabitants, the minimum sum of $1,000,000; and

(3) in communities having 100,001 or more inhabitants, the minimum sum of $2,000,000.

Such subscription requirements coincide with the federal requirements. See FHLBB, FSLIC Outline of Information (in support of Application for Insurance of Accounts).

Sec. 8 AS 06.30.060(e) Line 1 Page 10

The amount of the expense fund should be defined, either by a dollar amount or percentage of capitalization.

Sec. 5 ASS06.30.040(b)(4) Line 29 Page 7

Should read: (4) the holding of an annual meeting of the association and method of notification of members; however, the time and place of it may be set by resolution of the directors of the association.

Sec. 12 AS 06.30.105(d) Line 21 Page 13

Delete: (Any number)
Substitute: A majority

Sec. 15 AS 06.30.140 Line 1 Page 15

Delete: (If authorized by vote of the members the directors may elect all directors.)
Substitute: The Board of Directors may fill vacancies occurring on the board, such appointees to serve until the next annual meeting of the members.

Sec. 19 AS 06.30.295 Line 21 Page 17

Delete: (security)
Substitute: account

Sec. 21 AS 06.30.335(a) Line 17 Page 18

Add two sentences in the beginning.
Each association shall be operated from the home office in the state. All branch offices and agencies shall be subject to direction from the home office.

Sec. 24 AS 06.30.445(a) Lines 18 thru 27 Page 21

Delete complete paragraph.
Substitute: A savings and loan association shall establish and maintain a general reserve account for losses and other net worth accounts adequate to assure solvency of the association.

At the annual closing date following the anniversary of its certification of authority and each annual closing date thereafter, the general reserve shall have an amount fixed by regulation.

The regulation shall fix the required minimum amount of general reserve accounts of the association. The regulation shall provide a uniform schedule of minimum levels to be reached during the first 20 or more years of an association's operation for the purpose of achieving an orderly accumulation of the general reserve account.

An association may establish reserve accounts, in addition to the general reserves, as itsboard of directors may authorize, and make transfers to and charge such reserve accounts.

The department may permit an association to cure a deficiency in its general reserve account by requiring the board of directors of the association to earmark earned surplus, voluntarily pledged savings accounts of a mutual association, or capital surplus or stated capital of a stock association, as part of its general reserve account in the amounts needed to cure the deficiency. Amounts so earmarked shall be held for the same purpose as the general reserve to the extent the earmarked amounts are needed to maintain the required reserve account level.

Sec. 24 AS 06.30.445(c) Line 7 thru 11 Page 22

Delete sentence: (Whenever the aggregate of the general reserves, surplus and other reserve accounts, except those allocated for specific losses, exceed 12 per cent of the amount of members' savings of an association, the credits to the general reserve or surplus account as set out in (a) of this section are not required.)

Sec. 27 AS 06.30.500(1) Line 2 thru 4 Page 24

Delete: ($75,000 on a single family dwelling or $100,000 on a multiple family dwelling or other improved realty)
Substitute: The amount designated by FSLIC regulations on a single family dwelling, or per dwelling unit for not more than 4 families in the aggregate.

Sec. 27 AS 06.30.500 Line 27 Page 23

Delete: (unencumbered)
The referenceto "unencumbered" in this section should be deleted, in that it raises questions as to what creates an encumbrance. Assessments? Easements? Patent reservations?

Sec. 28 AS 06.30.500(a)(1) Line 26 Page 25

Delete: ($75,000)
Substitute: the amount designated by FSLIC regulations

Sec. 44 AS 06.30.910(22) Page 119 of existing statutes

Delete: (judicial district in which the home office of an association is located;)
Substitute: "regular lending area" means the State of Alaska;

Sec. 11 AS 06.30.090 Line 21 and 24 Page 11

Delete: (of the home office)

Sec. 27 AS 06.30.500(7)(A) Line 13 Page 25

Delete: (21 years)
Substitute: 2 years beyond the maturity of the loan

Sec. 27 AS 06.30.500(7)(B) Line 15 Page 25

Delete: (70)
Substitute: 80

Sec. 6 AS 06.30.045(b)(2) Line 10 Page 9

Delete: (individual)

Memorandum

To: File No. A-4969/Peninsula Savings & Loan Assn.

From: RED

Date: February 8, 1978

Re: Recommended changes to HB703

Section 4.

AS 06.30.035(d)(1) should be revised to read as follows:

(d) The incorporators shall submit to the department

(1) An application for approval signed by all of the incorporators....

The present reference to "commencing business" is more appropriate AS 06.30.045(a), and a second reference in AS 06.30.035(d) creates ambiguity.

AS 06.30.035(d)(1)(D)(i) should delete reference to "and the amount of the expense fund," in that the amount would be then undetermined under AS 06.30.060(e).

The first sentence of AS 06.30.035(f) should read as follows: "The department shall notify the incorporators within 30 days of its decision on an application for a proposed association." Alternatively, the first sentence may be deleted, in that it is not needed in light of the remaining provisions of that subsection.

A new subparagraph (5) should be added to AS 06.30.035(g) to read in substance as follows: "That any person may file written objections to approval of the association's application within 30 days after publication of notice." Such provision will advise the public of their rights pursuant to AS 06.30.035(j).

AS 06.30.035(i)(4) shall be deleted. It is unrealistic to presume that any subscription amount, either

savings or capital, would be paid by any invester at such early stages of the formation and organization of an association.

AS 06.30.035(n) should be deleted. The subsection begins by referring to "any offering circulars," then refers to "the incorporators," and then goes on to refer to "the notice"; the section is a hodgepodge of unrelated items. No "offering circulars, prospectuses or other materials are required, see AS 45.55.140(a)(3), and any references thereto should be deleted as unnecessary. The "appropriate place" for securities regulation is in the Alaska Securities Act (AS 45.55), and any requirement for "review and approval" of offering circulars, prospectuses or other materials must await repeal of AS 45.55.140(a)(3). Likewise, there is no "notice" required to accompany any solicitation of savings or stock subscriptions, much less any "provisions of this section" which refers to any such "notice". The department already has authority to order the incorporators to cease "proceeding unlawfully," see AS 06.05.005(4); it is hard to perceive why the department may need additional powers to order the incorporators to cease "not acting in good faith." For all these reasons, AS 06.30.035(n) should be deleted.

Section 5.

AS 06.30.040 with reference to bylaws goes well beyond the usual bylaw requirements for any Alaska business corporation, see AS 10.05.135, or for a federal savings and loan association, see 12 CFR §544.5; indeed, there are no bylaw requirements for Alaska state commercial banks under AS 06.05. Accordingly, AS 06.30.040(b) should be deleted, in that many of its provisions infringe on management or board of director discretion, are subject to constant, if not daily, change, and may well concern confidential infor-

mation. However, there should be some provision added to AS 06.30.040(a) with reference to amendment of the bylaws. See AS 10.05.135.

Section 6.

The second sentence of AS 06.30.045(a) should be deleted. This is a very stiff penalty which turns on interpretation of a very vague concept of what is or is not "incidental" to commencement of business.

Reference to "savings subscriptions" should be deleted from AS 06.30.045(b)(1)(A). See comments to AS 06.30.060(h).

The reference to "individual" should be deleted from AS 06.30.045(b)(2).

Section 7.

The subscription requirements should be modified to read as follows:

"(1) in communities having less than 25,000 inhabitants, the minimum sum of $500,000;

(2) in communities having between 25,001 and 100,000 inhabitants, the minimum sum of $1,000,000; and

(3) in communities having 100,001 or more inhabitants, the minimum sum of $2,000,000."

Such subscription requirements coincide with the federal requirements. See FHLBB, FSLIC Outline of Information (in support of Application for Insurance of Accounts).

Section 8.

The first sentence of AS 06.30.060(e) should be amended to read as follows: "...in an amount not less than that specified by regulations promulgated by the department." As presently written, potential incorporators have little guidance upon which they may plan, and the department is

granted too much discretion as to creation of the expense fund.

Section 9.

The first sentence of AS 06.30.060(f) should be amended to read as follows: "...may be repaid pro rata according to amounts contributed by contributors from the net earnings...."

Section 10.

AS 06.30.060(h)(2) should be deleted. An association is required to obtain Federal Savings and Loan Insurance Corporation (FSLIC) coverage prior to issuance of a certificate of authority, see AS 06.30.045(b)(4); the Federal Home Loan Bank Board (FHLBB), agent of the FSLIC, already requires savings subscriptions in the minimum amount of $500,000. More importantly, the FHLBB allows payment of such subscriptions after the association is allowed to commence business; again, it is unrealistic to presume that any investor would deposit savings in an association prior to its receipt of a certificate of authority or prior to its "opening its doors" for business.

Section 11.

The reference to "of the home office" should be deleted in the preamble and subsection (1) of AS 06.30.090. The second reference to "of the home office" in AS 06.30.090(1) should be changed to "of the association." Further, it appears more appropriate that the secretary sign, as opposed to any "two officers," the notice of publication, see AS 06.30.090(1), and perhaps the "two officers" referred to in AS 06.30.090(2) should be specified as the president and secretary.

Section 14.

AS 06.30.115(c) should make exceptions for inspection pursuant to court orders and pursuant to the consent of the other member.

Section 16.

AS 06.30.145(c) should be deleted as an anachronism. (Perhaps the provision should be deleted in AS 06.05.435 also.)

Section 18.

AS 06.30.280(7) should be amended to read as follows: "...together with its interest in collateral securing the same."

Section 19.

The first sentence of AS 06.30.295 should be deleted, and the following sentence inserted: "Only savings accounts shall be issued, sold, negotiated, or advertised for sale either to members or to the public." I am quite concerned about the definitional problems surrounding the term "investment security" in the context of federal and state securities laws. The second sentence of AS 06.30.295 should read as follows: "...and those accounts are authorized by the Federal Savings and Loan Insurance Corporation," in that the reference to "insured" inadvertently fails to include accounts with balances in excess of $40,000. See 12 CFR §§ 561.6, 563.3-1.

Section 24.

Reference to "mutual" should be deleted from the second sentence of AS 06.30.445(a).

Section 25.

The second and third sentences of AS 06.30.455 require dividends to be paid or declared "equally," "pro rata," "according to [certai , rate limitations," and "on the withdrawal value." It is suggested that the ambiguity created by such multitude of standards may be avoided by changing the second sentence to read: "All savings account holders shall participate in dividends not exceeding the rate limitations prescribed...."

Section 27.

The reference to "unencumbered" in the preamble of AS 06.30.500 should be deleted, in that it raises questions as to what creates an encumbrance. Assessments? Easements? Patent reservations? What is the purpose, if any, of inserting the requirement that the property be "unencumbered" as long as the association acquires a first mortgage position?

A definition of "mortgagor" as found in AS 06.30.500(1) is required in light of various family and business relationships, e.g., Mr. Jones, individually, and as majority stockholder of Jones, Inc.

Associations should be granted the authority to make construction loans; accordingly, the preamble to AS 06.30.500 should read as follows: "...an association may invest in first mortgages on real property, including leasehold estates, and including mortgages securing loans made for the purpose of construction, subject to the following limitations:"

AS 06.30.500(5) should be deleted to allow state savings and loan associations to compete with the state-wide lending powers of federal savings and loan associations. See 12 CFR §545.6-6. Further, AS 06.30.500(5) is inconsistent with the state-wide powers granted in AS 06.30.500(3).

Subparagraphs (A) and (C) of AS 06.30.500(7) could be combined in a single paragraph to the effect that the mortgage must amortize within a certain number of years prior to the end of the lease term. Paragraph (B) of such subsection should be increased from 70% to 80% for consistency with AS 06.30.500(2), .505(d), .555(b)(2).

Section 33.

A definition of "service corporation" as used in AS 06.30.616(a)(1) is required, either by statute or regulation.

Section 37.

AS 06.30.836 should be deleted. The provision is entirely too broad, giving the department power to dissolve

an association for any reason whatsoever. It is suggested that the commissioner's powers are sufficiently broad under AS 06.05.005 to dissolve an association for good and valid reasons. An association which does not obtain a certificate of authority and commence business within one year from approval of its application would forfeit its corporate existence under present statute. See AS 06.30.095. Accordingly, AS 06.30.836 is not only not necessary, but also is subject to abuse.

HB
739

02-0018 (Rev. 10/76)

STATE of ALASKA

MEMORANDUM

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

TO: House Commerce Committee

Attention Joe McKinnon

DATE: May 24, 1978

FILE NO:

TELEPHONE NO:

SUBJECT:

FROM: Richard L. Block, Director
Division of Insurance

I very much appreciate your making the changes called for in the memorandum of May 15, 1978, to the Chairman of the Rules Committee, in CS for sponsor substitute for HB 739.

As clarification of the need for these amendments, I would like to explain as follows (item numbers refer to the same item numbers as listed in the May 15 memo):

3. The words "as to each apartment" were added to distinguish the impact of recording successive Notices of Completion.

   As originally drafted, it would appear that a Notice of Completion could be recorded with respect to construction of the whole building, and that liens would be cut off with respect to remaining apartments if claimants had not properly recorded their mechanic liens within the ten days following the recording of each of the successive Notices of Completion.

   This was not the intent of this provision.

   It was intended that a Notice of Completion could be recorded as to a single apartment, and that mechanic lien claimants would have to record their liens within ten days after that Notice of Completion, or lose their lien rights on that apartment.

   Without the additional language, it is conceivable that it could be misconstrued to mean that failure to record within ten days after a Notice of Completion cut off the rights as to the total property for all work done prior to the Notice of Completion.

8. This language change accomplished the following:

   a. the language was changed from permissive ("may" in line 17) to mandatory ("shall" in line 17).

      It is important to recognize that the provision is of little value unless an obligation is imposed upon the supplier to release his lien, rather than authorizing him to do so should he wish.

   b. the language changes change the concept from that of waiver to that of a release.

      In fact, a mechanic lien claimant is not being asked to

waive his rights, but only being asked to release the lien as it pertains to a special portion of property, maintaining his rights as to the balance of the property subject of the lien.

c. the language clarifies that the liens subject to this provision are those arising out of original construction, and not to the type of liens referred to in the Horizontal Property Regimes Act, which are already subject to being released pursuant to a statute therein contained.

In other words, the special provisions of this Act are limited to original contruction liens, and not to all liens, since the Horizontal Property Regimes Act contains a provision for how other liens are to be released.

10. This language changes the release clause to require the construction lender to reduce their loan on the unreleased portions of the property, in accordance with a formula utilized to calculate the mechanic lien claimants release.

As drafted prior to the change, the dollar amount had to be equal to the amount which the mechanic lien claimant waived.

For example, suppose there were a mechanic lien for $5,000 on a ten unit condominium project and a $500,000 construction loan. Upon the release of the first apartment the mechanic lien claimant would have to accept 115% of $500, and release his lien on the first apartment. The lender would have to release an identical amount with the balance being a prior lien on the remaining nine units. This would seriously dilute the equity of the mechanic lien claimant.

As changed, the mechanic lien claimant would release for 115% of $500, provided the lender reduced his loan balance on the remaining nine units by 115% of $50,000.

12. The changes in this section were made necessary to clarify the applicability of the law to liens, particularly those liens which are in favor of claimants who do work prior to the effective date of the law, but who do not complete their work until after the effective date of the law.

A number of phrases and clauses were deleted because of redundancy (line 14 and 15 on page 16).

Further, the inclusion of the words ". . . during the 120 day period after the effective date of this Act, . . . " on lines 19 and 20 of page 16, limited the applicability to work done within the 120 day period, whereas it was intended that a person be entitled to have the benefits of this provision for all work done, including prior to the effective date of the Act.

These measures are extremely complex and it is understandable that in going through the several amendments and changes that have been made to this bill, a person responsible for drafting would make changes which inadvertently would change the meaning of the sections.

The division is grateful for the work done by Legislative Affairs in drafting of this measure, and trusts that the changes urged in the May 15 memo would be recognized as technical changes necessary to improve the workability of the law.

RLB/mh/3/10

Alaska State Legislature

House of Representatives

Committee on Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

March 21, 1978

MEMORANDUM

SUBJECT: Committee Substitute for HB 739 - A Summary

TO: House Commerce Committee

FROM: Andrew Brown

Section 1. This section adds two items to the present law. The word "general" has been substituted for "original" in this Section, and throughout the entire bill, so that the law will reflect the industry's terminology. "General contractor" is defined in Section 21 of this bill. An addition to this priority section is that "trustees of benefit for laborers" fall right below laborers in claiming priority over other lien claimants.

Section 2. This section repeals the present law and rewrites it, so that while it does not spell out every possible person who could have a lien, as the present law does, it does clarify the categories under which lien claimants may base their claim. Subparagraphs (1) and (2) cover individual laborers and their trustees of benefit trusts. Subparagraphs (3) and (4) cover general contractors or suppliers of material or equipment used in or on real property. Subparagraph (5) covers persons who perform services relating to the preparation of plans or surveys for the real property.

Section 3. This section repeals and re-enacts the present .060(a) and specifies that a properly recorded encumberance, which is defined in Section 21 of this bill, will have a preference over any subsequent recorded liens or intents to lien. Recorded liens or recorded intents to lien would have preference over unrecorded prior encumberances. The last sentence in this new section would allow prior recorded encumberances to have a preference, even though dispursement of monies may not have taken place at the time of recording.

Section 4. The priority of an individual laborer's lien claim is kept in this section. It would be before even that of an encumberance under Section 3 of this bill. The deletion of the words "or furnishing material used in" means that suppliers would not have equal priority with individual laborers, but under Section

5 of this bill they would be able to use the "stop-payment notice" system to ensure payment of amounts owed them. Also, this Section requires laborers to be ones not falling within the definition of "contractor" in AS 08.18.171.

Section 5. This Section sets up a new mechanism in the lien system, whereby any lien claimant may give a lender providing construction financing, which is defined in Section 21 of this bill, a "stop-payment notice" 20 days after non-payment of sums due the claimant. Lenders would be required to withold draws (defined in Section 21 of this bill) from contractors who have not paid their subcontractor or employees. The content of the stop-payment notice is specified in this Section. Once the stop-payment notice is received, the lender would have to withold, under subparagraph (a) (4), from later draws enough money to pay the amount claimed in the stop-payment notice; however, under subparagraph (a) (5) there could be disbursements if the claimant, owner and general contractor agreed to them. Under subparagraph (a) (6), the amount in the stop-payment notice has to be restricted to that proportion of the contract price expended within 10 days prior to a notice of intent to lien and up to the day of the stop-payment notice. Subsection (b) states the lender's liability if he wrongfully disburses monies. Subsection (c) allows the claimant to file an action in court for sums claimed in the stop-payment notice. This action is not mandatory, but if there is no lawsuit, then the sums witheld under the stop-payment notice may be disbursed by the lender. (Please note that the first sentence in subsection (d) should be deleted because it contradicts subsection (c), and that the second sentence in subsection (d) should be the last sentence in subsection (c); thus eliminating subsection (d) entirely).

Section 6. This is a new section in Chapter 35 creating a "notice of intent to lien" system. The notice may be given to the owner and lender at any time after the contract is made, and must state certain facts, including a warning.

Section 7. This section states when a notice of intent to lien may be recorded. It also sets out that unless a notice of intent to lien has been recorded prior to a recorded encumbrance, the lien for labor, materials, services or equipment furnished will not be valid against the lender.

Section 8. This section repeals and re-enacts the present law, and delineates a lien claim may be recorded at any time after giving or recording a notice of intent to lien, but no later than 90 days after completion. "Completion" is defined in Section 21 of this bill. However, the up to 90 day rule would not apply if the owner of real property complies with Section .071 in Section 11 of this bill.

Section 9. This section rewrites the subsection on the contents of the lien claim. It is more specific then the present law.

Section 10. This section repeals the present law on the owner's recording a notice of completion and the claimant's subsequent duty to record a lien within a certain time frame. However, it should be noted that the issue of notice of completion is dealt with in a new Section .071 in Section 11 of this bill. The new .070(d) in Section 10 states that the lien of certain delineated claimants is restricted in amount to the proportion "attributable to labor, materials, services or equipment furnished within 10 days before, and at any time after, the claimant gives or records a notice of intent to lien" under Section 6 of this bill.

Section 11. This section specifies the method by which an owner may record a notice of completion. If he chooses to record a notice of completion, it must be done under subsection (a) after the completion of construction, alteration or repair, and must be preceded by at least 5 days by a notice to all claimants who served a notice of intent to lien, of the fact that a notice of completion will be recorded. Under subsection (c) of this section, if a notice of completion is recorded then a lien claimant would have to record his claim no later then 10 days after the recordation of the notice of completion. Subsection (d) states that premature notices of completion are ineffective, and subsection (e) specifies that a lien cannot be claimed for work done to satisfy breach of warranty or other defective material or workmanship.

Section 12. This is the present law only with the addition of the word "general" to contractor, and the specification of the laws under which surety bonds may be issued.

Section 13, 14, 15, 16, & 17. These sections substitute thw word "general" for "original", and in addition Section 13 uses the grouping "other claimants", rather than "workman, laborer, lumber merchant, or materialman", so that the statute can be more inclusive.

Section 18. This new section would allow any claimant, except an individual laborer, to waive his lien or stop-payment notice rights which have arisen up to the time of the waiver. Allowing waivers would facilitate project financing. Any attempted waiver by an individual laborer would be void.

Section 19. This new section would give owners, contractors, and lenders recourse for inequitable stop-payment notices, notices of intent to lien or lien claims.

Section 20. This new section encompasses the area of condominium construction. Subsection (a) allows for liens either limited to particular units upon which a claimant worked or to commonly owned property and all individual units. Subsection (b) limits the claim to the area of the building covered by a construction loan and worked upon.

Section 21. This is the definition section of the bill. The words or phrases newly defined are "completion", "contract price", "draws", "encumbrance", "general contractor","give notice", "construction financing", "lender", "owner", and "potential lien claimant".

Section 22. This section ammends the present law so as to permit lien waivers as accorded under Section 18 of this bill.

Section 23. This section repeals three current laws or parts of them. The repeal of .060(b) is due to the fact that the new .060(a) and (c) in Section 3 of this bill clarify the priority of liens subject. .070(e) on notice of completion is repealed, because it is unnecessary. .095 is repealed, due to the fact that the new .0[illegible])(d) in Section 10 of this bill covers the area of claimants recove[illegible] limits, and thus the present statute on contractor's lien recovery is unnecessary.

Section 24. This states the effect of the bill, if it becomes law, upon actual or potential liens at the time the act goes into effect. Those with claims under the current law would have to record their lien claims within 90 days of this bill's becoming law, and would have lien and stop-payment notice rights only for labor, services, materials or equipment furnished after recordation of those lien claims.

Section 25. This states when the act takes effect.

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

Representative Sam Cotten
Chairman, Rules Committee
House of Representatives
Alaska State Legislature

May 15, 1978

Richard L. Block, Director
Division of Insurance

CS for Sponsor
Substitute for
HB 739

Commerce Committee

This measure, when passed out of the House, included in substance all of the changes which have been recommended by the Division of Insurance and the other various interested parties. However, although the substantive material found its way into the legislation, there are a number of technical drafting errors which we did not see before the bill was signed out by the committee, and which must be changed before the bill can be properly adopted as a law.

For convenience, I shall refer to amendments to CSSSHB 739.

1. Page 2, line 2. Amend AS 34.35.050(6) to read as follows:

"(6) is a [Prime] general contractor."

2. Page 7, line 15. Amend Section 34.35.071(b)(5) to read as follows:

"(5) the name of the [Prime Contractors] general contractor, if any."

3. Page 8, line 5. Amend Section 34.35.071(f) to read as follows:

"(f) after recording a condominium declaration as provided in AS 34.07 (Horizontal Property Regimes Act), an owner may record a Notice of Completion under this section as to each apartment after completion of the original construction of each condominium apartment."

4. Page 9, line 22. Amend Section 34.35.095(c) by changing the word "contract" to the word "employment."

5. Page 11, line 8. Amend Section 34.35.112(a)(5) to read as follows:

"(5) the [Prime Contractors] general contractor."

6. Page 11, line 21. Amend Section 34.35.112(b)(4) to read as follows:

"(4) out of the remainder the subcontractors, including prime contractors except the general contractor, shall be paid in full or pro-rated if the remainder is insufficient to pay them in full; and"

7. Page 11, lines 24 and 25. Amend Section 34.35.112(b)(5), by changing the words "prime" to the word "general."

8. Add page 12, line 13-18. Amend Section 34.35.119(a) to read as follows:

"(a) liens created under AS 34.35.050-34.35.120 arising out of original construction which becomes subject to the Horizontal Property Regimes Act (AS34.07) before the first sale of any portion of the property after commencement of construction shall be subject to the provisions of this section."

9. Page 12, line 20. Amend Section 34.35.119(b) by changing the word "waiver" to the word "release."

10. Page 13, lines 4 and 5. Amend Section 34.35.119(c) by amending line 4 to read as follows:

"also reduced by an amount [Equal To The Amount Waived By the Lien Claimant] calculated in the same manner as provided in Section (b)."

11. Page 13, lines 6 and 7. Delete all of Section 34.35.119(d)

12. Page 16, lines 11 through 25. Amend Section 20(b) to read as follows:

"(b) this act is applicable to

(1) lien claims arising out of construction, alteration or repair projects commenced after the effective date of this Act;
(2) lien claims arising out of construction, alteration or repair projects commenced before the effective date of this Act in favor of claimants who first furnish labor, materials, services, or equipment after 120 days after the effective date of this Act; and
(3) liens arising out construction, alteration or repair projects commenced before the effective date of this Act [And Not Completed Within 120 Days After The Effective Date of This Act] claimed by claimants whose furnishing or delivery of labor, materials, services or equipment is first furnished before and continues beyond 120 days after the effective date of this Act; however, in order to preserve the right to claim a lien for all of the labor, materials, services or equipment furnished or delivered [During the 120 Days Period After The Effective Date of This Act] the claimant must give a Notice of Right to Lien required under AS 34.35.064 contained in Section 4 of this Act, within 130 days after the effective date of this Act. A Notice of Right to Lien given under this subparagraph (3) is effective for all labor, materials, services, or equipment furnished from the date of commencement of the claimant's portion of the construction, alteration or repair project."

RLB/mh/3/7

OWNER CONTRACTS WITH SUPPLIER FOR MATERIALS (gen. CONTRACTOR)

SUPPLIER DELIVERS MATERIALS

rights begin 10 days prior To notice

SUPPLIER MAY GIVE NOTICE OF INTENT TO LIEN

SUPPLIER MAY FAIL TO GIVE NOTICE OF INTENT TO LIEN

PAYMENT NOT MADE WHEN DUE

MAY RECORD

~~ESTABLISHES LIEN PRIORITY~~

HAS NO LIEN RIGHTS

STILL HAS CIVIL RIGHTS IN COURT

MAY GIVE STOP NOTICE 20 DAYS AFTER ~~PAYMENT~~ IS DUE

MUST GIVE NOTICE TO OWNER AND TO LENDER

MUST GIVE NOTICE TO OWNER AND TO LENDER

LENDER ~~MAY~~ SHALL WITHHOLD ENOUGH MONEY TO PAY CLAIM

LENDER MAY CONTINUE DISBURSEMENTS

OWNER GIVES 5 DAY NOTICE OF COMPLETION

NO ADVANCE NOTICE OF COMPLETION

LENDER MAY DISBURSE UNDER TERMS OF WRITTEN AGREEMENT BY ~~CLONE~~ CLAIMANT AND GENERAL CONTRACTOR

LENDER LIABLE FOR LESSOR OF

AMOUNT DISBURSED IN VIOLATION OF STOP NOTICE	SUM DUE CLAIMANT AS DECIDED BY COURT

NOTICE OF COMPLETION RECORDED

SUPPLIER HAS 10 DAYS TO RECORD LIEN

SUPPLIER HAS 90 DAYS TO RECORD LIEN

CLAIMANT MUST FILE ACTION WITHIN 30 DAYS AFTER FILING OF STOP NOTICE

Bond requirement

FAILURE TO FILE REMOVES LENDERS LIABILITY

CURRENT PROCEDURES EXCEPT FOR CHANGE IN LIEN PRIORITY

PREPARED BY:
ALASKA DIVISION OF INSURANCE

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

POUCH D
JUNEAU, ALASKA 99811

April 3, 1978

House Commerce Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Gentlemen:

Re: CSSS HB 739
(March 24, 1978)

I have just received a copy of CSSS HB 739 which is the printed work draft version dated March 24, 1978 and prepared by the Legislative Affairs Agency.

To my knowledge this is the last printed draft of this bill and incorporates most all of the suggestions which have been made by the various interested parties.

In reviewing the bill, however, I note that there are some changes that must still be made in order to make it conform to the recommendations which were made by the Division of Insurance, many of which were agreed to at the last meeting of the House Commerce Committee.

Because I feel these changes are necessary in order to make the legislation clear and workable, I will set them forth here:

1. [Page 1, Section 34.35.050(2)]

It is the intent to permit a lien in favor of an employee benefit trust which runs in favor of individuals, which is later defined as natural persons performing labor on the job.

The reference in line 16 to "persons described in (1) of this section" refers to language that includes corporate subcontractors. I recommend that the language on line 16 read as follows:

"...of individuals performing labor on the building or improvements and has a direct contract..."

2. [Page 1, Section 34.35.050(6)]

There is an attempt to either define or limit the category of general contractors and neither effect is desirable.

It is unnecessary to limit the category of general contractors since all general contractors would fall into category 6. In addition, it is unwise to try to define them, at least with the language used here, since they are already defined in Section 120 of the law, and the two definitions are slightly in conflict.

I recommend that all the language of Subsection 6 be deleted starting with the words "...who is responsible for the...." This pertains to page 1, line 29, through page 2, line 3.

3. [Page 2, Section 34.35.060(a)]

There is language which is redundant and ought to be clarified. I suggest that lines 7 through 9 read as follows:

> "...Sections 50-120 of this chapter except that a lien created under Secs...."

4. [Page 2, Section 34.35.060(c)]

The word "individual" is defined in Section 120 and it is unnecessary that it be duplicated in this section. I recommend that the language added on line 20 be deleted so that line 20 will read:

> "...-struction is pre-..."

5. [Page 4, Section 34.35.062(c)]

This section needs to be totally rewritten for two reasons.

(a) There is need to combine some sentences for proper phrasing in order to convey what was intended by the legislation; and

(b) In order to make it clear that the bank is entitled to notice of the filing of the Superior Court action within 30 days after receipt of the stop notice. As currently drafted, the action must be filed within 30 days, but the bank need not be notified until a substantially later period of time.

I suggest that the section be rewritten between line 8 and line 18 as follows:

"(c) within 30 days after filing a stop payment notice the claimant shall file an action in a court of competent

jurisdiction, to obtain the sums claims in the stop payment notice. The complaint shall be accompanied by a bond in an amount equal the amount claimed with sufficient sureties as approved by the court. The claimant shall give notice to the lender that the action has been filed and include a copy of the bond filed with the action. If a claimant fails to file an action under this subsection and serve notice of the filing and a copy of the bond within 30 days after filing the stop notice, or execute a written agreement under (a)(5) of this section, the lender may disburse the money withheld under the claimant's stop payment notice without incurring liability to the claimant."

6. It was my understanding that subcontractors dealing directly with the owner or the general contractor need not file notice of intent to lien. This fundamental matter has been changed so that subcontractors are required to file the notice of intent to lien. If it is the desire to adopt the original concept then the legislation will have to be changed in the following place:

   (a) Page 4, Section 34.35.064(a) [Line 20] and the following language would have to be added:

   "..., a subcontractor in direct contract with the owner or general contractor,..."

7. [Page 5, Section 34.35.064, Line 17]

   The intention of requiring a person who exercises his claim rights to disclose the potential amount of his claim is to give the owner, lender or general contractor an opportunity to find out not only what is owed at the date of the giving of notice of intent to lien, but also to enable the owner, lender or general contractor to have an opportunity to know what further work is expected to be performed or goods furnished to the job by the same claimant. The concerns expressed by suppliers and by certain of the legislators who view with concern imposing an obligation on suppliers and subcontractors to disclose the cost of future work deals with the obligation to give dollar values. I believe the problem can be overcome by requiring the supplier or subcontractor-claimant to give information concerning the dollars incurred to date and, with respect to future work, to describe in-kind, what additional services or materials will be furnished.

   To accomplish that the following language needs to be added at the end of line 17:

   "...and a description of labor, materials, or equipment which the claimant reasonably anticipates furnishing the job."

8. [Page 5, Section 34.35 067(b), Line 24]

This section establishes the priorities of mechanic liens with respect to incumbrances securing financing and is a true statement except with respect to labor liens on original construction. An exception has to be included in the language, therefore, to recognize that fact. I recommend the following language be added so that line 24 reads as follows:

> "(b) a claim of lien, except the claim of an individual performing work on original construction, for labor, materials, services or equipment...."

9. [Page 6, Section 34.35.070(a), Lines 6 and 7]

The drafter has redrafted this section even from the immediately preceding draft and inadvertently created the impression that liens could be lodged even after the 90-day period in subsection (b) of this section. In order to clarify that subsection (b) is the final outside date for recording of claims, the following language must be deleted from lines 6 and 7:

> "Except as provided under Section 71(c) of this chapter,..."

There, of course, will have to be a reference in another section, dealt with later.

10. [Page 7, Section 34.35.071(a)(2), Line 7]

The committee agreed that language would be added in this subsection to clarify that five-day notices prior to recording notice of completion need not be given to those persons performing work at the very end of the job, since their 10-day notices of intent to lien may not be received until after the five-day notices have been sent. In order to clarify this point, the following language must be added so that line 7 reads as follows:

> "...intent to lien or a stop payment notice to the owner prior to 10 days before recording the notice of completion. The notice shall..."

11. [Page 7, Section 34.35.071(c), Lines 20 to 22]

The committee agreed that there would be some clarification language added to this subsection in order to make it clear that the failure to properly send the five-day pre-notification of recording notice of completion would affect only those claimants not receiving the notice, not all mechanic lien claimants. Further, language must be added in order to reference the fact that there is a 90-day recording period in another section.

[Page 7, Sec. 34.35.071(c), Lines 23-24]

Subsection (c) should be totally rewritten as follows:

> "(c) Notwithstanding the provisions of Section .070(a) and (b), if an owner has complied with (a) and (b) of this section, a claimant shall record his claim of lien no later than 10 days after the date the notice of completion is recorded. Any claimant who has given or recorded notice of intent to lien prior to 10 days before recording notice of completion and who has not given five-day notice of recording of notice of completion, shall have 90 days from completion to record his claim of lien, but it shall not extend the time to file claim of lien for claimants who were given the five-day notice of recording notice of completion."

12. [Page 9, Section 34.35.095, Lines 4 - 8]

It is the intent of the drafter to impose the time period for which lien rights arise for both stop notices and mechanic liens in one section. Although this is a slightly different approach than taken in the earlier drafts, it is fully acceptable; however, as drafted, it applies only to mechanic liens and makes no mention of stop notices. To cure that problem, the following changes should be made so that lines 4 through 8, read as follows:

> "The amount to which a claimant, other than a general contractor, for a building or improvement or of an individual described in Section 120(10) of this chapter or of a claimant having a direct contract with the owner or general contractor for alteration or repair of a building is entitled,..."

13. [Page 12, Section 34.35.120(4), Line 17]

Everyone is in agreement the construction financing refers only to the first construction on the property; however, the word "new" is language not currently used in the code and over which there has been no history of litigation. The terminology used throughout the section, and for which there is a body of interpretive law, is the word "original" and that is the word which should be used on line 17.

14. [Page 13, Section 34.35.120(10), Lines 26 and 27]

This section needs to be revised for two reasons.

(a) It currently limits the rights of an individual to individuals working original construction and it must be clear that individuals have rights even with respect to repairs, alterations or maintenance or existing structures. In other sections, their rights to a priority lien are limited to original construction, but that is dealt with in appropriate sections. Here it is necessary only to define the individual as being a natural person but not limited to original construction.

(b) In order to clarify that individuals include persons who may have contractors licenses but who are employees on a

particular job, additional language must be added. This is another matter that was agreed upon by the committee and not included in the last draft.

Section 10 should be rewritten as follows:

"(10)'individual' means a natural person who actually performs labor upon a building or other improvement, and who is not a 'contractor' as defined in AS 08.18.171, or, if a contractor, is not acting as a contractor on the job but acting as an employee, including having payroll deductions made from all remuneration paid him."

The effective date and applicability clauses as well as the section dealing with condominiums and other multiple unit structures have been omitted and it will be necessary to reserve the right to comment on those until they have been submitted.

It is of some concern to the Division of Insurance that there seems to be some question about the effective date. It the recommendation of the division that the law be made effective immediately, even though the applicability clause may provide for some deferral of the application with respect to certain liens.

Sincerely,

Richard L. Block
Director

RLB/val6-11

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 22, 1978

SUBJECT: House Bill 739

TO: Representative Joe L. Hayes

FROM: James L. Baldwin
Legislative Counsel

I have been requested by John Crandall to prepare a brief memorandum on the amendments HB 739 would make in existing law.

Section 1. Simplifies the language of existing section 50 and decreases the number of persons entitled to claim a lien. Under existing law any laborer, supplier, architect, or engineer may claim a lien; while after enactment of HB 739, only those persons performing labor upon or delivering supplies to the job site (or a person who directs them to work or deliver there) may claim a lien.

Section 2. The intent of this section is, with certain exceptions, to reorder the priorities accorded liens. Under existing law a lender may not have priority over a subsequent unrecorded construction lien for his recorded mortgage or deed of trust. HB 739 specifies that the priority of a construction lien is fixed on the date of recording of the lien claim.

Section 3. Allows a person to record a lien immediately after materials are delivered or work begins. Under existing law a lien claim may be recorded within 90 days after the materials are furnished or the work is completed.

Section 4. Under existing law, a supplier and a person furnishing labor at the site of new construction has a preference over a prior recorded lien, mortgage, deed of trust or other encumbrance. HB 739 would delete this priority for suppliers and qualify the priority for laborers by providing that they must not be a "contractor" as defined under AS 08.18.171.

Section 5. Adds a new section which establishes procedures for the administration of construction financing. Lenders would be required to withhold draw from contractors who have not paid their subs or employees. The withholding is mandatory after receipt of a stop payment notice by a person entitled to claim a lien. The notice may be sent if payment is not received within 20 days after the claimant's contract requires. Lenders who don't comply with these new procedures will lose any priority obtained under a recorded mortgage or deed of trust to the extent of funds wrongfully disbursed after receipt of the stop payment notice.

Section 6. Adds a new section to existing law which requires a potential lien claimant to give a notice of lien liability to the owner of the property and lender within 20 days after entering into a construction contract. The intent is to notify the owner of the sources of lien liability that have the potential for encumbering his property. Under existing law, an owner may be subjected to double liability unless he makes certain that all subcontractors are paid by the general contractor. A mechanic's or materialman's lien is not enforceable unless a notice of lien liability is given and recorded when required.

Section 7. Under existing law, a lien claim may not be recorded by a general contractor until completion of the construction contract. That section is repealed and reenacted to generally provide for the recording of lien claims and provides that they attach and are capable of enforcement only upon recording.

Section 8. Specifies the contents of a claim of lien. Existing law is similar to this repealed and reenacted section, except that additional specific information is required about the lien claimant and the work or materials furnished.

Section 9. Adds new subsections to AS 34.35.070, which provide that:

(1) a premature notice of completion is ineffective;

(2) a lien may not be claimed for work performed to satisfy a breach of warranty or other defective material or workmanship unless funds are placed in escrow to pay for the work; and

(3) a general contractor can waive his right to claim a lien if he has substantially completed the work under contract, he will complete the remaining work within six months, and funds have been placed in escrow to pay for the work.

Section 10. Specifies amounts and conditions for a bond that may be required by a lender in lieu of withholding money from draws when a stop-notice is filed under sec. 62. (It appears that the internal citation to sec. 64 on page 7, line 7 of HB 739 is incorrect, and should be changed to read sec. 62 vice sec. 64).

Section 11. Conforming amendments.

Section 12. Definitions.

I hope that the foregoing has answered your questions concerning HB 739; if I can be of further assistance, please call me at 465-4627.

JLB:hjd:jpd

REALTOR

ANCHORAGE BOARD OF REALTORS,® INC.

1818 WEST NORTHERN LIGHTS BOULEVARD

ANCHORAGE ALASKA 99503

(907) 272-3833

March 1, 1978

Attn: ANCHORAGE AREA LEGISLATORS

Whereas a serious situation now exists in the State of Alaska with regard to materialmen and mechanics lien legislation, and

Whereas the legislature is now considering HB 739 and suggested amendments and revisions to HB 739 by the Homebuilders Association, and

Whereas we as Realtors are involved with all aspects of the real estate industry,

Therefore, be it resolved that the Anchorage Board of Realtors supports the enactment of effective legislation during this session to provide for protection of all parties involved in the creation, insuring, and financing of residential dwellings; and to further provide 1) protection for the individual homeowner from injudicious lien filing, 2) definition of procedures guaranteeing labor's rights to lien for work performed, 3) suppliers right to lien for materials provided to job site, & 4) definition of procedures allowing for prompt issuance of ALTA Title Insurance and subsequent long-term financing.

Board of Directors
Anchorage Board of Realtors

Grayce Oakley Pres.
Al Ackerman
Robert A. Bell
George S. Oliver
Robert E. Bell
Barbara J. Hill
Joan Sheppard
Judi A Gastiok

REALTOR®

ALASKA ASSOCIATION OF REALTORS®
1818 W. Northern Lights Blvd., Suite 104 • Anchorage, Alaska 99503
Telephone 907-272-8016

March 1, 1978

Honorable Joseph H. McKinnon, Chairman
Alaska House Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: H. B. 739

Dear Joe:

We know that you are aware of the considerable hardship now being felt by homebuilders and home buyers because of the inability to receive prompt issuance of ALTA Title Insurance as required by the lenders financing these homes.

We have no specific recommendations at this time but we are aware that the Homebuilders Assocation, the suppliers, banks and title companies will be giving testimony before your committee in the immediate future.

Inasmuch as we are involved in all the various aspects of the Real Estate Industry we can sympathize with each of these factions. However, small builders are going broke and prospective purchasers are being greatly inconvenienced because of the great length of time now needed for closing of sales requiring the issuance of ALTA title policies.

We urge you to consider the testimony, amend the bill as fairly as possible and report it out of committee. We will lend any assistance we can, thereafter, to secure quick passage of a bill in the House and Senate that would relieve the present chaotic condition.

Sincerely,

Audie L. Moore

Audie L. Moore, Acting Chairman
Legislative Committee
Alaska Association of Realtors

ALM:pw

REPRESENTATIVE
STEVE COWPER
210 NERLAND BUILDING
FAIRBANKS, ALASKA 99701

Alaska State Legislature

JUNEAU, ALASKA

House of Representatives

March 16, 1978

Mr. Edgar S. Philleo
President
Philleo Engineering &
Architectural Service Inc.
529 Sixth Avenue
Fairbanks, Alaska 99701

Dear Ed:

Thank you for your letter of March 3, 1978, in which you raise an important point in opposition to HB 739, which relates to materialmen and mechanics' liens.

I have taken the liberty of sending a copy of your letter to Rep. Joe McKinnon, chairman of the House Commerce Committee, to which that bill has been referred. I think your comments will prove valuable to them in their review of the bill.

Thank you for keeping me informed of your views on this. I look forward to hearing from you again.

Very truly yours,

Steve Cowper

SCC/mas
cc. Rep. Joe McKinnon

March 3, 1978

Steve Cowper
210 Nerland Bldg.
Fairbanks, Alaska 99701

Dear Steve:

I am writing to express my opposition on House Bill #739 which as I understand it would eliminate Architects and Engineers from any lien rights in that it would require manual labor to have been performed on a property before a lien could be filed.

I have availed myself of lien rights on several occasions in the past and see no reason that professional services should not be entitled to the same rights as laborers.

Very truly yours,

Edgar S. Philleo, P.E.
President

ESP/pal

Page of 2 Roll of Persons attending
Rep McKinnon Lien hour forum/meeting 3/28/78
HB739 Lenders

NAME	COMPANY	Phone
RAY Holtson	ace Electric	333 4071
Michael P. Friel	" "	"
Ted Smith	Dig hot Electric	694-2677
Frank Day	Western Utility Supp	272-1219
Jean Lekola	AK Truss + Millwork	279-3522
[illegible]	Alaska Interstate Builders	277-3022
Jerry Day	Builders Hardware	279-0461
Charlie Hamilton	Mikes Supply	274-1538
Jack Peterson	Arrow Lumber	
Mike Sander	Swiftna Supply	276-2818
Jerry Earp	" "	276-2818
Mrs. Roy Cassel	Decor Ind.	277-7444
Mark Nardini	Design Suite 204	274-6322
Joe DeCosta	Bel Corp	277-5451
Roy L Cassel	Decor Enterprise	272-1593
Rosemary Shimohara	Daily News	272-8561
Ray Hamilton	Hamilton & Sons	
Glenn Smith	General Roofing	274-6822
Candace Schneider	Alaska Brick	344-0531

ROLL OF PERSONS ATTENDING
LIEN LAW forum/meeting 3/28/77

NAME	COMPANY	Phone
Harry Hollabaugh	United Fbr Co	274-5602
SWEDE HOLMSTROM	UNITED LBR. CO	274-5602
Bernie Gauthier	self-emp	274-0116
Ray Rainwater	self-emp	349-4951
Berg, Walter	Stolt	277-7654
Clive Cooper	Jones Const.	
Leon T Brown	Brown Elct.	
Madge Woods	Northwest Door	
Don McLeod	"	
Vern Rhode	AK. Truss & Millwork	279-3500
Judy Russell	Allen & Peterson	279-3537
Jake Neveu	Neveu Const	537-4944
Jerry Pruitt	Associated Enterprises	
Dave Mero	Flintstone Inc.	344-2416

To: Rep Joe McKinnon

From: Bernie Gauthier.

RE: House Bill No. 739, Tentative Draft Dated March 24, 1978 (copy attached)

DATE: March 28, 1978

I have reviewed the tentative draft and will herein briefly outline my thoughts concerning the legislation. I have some general comments which I will set forth first and this will be followed by some specific comments.

I. General Comments

(1) The overall approach taken by this legislation is wrong. First the Act gives the bank or lending institution priority over the materialman's lien rights and then makes numerous additional burdensome requirements upon the lien claimant. The bank is not required to do anything and is given first priority.

(2) This Act gives the laborer priority and subordinates the materialman. Under the current law, these two claimants are equal. This change is simply unfair and gives undue preference to the laborer (Page 2, Line 17; Page 2, Line 5).

(3) The legislation not only encourages litigation, it requires it (see Page 4, Line 8).

(4) The legislation is far too complex. In order to fully protect his interest, the lien claimant must prepare, record and serve a "notice of intent to lien", a "stop payment notice", file a lawsuit in superior court, and, finally record his lien within ten days from the recording of a notice of completion". This places so many technical requirements upon the lien claimant that it is a virtual certainty that one mistake along the line could result in the loss of lien rights and the imposition of liability upon the claimant. In short, the legislation will discourage the filing of lien claims.

II. Specific Comments

Section (1) (Page 1, Line 18). It is virtually impossible to require that the material supplier actually deliver the material to the job site under a contract with the owner. All reference to any delivery requirements are simply contrary to the existing practice in the industry and should be stricken. Under existing law the materialman must prove that his materials became incorporated in the structure. This is sufficient and the delivery requirement simply creates another loophole for the banks to defeat legitimate claims.

Under Section 3 the third level supplier usually has no contract with the owner. Thus his rights under this statute are completely cut off and he is left with no lien rights whatsoever.

Section (2) This section changes existing law by making the banks mortgage superior to the materialman's lien but leaves the labor lien in first position. As stated above, this distinction makes no sense and is simply unfair.

(Page 2, Line 13-15). This language gives the banks mortgage priority even before the bank advances any monies. The materialman could be out seven or ten thousand dollars before the bank advances any cash and yet the bank still has priority. This is obviously unfair.
Section 4 (Page 2, Lines 25 -Page 4, Line 18).

Bonded Licensed Bus 907 274-0116
Home 907 277-9167

Gauthier's
P O BOX 3 546
Anchorage, Alaska 99501

Construction
Credit Consultant B M (Bernie) Gauthier

1 page of 2

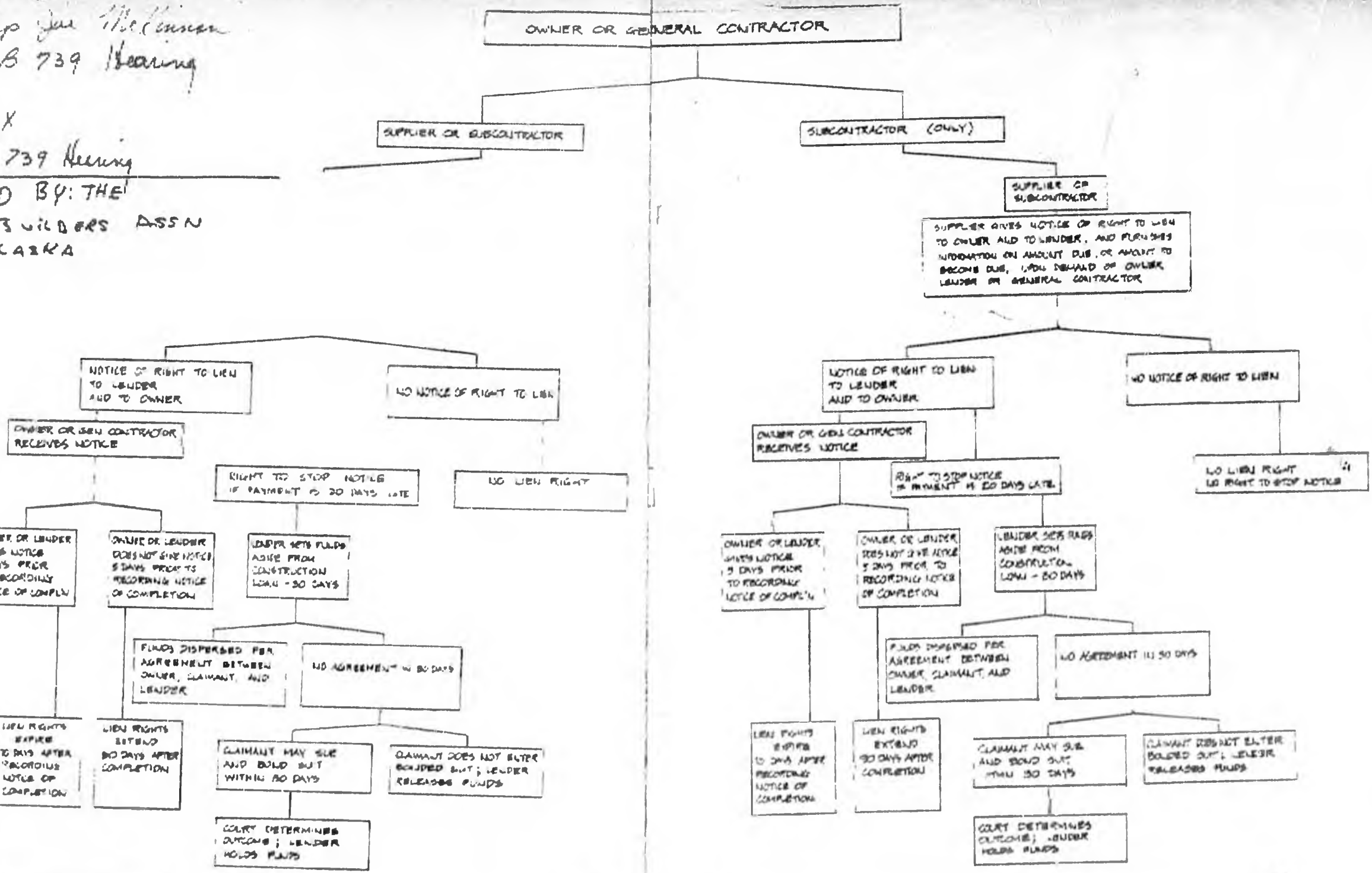
To: Rep Jim McClanahan

Re: HB 739 Hearing

fo: FBX

6: HB 739 Hearing

PREPARED BY: THE
Home Builders Assn
of Alaska



LA11 4003 16.13 JA01 0032 16.13 03/16/78

TO REPRESENTATIVE JOE MCKINNON CHAIRMAN, HOUSE COMMERCE
FROM SIGVALD STRANDBERG, 555 WEST NORTHERN LIGHTS BLVD, SUITE 201,
ANCHORAGE 99503 - PHONE 276-4555

WOULD APPRECIATE BEING ADVISED WHEN HEARINGS ARE SCHEDULED ON
HB 739, MATERIALMENS AND MECHANICS LIENS.

JH-EOM/

LA11 3337 15.51 JA01 0049 15.51 03/16/78

TO REP MCKINNON CHAIR H. COMMERCE
ATTN: ALL MEMBERS

FROM BUILDERS MILLWORK & SUPPLY
999 E. TUDOR
ANCHORAGE, AK 99503
TEL: 279-0401

Copies distributed SSB

RE: HB 739

AS A MATERIAL SUPPLIER AND SUBCONTRACTOR WE TAKE EXCEPTION TO
MANY CLAUSES IN THE PROPOSED BILL AS DRAFTED. WE REQUEST A COPY
OF THE NEWLY REVISED DRAFT AND TIME TO STUDY REDRAFT OF FINAL BILL.
AND AN OPPORTUNITY TO COMMENT BEFORE COMMITTEE TAKES FINAL ACTION.

WE CAN BE CONTACTED THROUGH B. . MATTHIES, P.O. BOX 3-546, MUNI.
AK 99501, 274-0116. JOB

CLK/EOM

LA11 2097 12.03 JA01 0021 12.04 03/16/78

TO REPRESENTATIVE JOE MC KINNON
FROM SUPERSTRUCTURES BOX 1227 SOLDOTNA 99669 PHONE 262-5338
DICK ROCKMAN, OWNER AND RUSS COOPER, DON CUDDY, PAM WALSTRAN,
TERRY KVALVIK, BOB DAVIS

WE ARE NOT IN AGREEMENT WITH MANY OF THE CLAUSES IN PROPOSED BILL
HB 739. WE REQUEST TIME TO STUDY REDRAFT AND ALLOW OTHER INTERESTED
PARTIES TO BECOME FAMILIAR WITH PROVISIONS PRIOR TO PASSAGE.

JH EOM/

LA11 1009 11.37 JA01 0019 11.37 03/16/73

TO REP. JOE MCKINNON, CHAIRMAN, COMMERCE
ATTN: ALL MEMBERS

FROM: DON MCLEOD
NORTHWEST DOOR OF ANCHORAGE
6721 ARCTIC SPUR RD
ANCHORAG, ALASKA 99502
TEL: 276-9103

Copies distributed to Commerce members

AS A MATERIAL SUPPLIER, WE TAKE EXCEPTION TO MANY CLAUSES IN HB 739 AS PRESENTLY DRAFTED. WE REQUEST TIME FOR ALL INTERESTED PARTIES TO REVIEW ANY REDRAFTS PRIOR TO PASSAGE.
DON

LA11 1133 16.39 JA01 0015 16.39 03/15/73

TO REP MCKINNON, CHAIR, H. COMMERCE COMMITTEE
ATTN: ALL MEMBERS

FR UNITED BUILDING SUPPLY, INC
UNITED LUMBER CO. INC. AND SUBSIDIARIES
D.HOLSTROM, CREDIT MANAGER
P.O. BOX [illegible]
ANCH., AK 99510
TEL. 274-[illegible]

RE: HB 739

AS A MATERIAL SUPPLIER WE TAKE EXCEPTION TO MANY CLAUSES IN THE PROPOSED BILL AS PRESENTLY DRAFTED. IT IS OUR UNDERSTANDING THAT THE BILL WAS SUBSTANTIALLY REVISED MARCH 14TH, 1973, AND COPIES ARE NOT YET AVAILABLE. WE UNDERSTAND THERE WILL BE A COMMITTEE HEARING THURSDAY, MARCH 15, AT 7 P.M. TO CONSIDER CERTAIN PROPOSALS. WE ARE DESIROUS OF OBTAINING A COPY OF THE REDRAFT AND WE URGENTLY REQUEST TIME TO STUDY IT AND SUBMIT SUGGESTIONS IF NECESSARY, PRIOR TO SUBMITTAL TO THE LEGISLATURE FOR PASSAGE.
DON

DATE 1212 10:34 JNU 000X 10:41 03/17/78

CINDY JNU
FR CHARITY ANCH

THIS MESSAGE WAS SENT YESTERDAY AFTERNOON BUT WAS GARBLED AND PRINTED OUT AT ANOTHER SITE. I WAS TOLD BY THAT SITE THIS MORNING SO AM RESENDING IT.

TO REP MCKINNON CHAIR. H. COMMERCE
ATTN: ALL MEMBERS

RE HB 739

THE UNDERSIGNED AS MATERIAL SUPPLIERS AND SUB CONTRACTORS OBJECT TO MANY CLAUSES IN THE PROPOSED BILL AS DRAFTED. WE UNDERSTAND THAT A COMMITTEE MEETING FOR 3/16/78 WILL REDRAFT THIS BILL. WE REQUEST A COPY OF THE NEWLY DRAFTED PROPOSAL AND TIME TO STUDY IT. WE REQUEST AN OPPORTUNITY TO COMMENT BEFORE COMMITTEE TAKES FINAL ACTION.

WE CAN BE CONTACTED THROUGH D.M. GAUTHIER, P.O. BOX 3-546 ANCH., AK 99510, 274-0116.

S/ RAY DEBENHAM...DEBENHAM ELECTRIC & SUPPLY INC
JAKE NEVES....NEVES CONSTRUCTION
DEN DIGGINS....DIGGINS CONCRETE
SAM GIAMMALVA....ALASKA ASPHALT PAVING
JOE GIAMMALVA...[illegible] TRUCKING INC
RICHARD JOYSEN....[illegible] ASPHALT INC.

EOM

CBK/EOM

LAII 4765 18.08 03/15/78 JA01 0005 07.32 03/16/78

TO REP MCKINNON, CHAIR, H. COMMERCE
ATTN: ALL MEMBERS

FROM FRED STEENMEYER
2433 POST RD
ANCHORAGE, AK 99501
TELE 276-5055

AS A CONTRACTOR AND SUPPLIER WE OPPOSE HB 739 AS HOWDRAFTED. WE UNDERSTAND THERE IS A COMMITTEE HEARING, THURS. 3/16 AT 7 P.M. TO REDRAFT THIS PROPOSAL. WE REQUEST ADDITIONAL TIME TO STUDY THIS REDRAFTED BILL BEFORE LEGISLATIVE ACTION TAKES PLACE. EOM.

COPY OF P.O.M. REQUESTED: ATTN: JOANNA CBK/EOM

LAII 4772 18.13 03/15/78 JA01 0006 07.32 03/16/78

TO REP MCKINNON, CHAIR., H. COMMERCE
ATTN ALL MEMBERS

FROM INLET GLASS INC
245 POST RD
ANCHORAGE, AK 99501
TEL 276-1451

AS A MATERIAL SUPPLIER IN THE ANCHORAGE AREA WE TAKE EXCEPTION TO NUMEROUS CLAUSES IN HB 739 AS WRITTEN. WE UNDERSTAND A COMMITTEE HEARING TO REDRAFT THIS BILL IS SCHEDULED FOR THURS, 3/16, AT 7 P.M. IF POSSIBLE TIME TO STUDY THIS NEW DRAFT PROPOSAL BEFORE COMMITTEE ACTION IS TAKEN ON FINAL DRAFT. EOM

CBK/EOM

TO REPRESENTATIVE JOE MC KINNON
FROM ALLEN & SMITH HOME DECORATING

RE HB 739: AS A MATERIAL SUPPLIER AND SUBCONTRACTOR I TAKE EXCEPTION TO MANY OF THE PROVISIONS OF THIS BILL AS DRAFTED. WE REQUEST COPY OF REDRAFTED PROPOSAL FOR STUDY AND COMMENT BEFORE THE COMMITTEE TAKES FINAL ACTION. 4950 FAIRBANKS STREET, ANCHORAGE 99503. PHONE 272-3537.

LA11 2505 13.47 JA01 0023 13.51 03/16/73

TO REPRESENTATIVE JOE MC KINNON AND MEMBERS OF HOUSE COMMERCE COMMITTEE
RE HB 739

AS MATERIAL SUPPLIERS AND SUBCONTRACTORS WE TAKE EXCEPTION TO MANY CLAUSES IN THE PROPOSED BILL AS CURRENTLY DRAFTED. WE REQUEST TIME TO STUDY THE REDRAFT OF THE FINAL BILL AND AN OPPORTUNITY TO COMMENT BEFORE THE COMMITTEE TAKES FINAL ACTION. WE CAN BE CONTACTED THROUGH B. M. GAUTHIER, P. O. BOX 3-546, ANCHORAGE 99501 PHONE 274-0116.

SIGNED B.M. GAUTHIER, CONSTRUCTION CREDIT CONSULTANT
DAN JORDAN, JORDAN'S CARPET CENTER
CHARLES S. HAMILTON, MIKE'S SUPPLY, INC.
DAVID MERRO, FLINTSTONE, INC.
WAYNE STOLT, STOLT'S ELECTRIC
MIKE HAYDEN, QUALITY ASPHALT
LEON T. BROWN, BROWN'S SUPPLY COMPANY
ROBERT E. LINDSTROM, MC KINLEY FENCE
GLEN SMART, GENERAL ROOFING

Copies distributed to Commerce members

JH EOM/

LA11 3343 16.46 JA01 0047 15.46 03/14/73

TO REPRESENTATIVE JOE MC KINNON

FROM HELMUT METZEL WATERCRAFT KITCHENS AND FIXTURES
4460 STUART WAY ANCHORAGE 99503 PHONE 272-3433

PLEASE DELAY FINAL CONSIDERATION OF HB 739 UNTIL WE HAVE HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON YOUR COMMITTEE'S PROPOSAL.

JH EOM/

LA11 3066 14.53 JA01 0037 14.53 03/16/78

Copies distributed

TO REP MCKINNON, CHAIR, H. COMMERCE
ATTN ALL MEMBERS

FROM RICHARD HOLMSTROM, ALASKA MGR.
CONCRETE CORING CO.
1425 VIKING DR.
ANCH., AK 99501

"THE PROPOSED BILL, HB 739, AS CURRENTLY DRAFTED CONTAINS CONDITIONS UNACCEPTABLE TO A SUBCONTRACTOR. WE UNDERSTAND THERE HAVE BEEN REVISIONS AND PENDING REVISIONS ARE BEING DRAFTED CURRENTLY IN A COMMITTEE HEARING 3/16/78 AT 7 PM. WE RESPECTFULLY REQUEST A COPY OF THE DRAFT AND A FEW DAYS TO STUDY IT, AND OFFER SUGGESTIONS IF NECESSARY PRIOR TO SUBMISSION TO THE LEGISLATURE FOR PASSAGE. EOM"

CBK/EOM

Copies given to all comm. members dlb

LA11 4453 17.12 03/16/78 JA01 0033 07.31 03/16/78

TO: REP. JOE MCKINNON, CHAIRMAN, HOUSE COMMERCE COMMITTEE
AND ALL HOUSE COMMERCE COMMITTEE MEMBERS

FROM: GERALD E. EARP, PRES.
SUSITNA SUPPLY, INC.
P.O. BOX 3-4033
ANCH. AK 99501 276-2813

RE: HB 739

WE ARE TAKING EXCEPTION TO HB 739. PLEASE RECONSIDER AND DELAY FOR THE TIME BEING IN ORDER TO GIVE SUPPLIERS AND LIKE BUSINESSES TIME TO CONSIDER AND COMMENT. THE BILL AS WRITTEN IS VERY ONE-SIDED AND DAMAGING TO ALL SUPPLIERS AND SUB-CONTRACTORS. THANK YOU. EOM/

© Moore Business Forms, Inc

LA11 4359 16.53 03/15/78 JA01 0001 07.31 03/16/78

TO: REP. JOE MCKINNON, CHAIRMAN, HOUSE COMMERCE COMMITTEE
AND ALL COMMITTEE MEMBERS

FROM: GORDON HILL, MANAGER
PACIFIC PLUMBING SUPPLY CO.
6260 OLD SEWARD HIGHWAY
ANCHORAGE, AK 99502 344-4523

RE: HB 739

PACIFIC PLUMBING SUPPLY CO. TAKES EXCEPTION TO THE BILL AS CURRENTLY DRAFTED. IT IS OUR UNDERSTANDING THAT THE BILL WAS SUBSTANTIALLY REVISED 3-14-78, AND COPIES ARE NOT YET AVAILABLE.. WE UNDERSTAND THAT THERE WILL BE A COMMITTEE HEARING ON MARCH 16, 1978, AT 7:00 PM TO REDRAFT CERTAIN PROPOSALS.

PACIFIC PLUMBING SUPPLY CO. IS EXTREMELY INTERESTED IN OBTAINING A COPY OF THE REDRAFTED BILL AND REQUESTS TIME TO STUDY IT AND SUBMIT RECOMMENDATIONS PRIOR TO SUBMITTAL FOR PASSAGE IN THE LEGISLATURE.

THANK YOU. EOM/

LA11 1383 10.28 JA01 0015 10.28 03/16/78

TO REPRESENTATIVE JOE MCKINNON
FROM TIM DUGAN 5501 A STREET ANCHORAGE 99502 PHONE 276-3614
R. GAYLOR ELECTRIC

I REQUEST A COPY OF THE NEWLY MARKED-UP CS FOR HB 739. I WOULD LIKE AN OPPORTUNITY TO REVIEW AND COMMENT ON THE REDRAFT BEFORE FINAL COMMITTEE ACTION.

JH EOM/

LA11 3471 17.29 03/16/78 JA01 0001 08.06 03/17/78

TO REPRESENTATIVE JOE MC KINNON

FROM LILLIAN CASTLE DECOR INDUSTRIES INC 4263 MINNESOTA DRIVE
ANCHORAGE 99503 PHONE 272-1592

DECOR INDUSTRIES IS A MATERIAL SUPPLIER. WE ARE NOT IN AGREEMENT WITH SOME OF THE PROVISIONS IN THE PROPOSED SUBSTITUTE FOR HB 739 AND WOULD APPRECIATE HAVING A CHANCE TO READ AND COMMENT ON THE COMMITTEE'S FINAL PROPOSAL BEFORE COMMITTEE ACTION IS TAKEN.

JH EOM/

LA21 3673 17.40 03/16/73 JA01 0002 08.06 03/17/73

TO: CINDY, JNU
FROM: APRIL, FBX

PLEASE DELIVER THE FOLLOWING MESSAGE TO THE HOUSE COMMERCE COMMITTEE:

RE: HB 739

I STRONGLY OPPOSE THE WEAKENING OF THE LIEN RIGHTS OF MATERIAL SUPPLIERS AND CONTRACTORS AS PROPOSED BY HOUSE BILL 739. SUGGEST ORIGINAL WORDAGE BE REPLACED AS SHOWN IN SECTION 4, AS 34.35.060, PARA C IN BRACKETS: [OR FURNISHING MATERIAL USED IN] AS OPPOSED TO NEW WORDAGE. THE LIEN RIGHTS OF MATERIAL SUPPLY COMPANIES AT WHOLESALE, RETAIL, OR CONTRACTOR LEVELS NEED TO BE PLAIN AND CLEARLY WORDED. KEEP IN MIND THAT MATERIAL SUPPLIERS PROVIDE AS IMPORTANT A FUNCTION AS BANKS AND LABOR WITHOUT THE SECURITY OF MORTGAGES, DEEDS OF TRUST, OR WEEKLY PAY CHECKS. SUPPLIERS PROVIDE MILLIONS OF DOLLARS IN CREDIT WITH THEIR LIEN RIGHTS AS THEIR ONLY BASIC SECURITY. TO INSURE A HEALTHY CONSTRUCTION INDUSTRY MATERIAL SUPPLIERS MUST HAVE THE PROTECTION OF PREFERENTIAL LIEN RIGHTS EQUAL TO LABORS.

THE BILL IN PRESENT FORM IS EXTREMELY CUMBERSOME AND DIFFICULT FOR FAST MOVING INDUSTRIES SUCH AS WHOLESALERS TO CONFORM TO. BILLINGS AND COLLECTIONS ARE OUR INDICATORS OF CREDIT EXPOSURE AND THESE LAG FIFTEEN TO THIRTY DAYS AT BEST.

RESPECTFULLY REQUEST YOU ALLOW FAIRBANKS SUPPLIERS ENOUGH TIME TO FORMULATE THEIR IDEAS AND PROVIDE INPUT OR ALLOW US TIME TO REVIEW THE BILL BEFORE IT IS PUT IN ITS FINAL FORM AND MAKE SUGGESTED REVISIONS.

JAMES HAPP
CENTRAL SUPPLY COMPANY
P.O. BOX 140, FBKS, 99707
PH: 452-2105

PLEASE ACK WHEN MESSAGE DELIVERED. THANKS, /A/ SOM

LA11 3562 16.17 JA01 0052 16.17 03/16/73

TO: REP. JOE MCKINNON, CHAIRMAN, HOUSE COMMERCE COMMITTEE
AND ALL COMMITTEE MEMBERS

FROM: ROBERT E. LINDSTROM
MT. MCKINLEY FENCE COMPANY
1355 E. THIRD AVENUE
ANCHORAGE, AK 99501 279-1567

RE: HB 739

AS A SUBCONTRACTOR AND MATERIALMAN WE DO NOT AGREE WITH PROPOSED BILL 739 AND REQUEST TIME TO STUDY THE FINAL REDRAFT PRIOR TO ITS PASSAGE FROM COMMITTEE. FOW/

LA11 3591 16.29 JA01 0053 16.29 03/16/73

TO: REP. JOE MCKINNON, CHAIRMAN, HOUSE COMMERCE COMMITTEE
AND ALL COMMITTEE MEMBERS

FROM: MARCIE CLARK
TOM'S PLUMBING AND HEATING
3160 MOUNTAIN VIEW DRIVE
ANCHORAGE, AK 99501 279-9333

RE: HB 739

WE ARE NOT IN AGREEMENT WITH THE PRESENT PROVISIONS OF THIS BILL AND REQUEST A COPY OF A REDRAFTED BILL. FOW/

LA11 4064 16.19 JA01 0042 16.21 03/15/78

TO REP MCKINNON, CHR. H. COMMERCE
FROM KEVIN J. WELLS
KENAI SUPPLY INC
P.O. BOX 499
KENAI, AK 99611
TEL: 283-7521

RE; HB 739

WAS A MATERIAL SUPPLIER, WE TAKE EXCEPTION TO HB 739 AS CURRENTLY DRAFTED. WE UNDERSTAND THERE WILL BE A COMMITTEE HEARING THURS., 7 P.M. , 3/16/78, TO REDRAFT CERTAIN PROPOSALS. WE REQUEST TIME TO VIEW THE REDRAFT PRIOR TO SUBMITTAL TO THE LEGISLATURE FOR PASSAGE." EOM

CBK/EOM

LA11 4071 16.20 JA01 0043 16.22 03/15/78

CINDY, THE PRIOR MESSAGE FOR MCKINNON WAS ALSO INTENDED FOR RUSS MEEKINS. SORRY, EOM

LA21 3700 18.18 03/16/78 JA01 0003 08.07 03/17/78

TO: CINDY, JNU
FROM: APRIL, FBX

PLEASE DELIVER THE FOLLOWING MESSAGE TO HOUSE COMMERCE:

RE: HB 739

AM ADAMENTLY OPPOSD TO BILL IN ITS PRESENT FORM WHICH APPEARS TO WEAKEN LIEN RIGHTS FOR MATERIAL SUPPLIERS AND CONTRACTORS AS PROPOSED BY THIS BILL.

REQUEST THAT BILL INCLUDE MATERIAL SUPPLIERS TO RETAIN EQUAL LIEN RIGHTS TO LABOR.

ALSO, BILL IN ITS PRESENT FORM IS EXTREMELY CUMBERSOME FOR MATERIAL SUPPLIERS AS OURS IS A FAST MOVING INDUSTRY AND REQUIRES SUFFICIENT TIME FOR BILLING AND COLLECTIONS. FEEL THAT TWENTY DAY PERIOD IS NOT SUFFICIENT TIME AND WOULD REQUIRE US TO SHOW INTENT TO LIEN UPON INITIAL SALES CONTRACT.

REQUEST SUFFICIENT TIME TO REVIEW BILL IN ITS FINAL FORM BEFORE ITS PRESENTED TO THE HOUSE FOR ACTION.

DAN RAMOS
PRESIDENT, TOTAL ELECTRIC SUPPLY COMPANY
2113 CUSHMAN ST, FBKS 99701
PH: 452-1931

PLEASE ACK WHEN MESSAGE DELIVERED. THANKS. /A/ BOX

LA21 3740 18.33 03/16/78 JA01 0004 08.08 03/17/78

TO: CINDY, JNU
FROM: APRIL, FBX

PLEASE DELIVER THE FOLLOWING MESSAGE TO HOUSE COMMERCE:

RE: HB 739

WE ARE STRONGLY OPPOSED TO THIS BILL AS WRITTEN. IT ALL BUT DESTROYS LIEN RIGHTS FOR MATERIAL SUPPLIERS AND CONTRACTORS.

WE REQUEST THE BILL BE ALTERED TO INCLUDE MATERIAL SUPPLIERS RETAINING LIEN RIGHTS EQUAL TO LABOR AND CONTRACTORS.

THE NATURE OF OUR INDUSTRY REQUIRES A CERTAIN TIME PERIOD FOR BILLING AND COLLECTION. THE TWENTY DAY PERIOD PROVIDED IN THIS BILL IS NOT SUFFICIENT AND WOULD FORCE US TO NOTIFY INTENT TO LIEN UPON INITIAL SALE.

REQUEST WE BE ALLOWED TO REVIEW THE BILL BEFORE IT IS SENT TO THE HOUSE.

MR. ROYAL BIDWELL
AMFAC SUPPLY
2700 CUSHMAN ST, FBKS 99701
PH: 452-4424

#

02067 NL ANCHORAGE ALASKA 50 02-22 127P AST

PMS REP JOE MCKINNON

JUN

URGE HEARING HERE ON HB739 LITTLE GUY NEEDS CHANCE VS LARGER PROPONENTS OF BILL. THIS BILL WILL WORK HARDSHIP FOR SMALL CONTRACTORS

BERTHA MIDYETT 1011 WEST 12TH APT 3 ANCHORAGE AK 99501

1978 FEB 22 PM 5 11

April 4, 1978

Alaska State Legislature

Attn: Russ Meekins, Joe L. Hayes, Larry Carpenter,
Ed Dankworth, Terry Gardiner, Clark Gruening,
Kris Lethin, Hugh Malone, Alvin Osterback,
Charles H. Park, Randy Phillips, Leo Rhode,
Richard Union.

Re: House Bill No. 739
Tentative Draft dated March 24, 1978

"General Comments"

In reviewing the Tentative Draft it is the opinion of the signers that this legislation is entirely too complex. It appears to be designed for the purpose of defeating a claimants lien rights through a series of complicated procedures which a claimant cannot comply with. It not only defeats a legitimate claimants rights, but it also exposes a supplier to fraud which could be perpetrated by a dishonest owner and sub-contractor. For a supplier to comply with the complicated procedures of sending notices of "Intent to lien" and "Stop Payment" notices it not only encourages litigation but it requires it. While a supplier would be expected to comply with the above unworkable procedures, the bank or lending institution would be in a first priority position without having to do anything to protect their interest.

Needless to say this legislation will drive the cost of construction upward through a supplier needing additional personel and increasing his credit risk factor. At a time when inflation is a major concern, it appears that little thought has been given to this aspect.

If any changes were to be made in the lien statute, we would have the following recommendation. It seems to us that the principal problem is that title companies are unable to write title policies on property until 90 days after completion. If this is indeed a problem in the real estate industry, it could simply be solved by requiring lien claimants to file their liens within ten days of completion. Certainly the delays involved in closing will not make this ten day provision a burden. If the supplier wishes to be informed of the exact date the completion occurs, he can simply send the bank a Notice of Intent to lien. The statute could require that the bank then notify each such claimant prior to recording the Notice of Completion. Once the supplier receives notice that the completion will be recorded, he can take steps to immediately perfect his rights by recording his lien. This appears to be the only change which really is necessary and the remainder of this statute is simply overkill.

"Specific Comments"

Page (1) Line (18). It is nearly impossible to require a supplier to actually deliver material to a job site under contract with the owner. A large portion of materials used in construction are picked up at a suppliers place of business. All reference to any delivery requirements is contrary to existing practice. Proof that material was used on a specific project is provided by the legal property description written on the invoice and acknowledged by the owner or his agent at the time of purchase. This is sufficient and any delivery requirement simply creates a loophole to defeat a legitimate claim.

Page (1) Defining who may perfect a lien:
A supplier who provides material to a sub-contractor rarely if ever has a contract with the owner. Under this section such a supplier has no lien rights. This is not only unfair but it opens the door to possible fraud. A dishonest owner and sub-contractor through collusion could cause the majority of materials to be purchased by the sub-contractor. Under this section the supplier has no lien rights and consequently would be unable to recover his money.

Page (3)&(3) See(4). "Stop Payment Provision":
This section not only encourages litigation but it requires it. This section should be dropped and the materialman be allowed to maintain a first position supported by invoices. Sub-section "C" requiring a lawsuit within thirty (30) days should be dropped for obvious reasons. A materialman should only be required to send a stop payment notice to the bank since they are the one disbursing funds. An owner only has to refuse a registered letter containing a stop payment notice to invalidate the materialmans claim.

Page (4) Line (19). Notice of Intent to Lien.
This notice appears to be just another device to defeat a claimants lien rights. Obviously if an owner fails to accept or pick up a registered letter containing this notice the claimants rights are invalid. This section should be optional and not mandatory.

Page (6) Lines (1) thru (24). Claim of Lien:
This again makes the notice of intent to lien mandatory. The notice of intent to lien should be an optional requirement sent only to the bank to establish a materialmans priority over the banks mortgage. If a notice is not given the materialman should still have a right to lien even though he would be second to the bank.

Page (6) Line (26). Notice of Completion:
This is another complex device which does not give a supplier time to respond. It also makes the notice of intent to lien mandatory before a supplier can be informed of the notice of completion. Also to give notice five (5) days prior to recording is unrealistic. Even if a supplier could comply with the other requirements his claim could be invalidated by slow mail delivery.

From:

Debenham Electric Supply Company, Inc.
Stoll's Electric Supply Company
Stoll's Home Builders Center
Jordan's Carpet Center
United Lumber Company
Concrete Cutting Company, Inc.
Alyeska Wood Products
United Building Supply
Concrete Coring Company, Inc.
Decor Industries, Inc.
Susitna Supply, Inc.
Alaska Truss and Millwork
Tom's Plumbing and Heating Supply Inc.
Brown's Electrical
Inlet Glass Company

HB

756

08-H2LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER / POUCH D – JUNEAU 99811

March 3, 1978

Honorable Joe McKinnon
Chairman
House Commerce Committee
Alaska Legislature
Juneau, Alaska 99811

Dear Chairman McKinnon:

A member of your staff has requested our comments on HB 756 (identification of Alaska arts and handicrafts).

Under the present law (AS 45.65.030) which was enacted last session, four distinct seals were to be designed and distributed. Due to the cost involved, we have been unable to administer the program as specified.

House Bill 756 proposes two seals - one identifying native handicrafts and the other indentifying non-native resident handicrafts. This proposal would provide two easily recognizable symbols for certifying authentic Alaska-produced handicrafts and, at the same time, simplify the program's administration.

The enclosed fiscal note indicates that $64,000.00 would be required to administer HB 756, which is beyond the Governor's budget limits. Thus, while we believe the bill worthy of support, we do not wish to displace other priority projects.

Please let me know if you desire additional information on this proposal.

Yours truly,

H. Phillip Hubbard
Commissioner

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 756
Title Relating to identification of Alaska arts & handicrafts
Requested by _____ Date 2/9/78

II. FISCAL DETAIL
Agency Affected Commerce & Economic Development
Program Category Affected Development
Budget Request Unit(s) Affected Economic Enterprise

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL			64.0	68.0		
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL			64.0	68.0		

FUNDING (Thousands of Dollars)

GENERAL FUND			64.0	68.0		
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME			-0-	-0-		
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The identification of Alaskan crafts is an integral part of an arts and crafts development program. The Alaska Federation of Natives is currently promoting this vital industry on a contractual basis. For FY-79, $64,000 would be required as follows:

Personnel	$31,200
Transportation, Per Diem	6,750
Promotion Silver Hand	10,000
Consumables, postage, rent, etc.	16,050
Total	$64,000

IV. DATE Feb. 27, 1978 PREPARED BY James R. Deagen
AGENCY Division of Economic Enterprise

HB

786

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS

POUCH D – JUNEAU 99811

January 26, 1978

Honorable C. V. "Chat" Chatterton
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Mr. Chatterton:

Re: Private Offering Exemption 45.55.140(b)(5)
Definition of Issuer 45.55.130(7)(B)

PROBLEM

In the recently changed private offering exemption, certain oil, gas and mining programs were excluded from using this exemption because of a "peculiarity" in the definition of an "issuer," AS 45.55.130(7)(B), which states that there is no issuer in certain oil, gas and mining securities.

The intent of the private offering exemption legislation was not to exclude these groups from having the availability of the exemption but rather to have it apply to all types of private offerings.

PROPOSED SOLUTION

The problem lies not in the wording of AS 45.55.140(b) but in the archaic definition of an "issuer" as found in AS 45.55.130(7)(B) and, specifically, that part which states:

> "(B) with respect to certificates of interest or participation in oil, gas, or mining titles or leases or in payments out of production under these titles or leases, there is not considered to be an "issuer";"

This clause was contained in the original enactment of the Alaska Securities Act of 1959 (406 ch. 198 SLA 1959) and was taken verbatim from the Uniform Securities Act as approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in August of 1956. The original drafter saw a possible problem with this language but felt that it could be dealt with under the rulemaking authority of the Administrator (see Official Code Comment. I CCH Blue Sky Law Reporter, 4931).

The Draftmen's Commentary to this problem states "...the existing statutes seem to have ignored the problem of determining who is the issuer of such a security." After several futile attempts to draft a definition of "issuer" as applied to this type of "security," it was concluded that the simplest solution was to say that there is no "issuer" at all. Loss and Cowett, Blue Sky Law, 1958 Ed, 341.

What resulted because of the begging of this question in the original Uniform Securities Act was that many states, and now even Alaska, have been faced with problems of dealing with issuers who are statutorily "non-issuers." As a result, 35 states have changed this definition so that there is now considered to be an issuer in these oil, gas and mining programs. Only 15 states, including Alaska, have failed to remedy this problem.

It is interesting to note that Alaska is the only Pacific Northwest state to keep the old definition. The only other west coast state to maintain it is Hawaii.

RECOMMENDATION

I am attaching hereto, for your consideration, a proposed amendment to AS 45.55.130(7)(B) which conforms to the definition now adopted by a majority of states. This amendment will solve the problem by defining issuer in certain oil, gas and mining programs and bring our uniform act into uniformity.

I appr ciate the opportunity to express the division's views on this problem and remain at your disposal should you have any questions concerning this recommendation or proposed action on it.

Sincerely,

Julius J. Brecht
Director

JJB/val4/3
cc: Lum Lovely
Alaska Miners Association
Alaska Geological Society
Alaska Association of Petroleum Landmen
Alaska Oil and Gas Association

AS 45.55.130(7)(B) is amended as follows:

(B) with respect to certificates of interest or participation in oil, gas or mining rights, titles or leases, issuer means the owner of any such right, title or lease, who creates fractional interest therein for the purposes of sale. [WITH RESPECT TO CERTIFICATES OF INTEREST OR PARTICIPATION IN OIL, GAS, OR MINING TITLES, OR LEASES OR IN PAYMENTS OUT OF PRODUCTION UNDER THESE TITLES OR LEASES THERE IS NOT CONSIDERED TO BE ANY "ISSUER";]

March 28, 1978

Mr. Richard D. Latham, Commissioner
Texas Board of Securities
P.O. Box 131 Capitol Station
Austin, Texas 78711

Dear Mr. Latham:

Re: Oil & Gas Exemption Questionnaire

Thank you for your memoandum of March 10, 1978 on a proposed oil and gas exemption. I appreciate the opportunity to comment on this important proposal. Although we have attempted to respond to each of the questions posed, there are some areas where the problems or implications are not entirely clear. I suspect I am not alone in this regard, and I look forward to some enlightenment in Washington at the spring meeting.

To preface may response, I feel that some type of exemption is in order, but the type of exemption has a great bearing on the standards that should apply. If the exemption is to be available to "sophisticated investors" meaning those with experience and knowledge in the industry then there probably should be fewer restrictions. On the other hand, if wealth is the criteria or the exemption takes the form of a "private offering" exemption, then other more stringent standards should apply.

I would also like to point out that the Alaska Securities Act (ASA) already defines oil and gas interests, as well as mining interests as securities and that ASA already provides a private offering exemption under which certain of these securities may be offered.

In addition, the Alaska Legislature is presently considering a further exemption for oil, gas and mining securities for those "in the business." I have included below excerpts from the Alaska Statutes as well as the proposed legislation in hopes that these responses to the questions posed may be seen in better context. Please note that the division is experiencing some minor problems with present private offering exemption (AS 45.55.140(b)(5)) and will attempt to tighten it up standards during the next legislative session after I have had time to perfect the amendments. I am also willing to consider amending ASA to encompass any exemption that may come out of this subcommittee's recommendations.

The following are excerpts from the ASA.

AS 45.55.130(12) Definitions:

AS 45.55.130(12) "'security' means... a certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under the title or lease; or in any sale of or indenture or bond or contract for the conveyance of land or any interest in land;..."

AS 45.55.140 Exemptions:

AS 45.55.140(b)(5)(A)&(B). Sales by an Issuer.

(b) The following transactions are exempted from [registration under] this chapter...(5) sales by an issuer.

(A) to no more than 10 persons in this state other than those designated in (4) of this subsection [offer or sale to a bank, investment company, institutional buyer, etc.] during a period of 12 consecutive months whether or not the seller or any of the buyers is then present in this state, if

(i) no commission or other remuneration is paid or given directly or indirectly for soliciting a prospective buyer in this state;

(ii) the total dollar amount invested during a period of 12 consecutive months does not exceed $100,000;

(iii) a legend is placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under this chapter and cannot be resold without registration under this chapter or exemption from it;

(iv) offers are made without public solicitation or advertisement; and

(v) the issuer files with the administrator a notice specifying the issuer, the security to be sold and the terms of the offer at least two days before any sales are made;

(B) to no more than 25 persons in this state other than those designated in (4) of this subsection during a period of 12 consecutive months whether or not the seller or any of the buyers is then present in this state, if

(i) the sales are made solely in this state;

(ii) before any sale, each prospective buyer is furnished access to the information that would be provided to a prospective buyer in a registration under sec. 100 [basically the disclosure provisions of ASA] of this chapter (which information shall be furnished to the administrator upon his request);

(iii) the total dollar amount invested during a period of 12 consecutive months does not exceed $500,000;

(iv) commissions or other remuneration meet the requirements of this chapter and are made only to persons registered under sec. 40 of this chapter;

(v) a legend is placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under this chapter and cannot be resold without registration under this chapter or exemption from it;

(vi) the issuer obtains a signed agreement from the buyer acknowledging that he is buying for investment purposes and that the securities will not be resold without registration under this chapter;

(vii) offers are made without public solicitation or advertisement; and

(viii) the issuer files with the administrator a notice specifying the issuer, the security to be offered, and the terms of the offer at least two days before the offer is made;"

AS 45.55.140(b)(17) Proposed Legislation:

AS 45.55.140(b) is amended by adding a new subparagraph to read:

"(17) offers or sales of certificates of interest or participation in oil, gas, or mining rights, titles or leases, or in payments out of production under such rights, titles or leases, if the purchasers:

(A) are or have been during the preceding two years engaged primarily in the business of drilling for, mining, producing, or refining oil, gas, or minerals; or

(B) have been found by the administrator upon written application to be substantially engaged in the business of drilling for, mining, producing, or refining oil, gas, or minerals so as not to require the protection provided by sec. 070 of this chapter; and

(C) for purposes of this exemption "engaged in the business" means demonstrable expertise and activity by a person in the subject field of endeavor and shall include oil, gas, and mining corporations or principles but shall not include individuals who are employed in the business."

With these considerations in view, I have the following responses to the questions posed in your memorandum.

1. Should an exemption for the sale of fractional interests in oil and gas interests be accompanied by an amendment, if needed, to the definition section of the respective Securities Act to include an interest in an oil and gas lease, fee or title as being a security?

   Yes, if there is to be an exemption, it should be related to the definition of a security. Alaska's act already contains such a definition (see excerpt above).

2. Should such definition include "or mining" so as to include coal leases and ar other mining offering?

   As stated above, "mining" interests are already included in Alaska's definition, and the phrase should probably be included in the exemption under consideration.

3. Should a limit be placed on the number of offers and/or sales which can be made under the exemption? If the answer is "yes," what number would be an appropriate maximum?

   If the exemption is for the sophisticated investor, i.e., deals between oil companies or mining companies, then probably no limits need apply. If aimed at "private offering" small deals, then I suggest 20 offers and 10 sales would probably be adequate.

4. Should the exemption apply to offers and sales, or only to sales?

   Refer to 3 above. It should apply to both offers and sales unless the exemption is for sophisticated purchasers, e.g., major oil, gas, mining companies, etc., in which case there probably should be no limit.

5. If a maximum number is set, should it matter where the purchasers are from in counting to the maximum? In other words, would purchasers from all jurisdictions be counted in reaching a maximum or only those from the jurisdiction applying its law?

The staff of the division has a difference of opinion on this question. The staff feels if it is a sophisticated investor exemption, it does not matter where the investors come from to reach the maximum. On a private offering type exemption, I'm inclined to favor a maximum set by each state for sales within its jurisdiction plus a maximum of the total number of offerings nationwide on the theory there might be tighter control. That is, all X numbers in a given jurisdiction Y with a total not to exceed Z for all jurisdictions in order for an offering to be exempt in jurisdiction Y. I hasten to point out, however, that it may be doubtful whether an unscrupulous offeror would even disclose what activity went on in other jurisdictions under this type of exemption.

6. Should there be a dollar limit to regulate the maximum size of the offering? If a maximum should be set, what should it be?

For a "sophisticated" offering probably no dollar restrictions need apply. However, for a "private" offering type exemption, some overall ceiling should be set. The current private offering exemption of ASA sets a ceiling of $100,000 interstate and $500,000 intrastate (see AS 45.55.140 (b)(5) above).

7. Should there be a maximum or minimum limit set ont the number of wells which could conceivably be drilled on the venture and/or lease?

I am not aware of all the implications of this question, but it seems that for a "sophisticated" offering, no limit need apply. I would be interested in hearing from other states on this question. The question might apply to a "private" type offering assuming that we could apply substantive standards to an exempt offering.

8. Should the number of leases within a single offering under the exemption be limited to one? Should there by any limit?

Refer to 7 above.

9. Should there be a requirement that the lease be in the state in which the offering is being made?

This question connotes a strictly intrastate offering and would probably be all right for a "noncontiguous" state like Alaska. However, the question raises problems for some contiguous states where leaseholds cross state lines. The restriction is probably not necessary for a sophisticated offering exemption, but we would favor it on a private offering exemption.

10. Should the exemption be limited to sales within a maximum period to time, i.e., twelve months? If so, what would be an appropriate period of time?

Yes, but I have two points here: if you mean an issuer or promoter could avail himself of the exemption only once in a set period of time, i.e., twelve months, then we would favor that limitation. The question may be construed another way, i.e., should we restrict the number of days in which the sale may take place? In this case a shorter period probably should apply. Again note the distinction between the two types of exemptions. I would not require a limitation in deals where the purchase is a major oil, gas or mining company.

11. Should the number of times the exemption could be used by a single issuer within a given period of time be restricted? If so, what would be a reasonable restriction? Who or what is the issuer?

(See 10 above.) It is critical that a definition of who or what is the issuer in any oil and gas or mining security be carefully worked out. Several states have attempted to define "issuer" in this context, but there is no consensus. Hopefully this committee can look at the several definitions and draft one that will be acceptable to all.

12. Should there be any requirement that a filing be made with the Securities Administrator either before or after the hearing (sale?)? If a pre or post-filing requirement is desirable, what would be an appropriate time for such filing? How extensive should a filing be?

For purpose of notification to the administrator, even an exemption for sophisticated investors should have a pre-filing notice require-

ment, perhaps 10 days. The extensiveness of the filing would be different for the "sophisticated" investor as opposed to a private offering. At a minimum the issuer should furnish a description of himself and an outline of the intended use of proceeds. Conflicts of interest should be disclosed. If the notice to the administrator is in the form of post-filing, the fact that salesmen were receiving commissions or some similar type of remuneration would also have a bearing on the extensiveness of the filing notice. Some consideration could be given to a post effective sales report, e.g., names, addresses, amounts of sale. This report would then close out the State's exemption file.

13. Should the exemption be from the securities registration and dealer licensing requirements, or only an exemption from securities registration requirements?

Both.

14. If the exemption is from both securities registration and dealer licensing provisions, should any standard of exemption be different if sales are made through a registered dealer?

Again, the answer to this question depends on what type of exemption evolves from this questionnaire. Generally I favor no difference in the standard of the exemption whether made through a registered dealer or not. I think sales through registered dealers should, in fact, be encouraged, because of the additional regulatory control that the administrator has with a registered dealer.

15. Should any form of advertising be allowed? If so, what kind?

I would oppose advertising.

16. Should an organized sale effort and/or commissions be allowed?

In my view, the answer here depends on the definition of "organized sale effort." If it were to include newspaper advertising, "educational" seminars, etc., I am opposed. If the program were to include a telephone solicitation program (a rifle approach to a selected class of individuals as opposed to a shotgun approach), I think the sales effort could be allowed. I believe there will have to be some consideration given to commissions to registered broker/dealers, and agents who might sell one of these exempt offerings.

I do not believe we want to be in a position of precluding sales by registered people because we allow no sales commission. Perhaps, commissions or other nemuneration should be allowed only to registered broker/dealers or agents to encourage sales through them.

17. Should there be any restriction on the form of contract (contact) (?) made with the prospective investors? i.e., restrictions on the use of the telephone or mail solicitation.

The answer is, yes, for both telephone and mail solicitation. Refer to 16 above.

18. Should the exemption limit the type of person to which an offering can be made? i.e., offers to "sophisticated" investors. If so, what is a "sophisticated" investor?

The sophisticated investor can be considered from two aspects, as I noted in the opening paragraphs. If he has a technical expertise in the field, the requirements for the exemption should be very few. If his "sophistication" is limited to the existence of his own personal wealth with the assumption that he can or will obtain expert advice, the restrictions should be much more extensive. We have the rule 146 problem now with offeree-representatives. It would be even more accute in this area because, while people with wealth usually know or have an accountant who can look at the figures, they do not have such ready access to a geologist. I would consider an exemption for deals between oil companies and/or mining companies in the business to be the sophisticated for purpose of this exemption. It is not going to be easy to define "sophisticated."

19. Should public solicitation be prohibited? What is public solicitation?

Public solicitation should be prohibited, assuming "public solicitation" means use of the media, education programs (seminars), mass mailings or mass telephone solicitations.

20. Should a disclosure be required? If a disclosure document is to be required, what type of financing statements should be required?

A disclosure document should be required. The financial statement of any of the offerors (issuers) whose financial situation will have some bearing on the success of the program should be required. If the program seller is acting merely as a broker, it would not seem that his financials would be necessary. In other words, financials of all parties involved in a proposed development aspect should be furnished. Here again one is faced with the basic question of just how many substantive requirements can or should be impose on an exempt offering. The same applies to 21 below.

21. Should the promoter's contribution to the project and/or the amount of income distribution the promoter may receive in any way be controlled? i.e., should the promoter be required to make some minimum investment or be entitled to benefit in any way from the offering before the investor receives a partial or 100% return?

Again, if the purchaser is "sophisticated" in the sense that he has expertise in the area, I am not concerned about the promoters contribution or the income distribution. If the investors are not sophisticated, I suggest that we look to the Mid-west Oil and Gas Guidelines for standards.

22. Should the exemption for the sale of fractional interest in oil and gas leases tie into any other exemptions existing within the law? i.e., some jurisdictions exempt sales made to registered dealers, financial institutions, etc.

I believe some of these programs would already come under existing Alaska exemptions (AS 45.55.140(b)(5) and AS 45.55.140(b)(4)) and see no problem with an issuer or offeror having an exemption under more than one statute unless, of course, he would attempt to make them cumulative.

23. Should there be any special exemption for sales to persons who are "in the oil business?"

I think there should be and, in fact, through these questions, have had this in mind in commenting on a proposed sophisticated investor

exemption. I am referring here, primarily, to oil, gas, or mining companies doing business with one another or with individuals who are demonstrably and actively in the business. Please refer to the proposed legislation at the beginning of this memorandum. This exemption was not introduced by our division but we are following it with interest and have suggested the language dealing with definition of "engaged in the business."

24. Should the exemption be dovetailed into the existing NASAA guidelines for the sale of oil and gas interests? i.e., would it be desirable to use the existing guidelines, with modifications designed to account for the differences between the sale of fractional interests and the sale of limited partnership interests so that exemption offerings and registered offerings would not be interpreted from different viewpoints.

This may be a good point of discussion, but it does raise the problem of extending substantive requirements into an exempt area.

25. What are the specific characteristics of fractional, undivided, participating working interests in oil and gas leases and/or wells that require special legislation to provide a workable exemption from registration and/or dealer licensing?

I do not know enough about the "specific characteristics" to suggest remedial legislation. We do not want an exemption that will invite the Schedule "D" operators into Alaska.

26. How many inquiries and/or complaints from the oil and gas industry has your agency received in the last three years indicating that the oil and gas industry in general and/or specific offerors of securities were in any way suffering from current law regarding the sale of fractional working interests in oil and gas leases?

Perhaps 8 or 10 inquiries from Rule 146 offerors and some Schedule "D" promoters. In each case, because sales commissions were envisioned, registration by qualification has been required under ASA. They do not usually complain — they just go away.

27. What are the specific problems which have been perceived in your jurisdiction with the sale of fractional interest in oil and gas leases? Would the end result of this project, if successful, relieve those current problems, and, if so, how?

We would like to permit the local oil and gas leaseholder who has no intention of developing his lease, to sell to oil companies who are willing to buy up the leases and develop them. We would like to keep control of the Rule 146 offerings and the Schedule "D" offerings. We have not experienced too many complaints in this area. The only security problems we have had with leases are the sales of them by people who did not own them.

Alaska like every other state, is plagued by the occasional Schedule "D" offering mailed into the state. However, when these come to the division's attention, a C&D is issued. The division has had not success with rescission in these instances.

I hope a uniform exemption can be worked out, and (assuming it is) adopted by a number of jurisdictions. It will probably solve some of the problems. At least I hope we will not create more than we can solve.

Some considerations should be given to the administrator's right to deny or revoke exemptions, particularly, if we are going to impose substantive requirements on this type of an exemption. The Uniform Securities Act permits denial of exemption and provides for a hearing process. It is suggested that this committee consider regulations for standards upon which denial can be based.

I look forward to an interesting meeting in Washington next month.

Sincerely,

Julius J. Brecht
Administrator of Securities

JJB/slp20K1-14

cc: Paul Blatt
Bruce Day
Dwight Keen
Barry Lake
John R. Larson
Arly Richau
A. M. Swarthout

STATE OF ALASKA

Inter-Department Route Slip

TO:
MAIL STATION NUMBER Court Bldg. Rm. 628

DEPARTMENT House

ATTENTION Joseph McKinnon

☐ Approval	☐ Note & Return
☐ Signature	☐ Initial & Return
☐ Comment	☐ Return As Requested
☐ Contact Me	☐ Return For Approval
☐ Prepare Reply	☐ Necessary Action
☐ For Your File	☒ Your Information

Remarks:

FROM:
MAIL STATION NUMBER 0800

DEPARTMENT Commerce

BY J. Brecht / Acq DATE 3-15

02-002 (REV.10/73)

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS *POUCH D – JUNEAU 99811*

March 15, 1978

Mr. Lum Lovely
Geologist
P.O. Box 99
Anchorage, Alaska 99510

Dear Mr. Lovely:

I have just received your letter of March 11, 1978 concerning HB 786, a bill which would amend the Alaska Securities Act. This letter is to confirm our telephone conversation of today on this subject.

Pursuant to that telephone conversation, please find enclosed a copy of a questionnaire that I have been asked to complete concerning the possibility of North American Securities Administration Association adopting a "uniform exemption for the sale of fractional interests in oil and gas leases." Would you please fill it out and return it to me so that the NASAA Oil and Gas Subcommittee #2 may consider your comments.

Because of the issues that are raised in the questionnaire and because of the potential for abuse of the proposed Sec. 45.55.140(b)(17) exemption from registration by unscrupulous persons dealing in oil and gas leases, I am extremely reluctant to endorse the proposed section 2 of the bill at this time, i.e., providing for Sec. 45.55.140(b)(17). The Alaska Securities Act is based on a uniform act, and I believe that it would be prudent to wait at least until the next legislative session to consider an explicit exemption in the oil and gas area. In the meantime, I shall be working with other members of the NASAA subcommittee to come to a consensus on this issue.

Of course, Sec. 1 of the bill would repeal AS 45.55.130(7)(B) and thereby allow you to take advantage of the private offering exemption found at AS 45.55.140(b)(5).

Thank you for your interest in this matter.

Sincerely,

Julius J. Brecht

cc: C. V. Chatterton
Joseph L. Orsini
Joseph McKinnon
Alaska Miners Association
Alaska Oil and Gas Association
Alaska Association of Petroleum Landmen

08-H14LH

File HB 786

LUM LOVELY Geologist

P.O. BOX 99 • ANCHORAGE • ALASKA • 99510

OIL, GAS & MINERAL PROPERTIES

February 27, 1978

Mr. Julius J. Brecht, Director
Division of Banking, Securities and Corporations
Department of Commerce and Economic Development
Pouch D
Juneau, Alaska 99811

Re: Proposed Substitute for House Bill No. 786
Amendments to Alaska Securities Act of 1959

Dear Mr. Brecht:

In reference to the three-way telephone conference of February 22, 1978, in which you, Securities Examiner James L. Thompson and I discussed the merits and demerits of certain proposed amendments to the Alaska Securities Act of 1959, I am in complete agreement with Mr. Thompson's suggestion that the "private offering" exemption, AS 45.55.140(b)(5), can quite readily be expanded to cover both whole and fractional oil, gas, and mineral interests by the simple expedient of dropping AS 45.55.130(7)(B) from the current definition of "issuer". I also agree with you that a "sophisticated purchaser" exemption, similar to the one which the State of California adopted in 1963, would expedite dealings with oil and mining companies (where dollar amounts larger than those specified in the current "private offering" exemption are involved) while at the same time maintaining protection for unsophisticated investors.

A simple repeal of AS 45.55.130(7)(B) is, of course, all that is needed to bring about automatic expansion of the "private offering" exemption to include whole as well as fractional oil and gas interests. In the case of the "sophisticated purchaser" exemption which you proposed in your letter of February 10, 1978, however, a few minor changes in your suggested wording appears necessary in order to conform the exemption more closely to the statutory definition of "security" and to expand it to cover sales of mineral interests as well as oil and gas interests.

I learned from you for the first time during our telephone conversation that your proposed amendment to AS 45.55.130(7)(B), which you sent to Representative "Chat" Chatterton along with your letter of January 26, 1978, has been submitted to the legislature as House Bill No. 786 and that it now resides in the House Commerce Committee where it will be given further consideration in hearings two to three weeks from now. By copy of this letter, I am asking Committee Chairman Joseph H. McKinnon to notify me a few days in advance of such hearings in order that I might have an opportunity to testify. Meanwhile, in light of the foregoing observations, I respectfully suggest that the present wording of HB-786 be deleted in its entirety, and that new wording be substituted in lieu thereof, as follows:

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

* Section 1. AS 45.55.130(7)(B) is repealed.

* Section 2. AS 45.55.140(b) is amended by adding a new subparagraph (17) to read:

(17) offers or sales of certificates of interest or participation in oil, gas, or mining rights, titles or leases, or in payments out of production under such rights, titles or leases, if all of the purchasers:

(A) are and have been during the preceding two years engaged primarily in the business of exploring for, producing, extracting, or refining oil, gas, or minerals, or

(B) are persons described in clause (4) of subdivision (b) of this section, or

(C) have been found by the commissioner upon written application to be substantially engaged in the business of exploring for, producing, extracting, or refining oil, gas, or minerals so as not to require the protection provided by Section 070 of this chapter.

For the sake of uniformity and clarity in drafting the foregoing proposal, I have adopted the syntax and some of the language of California's aforementioned "sophisticated purchaser" amendment of 1963 (see Cal. Corp. Code Ann., §25102(j)). Like the California statute, for example, the foregoing proposal covers both offers and sales, and it conforms to the statutory definition of "security" in both California and Alaska in its coverage of "certificates of interest or participation" in oil, gas, and mining rights, titles, or leases and in "payments out of production" under such rights, titles, or leases (see AS 45.55.130(12) and Cal. Corp. Code Ann., §25019).

By way of comparison, your proposal of February 10, 1978, fails to cover offers, and does not exempt sales of mining interests or production payments. Accordingly, it is neither uniform with the California code nor does it conform with the definition of "security" as used throughout the Alaska Securities Act.

In further comparing our respective proposals, mine substitutes "exploration for" in place of your (and California's) "drilling for", in order to cover geophysical activities which are just as important (and often as costly) as drilling in the overall search for oil, gas, and minerals; it utilizes the word "minerals" instead of your "mining interests" in subparts (A) and (C) for grammatical reasons; it adds the word "extraction" to subparts (A) and (C) to cover mining operations; and, finally, like the California statute, subpart (B) of my proposal covers sophisticated purchasers such as banks, savings institutions, trust companies, insurance companies, etc., whereas subpart (b) of your proposal covers investment companies only.

As a result of our aforementioned telephone conversation and your letter of January 26, 1978, to Rep. "Chat" Chatterton, I know how important it is to both you and Mr. Thompson that we "bring our uniform act into uniformity", not only with the laws of other states but to the corpus of Alaska's own Securities Act as well. I believe my foregoing proposal accomplishes this end. Accordingly, by copy of this letter, I am asking House Commerce Committee member "Chat" Chatterton to submit my proposal as a committee substitute for currently pending House Bill 786. A copy of my proposal is herewith enclosed in suggested bill format for the House. By copy of this letter I am also asking that Senator Joe Orsini introduce a similar bill in the Senate.

I wish to take this opportunity to express my thanks to you and Mr. Thompson for the many helpful suggestions which you offered during our aforementioned telephone conversation of February 22, 1978. Hopefully, with your continued cooperation, current conflicts in the Alaska Securities Act can be reconciled to everyone's satisfaction before the end of the current legislative session.

Very truly yours,

L. C. LOVELY, JR.

Encl.

Copies to: Rep. C. V. Chatterton, Sen. Joseph L. Orsini, Alaska Miners Association, Alaska Association of Petroleum Landmen, Alaska Oil and Gas Association, and Alaska Geological Society (please note Alaska Geological Society's mailing address has changed to P. O. Box 1515, Anchorage, Alaska 99510). Also Rep. Joseph H. McKinnon.

Oil, Gas & Mineral Properties

LUM LOVELY, Geologist
P.O. Box 99
Anchorage, Alaska 99510

Offices located at
1016 W. 6th Ave., Suite 440
Anchorage, Alaska 99501
Phone (907) 277-1551

March 21, 1978

The Hon. Joseph H. McKinnon, Chairman
House Commerce Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Re: House Bill 786

Dear Mr. McKinnon:

As an addendum to testimony which I presented to your committee at a hearing held in Juneau on March 20, 1978, I wish to stress here that neither section of my proposed two-section Substitute For House Bill 786 (copy attached) need be considered or enacted jointly with the other, inasmuch as each section stands separately on its own respective merits. Accordingly, I urge you to make every effort possible to enact Section #1 of my proposal, even if you should fail to gain legislative support for my somewhat controversial Section #2.

Section #1, of course, is a simple one-line repealer designed strictly as a housekeeping measure to restore original legislative intent to last year's repeal and re-enactment of AS 45.55.140(b)(5). As you know, this non-controversial section of my proposal is fully endorsed by Mr. Julius J. Brecht, author of the administration's original version of House Bill 786 which now resides in your committee.

I wish to thank you for notifying me of the aforementioned hearing in order that I might have an opportunity to present my views to your committee in person. Your continued cooperation in keeping me informed with respect to the progress of House Bill 786 will of course be greatly appreciated.

Sincerely,

L. C. LOVELY, JR.

Encl.
Copy: Mr. Julius J. Brecht
Rep. C. V. Chatterton
Sen. Joseph L. Orsini
Alaska Miners Association
Alaska Geological Society
Alaska Oil and Gas Association
Alaska Association of Petroleum Landmen

LUM LOVELY, Geologist
P.O. Box 99
Anchorage, Alaska 99510

Oil, Gas & Mineral Properties

Offices located at
1016 W. 6th Ave., Suite 440
Anchorage, Alaska 99501
Phone (907) 277-1551

March 21, 1978

The Hon. C. V. Chatterton
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Re: House Bill 786

Dear "Chat":

As you know, groups of oil companies often join together for the purpose of drilling exploratory wells. Sometimes they go the full partnership or joint venture route where all parties have a direct say in all operations. At other times, however, they prefer the limited partnership route which takes operational control away from the investing companies (limited partners), but protects them (the limited partners) with limited legal and financial liability. The General Partner in a limited partnership has full and complete operational control but, in exchange therefor, he must assume the burden of unlimited liability.

I'm sure Gene Wiles will confirm for you that limited partnerships are classified as "investment contracts" under most securities laws (including Alaska's) and, as such, they are subject to registration under such laws. If Section #2 of my proposed substitute for House Bill 786 is not enacted, of course, all such ventures involving more than half-a-million dollars here in Alaska must be fully registered under the Alaska Securities Act, even if all of the partners (both general and limited) are oil companies which need no protection under Section 70 of the Act. No wells are being drilled in Alaska these days, of course, for less than $500 thousand.

The foregoing example is only one of many which could require needless securities registrations by sophisticated oil companies. Such ludicrous registration could become commonplace here in Alaska, of course, if an appropriate exemption is not provided soon. I therefore urge you to "hang in there" in defense of Section #2 of my proposed substitute for House Bill 786.

If my proposal is enacted, of course, you will be doing everyone a favor. You will at the same time be eliminating needless registration by oil companies while eliminating needless administrative work on the part of the State. God knows, the oil companies and the State have enough to do already without taking on the burden of a ludicrous charade of needless securities regis-

trations as well.

I leave it in your persuasive good hands, Chat. Your efforts in behalf of my proposed bill will be greatly appreciated.

Sincerely,

L. C. LOVELY, JR.

Copy: Julius J. Brecht
Joseph H. McKinnon
Joseph L. Orsini
Alaska Miners Association
Alaska Geological Society
Alaska Oil and Gas Association
Alaska Association of Petroleum Landmen

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS *POUCH D – JUNEAU 99811*

March 23, 1978

Honorable Joseph McKinnon, Chairman
House Commerce Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Mr. McKinnon:

Re: HB 786

In yesterday's hearing on HB 786, a number of issues were discussed. I thought it might be helpful to you and members of the House Commerce Committee if I briefly summarized the points that I raised concerning the bill.

As you know, the Legislature enacted SB 48 during the previous session. One provision of that bill amended the private offering exemption found at AS 45.55.140(b)(5) of the Alaska Securities Act (ASA). The amendment changed the exemption by using the terms "sales" by "issuers" rather than "offers" of a security. Under AS 45.55.130(7)(B), transactions involving certificates of interest in oil, gas, or mining titles or leases and related matters do not involve an "issuer." Therefore, the 1977 amendment to Sec. 140(b)(5) precludes a person dealing in oil, gas, or mining leases as defined in Sec. 130(7)(B) from seeking a private offering exemption from registration. This exclusion was not intended by the Administration in introducing SB 48 last year.

The ASA is based in large part on the Uniform Securities Act, which has also been adopted, or is followed, by approximately 43 other states. The bill before you attempts to resolve the problem of defining an issuer by explicitly expanding the language of Sec. 130(7)(B). Twelve

08-H14LH

other states have made similar attempts. However, 35 states have remedied the problem by simply deleting the language found at Sec. 130(7)(B). In this way, an "issuer" simply means a person who issues a security as provided by Sec. 130(7)(A). This approach is more streamlined, precludes the need for cumbersome verbage, and relies on the detailed definition of a security found at AS 45.55.130(12).

Mr. Lum Lovely testified before your committee in favor of another amendment to the bill. That amendment provides an explicit exemption from registration for oil, gas, or mining lease offerings involving sophisticated investors. During the course of the past several weeks, I have had several conversations with Mr. Lovely and have corresponded with him during the past weeks on this proposed exemption. The language that he proposed follows the law of California very closely.

However, this past week I received a 27 part questionnaire from the chairman of a North American Securities Administrators Association committee recently formed to study and make recommendations on an exemption for sophisticated investors or perhaps a private offering exemption (similar to Sec. 140(b)(5)) in the area of oil, gas, or mining lease offerings. I am a member of that committee. The recommendations of that committee will amend the Uniform Securuties Act on which ASA is based. During the hearing before your committee, I recommended that the committee defer consideration of the exemption until I have had the opportunity to discuss the matter of the questionnaire with my counterparts in other states and, hopefully, after the NASAA committee has made appropriate recommendations for changes to the Uniform Securities Act. I stated that I would certainly be in a position to recommend legislation by no later than the next session of the Alaska Legislature.

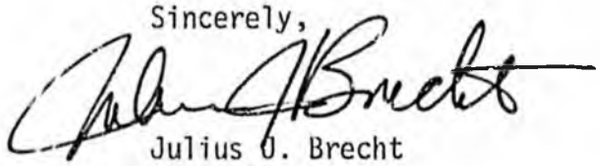
I then pointed out that if the committee was disinclined to follow this advice, that I was concerned about the language that is proposed by Mr. Lovely for the exemption. For example, what does the phrase found in the proposed Sec. 140(b)(17)(A), "primarily in the business of" drilling for oil or gas for at least two years mean? Does it include a roughneck working on an oil rig; does it include a corporation formed, but not actively in the business; does it mean at least two years active experience? I stated that I had serious concern about this exemption being used by con-artists to bilk the Alaska investing public of thousands of dollars. Similar problems have occurred and are occurring in Texas and Oklahoma where state law does not presently require registration of certain drilling programs called "schedule D" offerings. Alaska does not have the problem because these programs must be registered under present provisions of ASA. Therefore, any exemption in this area will have to be carefully written to ensure that the primary purpose of ASA, i.e., protection of the Alaskan investing public from fraud and misrepresentation is not circumvented.

The House Commerce Committee can, of course, amend ASA in any manner consistent with the Alaska Constitiution. I am sure that some sort of exemption could be devised without the input of NASAA or the experience of other states that are more deeply involved on oil and gas lease offerings. However, to do so would, in my estimation, run the risk of overlooking other effects on the ASA and may lay the Alaskan investor open to fraud and misrepresentation.

The repeal of Sec. 130(7)(B) will satisfy Mr. Lovely's immediate problem, i.e., access to the Sec. 140(b)(5) exemption. In addition, it is likely that he can also enjoy the Sec. 140(b)(4) exemption in transactions where he offers or sells an oil or gas lease to an oil company. That is, the oil company may be an institutional investor, depending on the circumstances of a specific case. Mr. Lovely has submitted a request to me for an interpretation of Sec. 140(b)(4) in this context.

In conclusion, It is my view that the oil and gas lease exemption is not needed to solve Mr. Lovely's immediate problem. I, therefore, recommend that the explicit exemption provision be deferred until next session, at which time detailed and well reasoned testimony may be given on an oil and gas lease offering exemption. In the alternative, I would, of course, be available to the committee at this time to attempt to draft an adequate exemption. Please do not hesitate to contact me if you have any further questions concerning these comments or related matters.

Sincerely,



Julius O. Brecht
Director

JJB:lc2:1

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT
DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS POUCH D – JUNEAU 99811

February 10, 1978

Mr. L. C. Lovely, Jr.
P.O. Box 99
Anchorage, Alaska 99510

Dear Mr. Lovely:

Your letter of January 31, 1978 commenting on our proposals to solve the dilemma of oil and gas interests created by AS 45.55.140(b) has been reviewed.

We thank you for concurring that our proposal to change the definition of an "issuer" is a step in the right direction.

Your comments have raised other questions which I will try to answer in the order posed.

The first point raised in your letter was that you would have to go through the full registration process in selling an entire leasehold interest. This is not so either under present statutes or under the proposed changes. At the present time an exemption from registration for whole leasehold interests may be available under AS 45.55.140(b)(9), the exemption for isolated non-issuer exemptions (emphasis added). In our proposed revision up to 25 sales of issues of oil and gas interests may be exempt under AS 45.55.140(b)(5).

You recommend that we change our definition of oil and gas securities to coincide with federal law. At the present time Alaska's Securities Act is not based on the federal acts but on the Uniform Securities Act adopted by the majority of states. It should be noted that no state follows the narrow federal definition of oil and gas interests. The reasons that state "Blue Sky" acts differ from the federal act are 1) that the federal acts are meant to be merely disclosure oriented while state acts speak to substantive standards, and 2) the Securities Act of 1933 applies only to this initial offering of a security while the state acts address themselves to subsequent or secondary transactions. The Federal Government has left the public protection and substantive standards to the states to regulate thus avoiding duplication of efforts.

The drafters of the Uniform Securities Act expanded the oil and gas security definition to "make it clear that so called 'oil payments' are securities whether or not they may be considered as interests in a title or lease." (Official Commment to 401(1) of the Uniform Securities Act, Blue Sky Law, Loss and Cowett (1958) at 350). The official comment further states: "However, it is clear that even entire leasehold interests may be offered under such circumstances that a security is involved in the nature of an 'investment contract'... SEC v. CM Joiner Leasing Corp. 64 S.Ct.120, 320 U.S. 344, 88 L. Ed. 88 (1943)." (Official Comment, supra at 350).

Therefore, it appears that no matter what type of legislation is introduced, whole leasehold interests may be held to be securities as an "investment contract" under both state and federal securities laws.

It is the opinion of the division that the changes that you propose would be unwise and not in the best interest of Alaskan investors as it could result in excluding from regulation those operations where the promoter is promising only future royalties without even the security of an underlying title.

You have also recommended that we make a blanket exemption for all oil and gas securities. This change would create two major problems: discrimination against other forms of securities and increased losses by Alaskan's from unscrupulous promoters.

An exemption of all oil and gas offerings would lead to immediate protests from real estate, manufacturing, chemical, service industries, etc. demanding equal treatment in having all of their securities exempted by statute also.

The second problem raised would be that Alaska would immediately become "open season" for unethical and fraudulent oil and gas operators. This State and others were hit by a rash of these promotions from Oklahoma, Texas, and Louisiana in late 1975 and early 1976. However, prompt action and strong securities laws effectively stopped this fraudulent activity by February of 1976. At the present time we are cooperating with the State of Oklahoma in a current promotion that might involve as much as $2,000,000 in losses by Alaskan investors from an unregistereed oil and gas offering.

It should be noted that last year we had the first two criminal convictions under the Alaska Securities Act since 1964. They both concerned unregistered offerings of either oil and gas or mining securities.

California added an exemption to their act in 1963 as a result of a proposal by the Oil and Gas Committee of the Los Angeles County Bar Association to exempt transactions between oil firms. Adoption of a similar exemption might solve your very real problem in dealing with a sophisticated oil company while at the same time maintaining protection for the Alaskan investor. The exemption that I propose would read as follows:

AS 45.55.140(b)(17). sales of oil and gas interests, if all of the purchasers meet any one of the following criteria:

(a) they are and have been for the preceeding two years primarily engaged in the business of drilling for, producing, or refining oil and gas or mining interests;

(b) investment companies as defined in the Federal Investment Company Act of 1940; or

(c) they have been found by the administrator upon written application to be substantially engaged in the business of drilling for, mining, producing or refining oil and gas or mining interests so as not to require the protection afforded by Sec. 070 of this chapter.

I feel that if legislation is enacted relating to the definition of an issuer and the above exemption, it would solve the problem for ethical oil and gas and mining operators while, at the same time, maintaining full and adequate protection from fraudulent and incomplete disclosure that is presently enjoyed by the Alaskan investing public.

If you have any further comments or suggestions, feel free to contact me at any time.

Sincerely,

Julius J. Brecht
Director

JJB/slp5/12

cc: C. V. Chatterton
Joseph L. Orsini
Alaska Miners Association
Alaska Association of Petroleum Landmen
Alaska Geological Society
Alaska Oil & Gas Association

HB

872

Cross-referenced

MEMORANDUM IN SUPPORT OF H.B. 872

This bill would modernize the Standard Valuation and Nonforfeiture Laws (1) to add a new nonforfeitue law for individual deferred annuities, p. 10-16 (2) to increase statutory interest rate assumptions in the Standard Valuation and Nonforfeiture Laws for newly purchased life insurance and annuities to reflect changes in the level of life insurance company interest earnings that have occurred since the law was last updated and to reflect the uses of particular statutory interest assumptions, p. 1, 5, 6, 7, 8 and 9. (3) to increase the maximum permissible age setback for females in the Standard Valuation and Nonforfeiture Laws for life insurance from three years to six years, p. 2, 8 (4) to define the Commissioners Annuity Reserve Valuation Method, p. 7-8 (5) to modify the Commissioners Reserve Valuation Method for policies under which the gross premium actually payable is less than the valuation net premium and (6) to replace the mortality tables used for valuing annuities p. 5-6 with new tables reflecting changes in annuitant mortality. p. 6-7 The bill is part of a nationwide program adopted by the National Association of Insurance Commissioners.

New Nonforfeiture Law for Individual Deferred Annuities

The Standard Nonforfeiture Law for Individual Deferred Annuities sets forth the minimum nonforfeiture values that must be made available as paid-up annuity or, if applicable, cash surrender benefits to individual deferred annuity contract purchasers who cease paying considerations prior to maturity of their contracts. For many years, only a handful of states have had annuity nonforfeiture laws which approximated these minimum requirements. Recent rises in interest earnings that insurers are able to credit on individual deferred annuities and favorable tax treatment under the Employee Retirement Income Security Act of 1974 have stimulated sales of individual deferred annuities and created a much greater need for standard legislation to establish minimum nonforfeiture values for these products. The bill would enact the NAIC Standard Nonforfeiture Law for Individual Deferred Annuities in the Standard Valuation and Nonforfeiture Laws.

Increase in Statutory Interest Assumptions in the Standard Valuation and Nonforfeiture Laws for Newly Purchased Life Insurance and Annuities

The Standard Valuation Law sets forth the minimum reserves that an insurance company must maintain for a block of business. The need for keeping this law up-to-date is most dramatically illustrated in the case of single premium immediate individual annuities and group annuities. In order to be competitive, companies set the purchase price for such annuities using the current rate of return that they obtain from new investments. The average yield on new fixed-income investments by 60 life

insurance companies accounting for about 65% of life insurance company assets was 9.08% in 1974, 9.87% in 1975, and 9.73% in 1976. The current law, however, requires companies to set up reserves considerably in excess of the funds actually received as premiums for annuities because the valuation law prescribes a 3 1/2% interest rate to be used to compute minimum reserves. Unless this rate is changed, companies will be faced with the alternative of either increasing the premiums charged for annuities or limiting or stopping the sale of annuities.

The effect of requiring reserves to be established on an unrealistically low valuation interest rate can be illustrated by the following example: Suppose a company agrees to guarantee the payment of $1000 at the end of one year in return for the payment of a specified premium at the beginning of the year. If the company is able to invest the premiums received to yield 9%, it only has to charge $1000 ÷ 1.09 or $917.43 as the premium. But the current valuation law requires the reserves to be established on the assumption that the investments will yield only 3 1/2%, rather than the 9% at which the funds are actually invested. This requires a reserve in the amount of $1000 ÷ 1.035 or $966.18, which is $48.75 more than the actual premium received. This difference can only be taken out of the company's surplus.

Since most annuities continue in force for more than one year after the premium is received, the effect of the difference between the actual

interest rate earned and the statutory interest rate assumption produces an even greater drain on surplus. An example of the surplus drain caused by requiring overly conservative reserve interest assumptions in the face of higher investment yields and competitive pricing can be illustrated by a comparison of net single premiums for a life annuity of $100 per month to a male aged 65 computed on the basis of the 1971 Group Annuity Mortality Table and an interest rate close to what insurers are currently using to price group annuities with the statutory reserve requirements. The net single premium for such an annuity calculated on the basis of the 1971 GAM and 9% interest, which is representative of interest rates currently used in determining group annuity benefits, is $9,205. However, the required reserves for this annuity calculated on the basis of the current minimum reserve basis of 3 1/2% interest and the Group Annuity Mortality Table for 1951 is $12,760 or 39% more than the net premium used in pricing the benefit.

A similar calculation can be made for a life annuity of $100 per month commencing at age 65 for a male now aged 55, which is a typical weighted average age in the case of annuities sold to fund terminating pension plans. In this case the net premium based on 9% interest and the 71 GAM Table is $3,409 while the required reserve based on 3 1/2% interest and the Group Annuity Mortality Table for 1951 is $7,740. Thus, an additional 127% above the net premium used in pricing the benefit must be established as reserves. Similar surplus drains arise from the sale of other life insurance and annuity products but are not as extreme because prices for these products reflect both current and expected future yields on life insurer's investments.

To reduce drains in surplus and to give life insurance companies the flexibility to offer lower priced products with lower nonforfeiture values and reserves, the bill would increase the statutory valuation interest rate assumptions for group annuities and for single premium individual immediate annuities from 3 1/2% to 7 1/2%, for single premium life insurance and for single premium individual deferred annuity contracts from 3 1/2% to 5 1/2% and for all other life insurance policies and all other individual deferred annuity contracts from 3 1/2% to 4 1/2%, and would increase the statutory nonforfeiture interest rate assumptions for single premium life and endowment insurance from 3 1/2% to 6 1/2% and for all life insurance from 3 1/2% to 5 1/2%. The statutory valuation interest rate assumptions vary depending upon the type of product with which they are used so as to reflect the degree of investment risk and hence the need for greater or lesser conservatism in minimum reserve standards. The statutory nonforfeiture interest rate assumptions are higher than the statutory valuation interest rate assumptions since the Standard Nonforfeiture Law is not a solvency test and minimum nonforfeiture standards should be based upon interest assumptions that are closer to those used in product pricing.

(B) p. 6, 7
(C) p. 1, 6
(D) p. 1, 6
(E) p. 8, 9
(F) p. 8, 9
(B) (C) (D)
(G) p. 5 and (C), (D), (E) and (F)

Increase in Maximum Permissible Age Setback For Females

(H) p. 2, 8

The bill would recognize the increase in longevity of women relative to that of men by increasing the maximum permissible age setback used in calculating life insurance minimum nonforfeiture values and reserves from three to six years. As with the increase in statutory interest rate assumptions, such an increase in the maximum permissible age setback would give insurers the flexibility to offer women lower priced life insurance products with lower nonforfeiture values and reserves.

Definition of the Commissioners Annuity Reserve Valuation Method

(I) p.7 -8

The Commissioners Reserve Valuation Method is that portion of the Standard Valuation Law which describes the procedure for computing minimum reserve standards using the statutory valuation interest rate and mortality assumptions. The application of this method to annuity contracts has never been clearly defined with the result that some insurers have failed to take into account all promised contractual benefits in calculating minimum reserve standards for some types of individual deferred annuity contracts and have not established adequate reserves for these benefits. The bill adds a definition of the Commissioners Annuity Reserve Valuation Method to the Standard Valuation Law to clarify the procedure to be used in calculating minimum reserve standards for individual deferred annuity contracts.

Modification of the Commissioners Reserve Valuation Method For Policies Under Which the Gross Premium Is Less Than the Valuation Net Premium

(J) p.5-6

The Standard Valuation Law requires an insurer to establish additional reserves called "deficiency reserves" whenever the gross premium actually payable under a policy is less than the valuation net premium used in computing the policy reserve. The effect of this requirement is to force insurers to hold larger deficiency reserves if they choose to strengthen basic policy reserves. The combined increase in both basic policy reserves and deficiency reserves may deter many companies from strengthening reserves when it would be appropriate. The bill would modify the commissioners reserve valuation method to make it possible for companies to strengthen basic policy reserves without having to hold higher deficiency

(K) p. 6, 7

New Mortality Tables

Concurrently with increasing the interest rates in the Standard Laws, the bill would require companies to use the new 1971 Individual and Group Annuity Mortality Tables in place of the older 1937 Standard Annuity Mortality Table, the Annuity Mortality Table for 1949, and the Group Annuity Mortality Table for 1951.

Nationwide Program

These proposed changes were approved by the National Association of Insurance Commissioners at its meetings in December 1972 and December 1976 for nationwide enactment. All of the states except Maryland have adopted the 1972 changes. Twelve states adopted the 1976 chages in 1977 and it is probable that additional states will act in 1978. If this legislation is not enacted in Alaska, lower cost life insurance policies will not be available in Alaska, and Alaska citizens will not have the protection of the new nonforfeiture law for individual deferred annuities.

HB
876

FAIRBANKS SECURITY SERVICE
POST OFFICE BOX 80846, COLLEGE, AK 99701 ● 2406 CUSHMAN ST., FAIRBANKS, AK 99701 ● 456-4756

March 14, 1978

The Honorable Joseph McKinnon
Chairman, Commerce Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Re: House Bill 876

Dear Representative McKinnon,

The Board of Electrical Examiners would like to take this opportunity to present written testimony in regard to HB 876.

Preface: There are, at this time, 2 individual statutes which regulate the electrical industry in our state. Of these, one statute under Title 8 (AS 08.40) is administered by the Department of Commerce and Economic Development while the other (AS 18.60 Article 6), falls under the Department of Labor.

Coincidentally, the provisions of AS 08.40 grant enforcement authority to the Department of Labor while the structure of our centralized licensing statute (AS 08.01.050.(19)) relieves the Department of Commerce from the requirement to provide investigative services to our Board.

In addition to the foregoing, Article 6 of AS 18.60 provides inspection authority to the Department of Labor and others without delineating any criteria as to the minimum qualifications an electrical inspector should have.

It is the opinion of our Board that a comprehensive review of this situation leading to investure of a common authority under a single statute is manditory at this time. We have, to this end, taken the liberty of prepairing the following documentation which we offer as a possible committee substitute to HB 876.

CSHB 876

A bill for an Act entitled: "An Act relating to electrical safety"

* Section 1. AS 18.60.580 through AS 18.60.660 are repealed.

* Section 2. AS 08.40 "Article" is ammended by adding a new section to read:

4. Electrical safety (Sections 08.40.300 - 08.40.390)

5. Electrical inspectors (Sections 08.40.400 - 08.40.410)

* Section 3. AS 08.40 is ammended by adding Article 4.

AS 08.40 Article 4 Electrical safety

Section

300 Minimum electrical standards

310 State, Borough and City electrical codes

320 Powers and duties of the Board

330 Powers and duties of the Department

340 Delegation of authority

350 Inspection fees

360 Enforcement of compliance

370 Scope of work covered

380 Penalty for violations

390 Definitions

* Sec 08.40.300 Minimum electrical standards.

The latest published editions of the National Electrical Code and the National Electrical Safety Code, both as approved by the American National Standard Institute (ANSI) constitute the minimum electrical safety standards of the state.

* Sec 08.40.310 State, Borough and City electrical codes.

(1) The Board of Electrical Examiners may adopt regulations ammending the codes adopted by Sec 300 of this chapter, providing such ammendments are not less stringent than the standards prescribed by those codes.

(2) This chapter does not affect the authority of any Borough, Municipality or Utility to adopt by ordinance, rule or order, standards for their respective areas of jurisdiction not less stringent than the standards prescribed by the Board and/or those established under Sec 300 of this chapter.

* Sec 08.40.320 Powers and duties of the Board.

The Board may:

(1) Adopt regulations necessary to carry out the purpose of Sec 300 and Sec 310 of this chapter.

(2) Cause to have made inspections of the electrical wiring installed in any structure or facility in this state for the purpose of determining compliance with the minimum standards herein established.

* Sec 08.40.330 Powers and duties of the Department.

(a) The Department may:

(1) Adopt regulations necessary to carry out the purposes of Sec 330-390 of this chapter.

(2) Inspect the electrical wiring installed in a structure or facility within this state as directed by the Board or as otherwise authorized by this chapter.

(b) The Department shall maintain records of all electrical inspections conducted.

* Sec 08.40.340 Delegation of authority.

(a) Upon application to the Department, a Borough, Municipality or Utility may be authorized by the Commissioner to inspect the electrical wiring in any structure or facility within their respective areas of juridiction. Authorization by the Commissioner under this section constitutes a full grant of authority to act within the provisions of Sec 330-390 of this chapter with the same immunities and privileges accorded to the State in the performance of these duties.

(b) Notwithstanding the above delegation of authority, the Department may, upon reasonable cause or direction of the Board, make inspections of electrical wiring within any jurisdictional area of this state.

* Sec 08.40.350 Inspection fees.

(a) A Borough, Municipality or Utility authorized under Sec 340 of this chapter to provide inspection services may charge a fee for those services.

(b) The Department shall adopt regulations setting forth a schedule of maximum fees for inspection services rendered under Sec 330-390 of this chapter.

* Sec 08.40.360 Enforcement of compliance.

(a) An authorized inspector under this chapter shall give written notice to the owner of constructed premises, or the contractor or builder of premises under construction, of each violation of applicable electrical standards discovered.

(b) An owner, contractor, or builder whose electrical wiring installation is found not to meet the standards prescribed, has the right to appeal to the Commissioner for a new inspection. Such appeal must be made within five (5) working days of the date of notice of violation and when made, the Department shall, within ten (10) working days of the date of appeal make a new inspection by a designee other than the person conducting the original inspection.

(c) Within fifteen (15) working days after receipt of written notice of violation under this chapter, an owner, contractor or builder served with such notice must correct the discrepency and request reinspection.

(d) Should the owner or contractor fail to appeal the notice of violation and/or fail to correct the discrepant condition(s) within the timeframes specified, the Department may (1) Place a stop work order on the building, facility or project involved (2) Provide written notice of non-conformance to the serving utility, whereupon the supplier of electrical energy may discontinue services to the premises where the alleged violation exists.

* Sec 08.40.370 Scope of work covered.

(a) Sections 300-390 of this chapter apply to electrical wiring installed or being installed in any building, structure or facility within this state.

(b) Exclusion. Electrical installations in single family residential dwellings which are owned by the installer or a member of his immediate family and not intended for sale at the time the installation is made are exempt from the provisions of Sec 320-390 of this chapter.

* Sec 08.40.380 Penalty for violations.

An owner, contractor or builder who installs electrical wiring not in compliance with the minimum standards as defined in this chapter, and/or who fails to correct a discrepancy after having been notified in writing by an authorized inspector, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $1,000.00 or by imprisonment for not more than 90 days, or by both.

* Sec 08.40.390 Definitions.

In Article 4 of this chapter:

(1) "Board" means the Board of Electrical Examiners.

(2) "Department" means the Department of Labor.

(3) "Commissioner" means the Commissioner of the Department of Labor.

(4) "Electrical Wiring" see Sec 200.(3) of this chapter.

* Section 4. AS 08.40 is ammended by adding Article 5

AS 08.40 Article 5 Electrical inspectors

Section 400 License required

Section 410 Violation of chapter

* Sec 08.40.400 License required.

(a) No person may act as an electrical inspector in this state without an Electrical Administrator's license issued by the Board.

(b) A person licensed under this chapter may inspect work only in a category for which he is licensed.

* Sec 08.40.410 Violation of chapter.

A person who knowlingly violates Article 5 of this chapter is quilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $300.00, or by imprisonment for not more than 60 days, or by both.

* Section 5. AS 08.40.190 is ammended to read:

Sec 08.40.190 Exclusions

(a) Articles 1, 2 and 3 of this chapter do (does) not apply to any Utility or Municipality engaged in ------

Sec 08.40.190

(b) Articles 1, 2 and 3 of this chapter do (does) not apply to any person engaged in -------

* Section 6. AS 08.40.200 is ammended to read:

Sec 08.40.200 Definitions.

As used in Articles 1, 2 and 3 of this chapter.

We recognize that the implications of this proposal are somewhat far reaching even though our prime purpose is to codify the authorities into one Act. We would welcome the opportunity to testify before your committee and to hear the testimony of other persons and administrative departments affected.

Please let us know when we can be of assistance to you.

Sincerely,

J. M. Trammer
Chairman
Board of Electrical Examiners

JMT:kkm

cc: The Honorable Fred Brown
The Honorable Bob Bradley
The Honorable Charles Parr
The Honorable Larry Carpenter
The Honorable C. V. Chatterton
The Honorable Joe Hayes
J. Armstrong - NECA
J. Kornfeind - NECA
S. Andrew - Dept of Commerce
Hugh MaCaulay
Ed Schenderline

SB

326

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M

May 1, 1978

SUBJECT: Suggestions relating to medicine and hospitals

TO: Representative Joseph H. McKinnon

FROM: Billy G. Berrier, Director
Division of Legal Services

To confirm our conversation, it appears a misunderstanding of the Warren suggestions arose. We entered work orders for bill preparation prematurely.

We have examined those areas the committee decreed we check, and have found that the subject matter is covered in existing law, or would have serious constitutional and practical problems except in the area of composition of the State Medical Board. We have therefore prepared a work draft on that subject, which is enclosed, and have cancelled the remainder of the work orders 5415 through 5422,

BGB:hjd

Enclosure

See AS 08.64.380(3)(G)

PRINCIPLES OF MEDICAL ETHICS

PREAMBLE

These principles are intended to aid physicians individually and collectively in maintaining a high level of ethical conduct. They are not laws but standards by which a physician may determine the propriety of his conduct in his relationship with patients, with colleagues, with members of allied professions, and with the public.

SECTION 1

The principal objective of the medical profession is to render service to humanity with full respect for the dignity of man. Physicians should merit the confidence of patients entrusted to their care, rendering to each a full measure of service and devotion.

SECTION 2

Physicians should strive continually to improve medical knowledge and skill, and should make available to their patients and colleagues the benefits of their professional attainments.

SECTION 3

A physician should practice a method of healing founded on a scientific basis; and he should not voluntarily associate professionally with anyone who violates this principle.

SECTION 4

The medical profession should safeguard the public and itself against physicians deficient in moral character or professional competence. Physicians should observe all laws, uphold the dignity and honor of the profession and accept its self-imposed disciplines. They should expose, without hesitation, illegal or unethical conduct of fellow members of the profession.

SECTION 5

A physician may choose whom he will serve. In an emergency, however, he should render service to the best of his ability. Having undertaken the care of a patient, he may not neglect him; and unless he has been discharged he

From Bernard Kelly of Kelly v Lacc

OBJECTIONS TO MALPRACTICE BILL

1. A 90 day freeze issue:

The underlying presumption is that a 90-day freeze will result in some exchange of information between the representatives of the injured party and the physician involved. This presumption is erroneous. Extensive experience in the field of malpractice litigation has shown that in spite of repeated attempts by the attorneys and injured parties involved to discuss the presence or absence of a malpractice action, and a medical records treatment and reasons for same involved therein by physician, instituted by the attorneys and injured parties, have inevitably met with a refusal to discuss theissue, to reveal any medical treatment or in any way to attempt to resolve the question amiably without the necessity of filing a formal malpractice action. It is incredibly naive to presume that the granting of a 90-day freeze would in any way alter this response in the medical community.

2. The medical community's definition of malpractice is not that required under the law. The legal definition of malpractice is nothing more nor less than negligent conduct resulting in the injury to an innocent party. The medical community definition of malpractice is a willful and wanton disregard for the safety of the patient. The standard or test that the medical community applies in defining a doctor's conduct as being either malpractice or not is not the test for negligence (malpractice), but is rather the test for an action which would support punitive damages. It is the reckless indifference or a willful or wanton disregard for the safety of the patient. While it is true that conduct which would meet the medical community's standard would certainly be more than enough to justify successful malpractice action, the true test under the law is much less than that which the medical community views as required to sustain a malpractice action.

This distinction between the two tests will carry over to any medical board, to any doctor's willingness to discuss a malpractice action, to any vehicle which is set up which would remain in the control or under the direction of the medical community. It is clearly the position of the medical community that they are not responsible for negligent conduct. Just why a medical practitioner should not be held responsible for injury inflicted by his negligence, while members of any other profession, occupation or walk of life are required (and rightly so), to pay for injuries inflicted by negligent conduct, is something that has never been justified, nor can I conceive of any possibility of such justification in the future.

3. The medical profession in its campaign for the passage of the initial malpractice bill, including MICA, was perfectly willing to place the safety and well being of their patients in jeopardy; threatened the representatives of the people in this State with a cessation of medical care and a mass exodus from the State. Now, in the guise of seeking some relief from what the doctors view to be a great evil of the required coverage of MICA, the doctors wish to remove those reasonable risks from the insurance pool and leave the State of Alaska in the position of insuring those physicians who are incapable of acquiring privately funded malpractice insurance. The justification for this is that certain forms of medical practice comprise a "high risk" form of practice and that adequate insurance coverage is not available.

4. "High risk" defined.

The high risk forms of medical practice (i.e., heart surgery, thoracic surgery, anasthesiology, etc.) are areas in which a successful malpractice action is an extremely difficult case to prove. If the type of medical treatment carries a high risk of injury to the patient as a direct result of the type of practice involved, it follows that the mere existence of the injury is no evidence of the existence of negligence. To contend that merely because there is a high risk of injury to a given type of medical treatment results in a high incidence of successful malpractice actions is simply not true. The key to malpractice litigation is the presence or absence of the negligent conduct on the part of the treating physician. The mere fact, standing alone, that an injury has resulted from treatment is no proof of the presence of negligent conduct. It is only when a specific surgical procedure or the specific treatment (or absence of same) is established and established through competent medical testimony, that the presence or absence of negligence can be assessed.

ALASKA STATE HOSPITAL ASSOCIATION, INC.

5531 ARCTIC BLVD, SUITE 1
PHONE 277-1633

ANCHORAGE, ALASKA 99502

February 14, 1978

Joseph H. McKinnon, Chairman
Commerce Committee
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99801

Dear Representative McKinnon,

Several bills having to do with medical malpractice, as relates to our MICA regulations, are in your committee as amendments to MICA. These are HB 123 HB 280, HB 292, HB 309, HB 310 and HB 311. Plus SB 326 which is a companion to HB 484 which is now in Judiciary.

We are not going to attempt to pick out the bits and pieces of these various bills, or cut and paste to come up with what we think such a bill should look like. Rather, we would like to submit to you the three main issues we want to see addressed and let your committee and the Legislature do it up in a manner they see fit. Those three main issues are:

Elimination of the mandatory and exclusive provision of the law

A two-year statute of limitations where no claim can be brought against a provider unless the claim is filed within two years from the date of the alleged act (except in the case of a minor).

A 90-day period of notification where no action based on a provider's alleged negligence may be commenced unless the defendant has been given at least 90 days' notice of the intention to commence action.

Thank you for your consideration of this matter.

Sincerely,

Marion

Marion K Lampman
Executive Director

mkl

LAW OFFICES
KELLY & LUCE
A PROFESSIONAL CORPORATION
1015 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 279-9571

BERNARD P. KELLY
L. AMES LUCE

KENAI OFFICE
HIGHLAND BUILDING
P. O. BOX 3762
KENAI, ALASKA 99611

March 23, 1978

Representative Joseph H. McKinnon
Chairman, House Commerce Committee
Pouch V, State Capitol
Juneau, Alaska 99811

RE: Pending Medical Malpractice Legislation

Dear Representative McKinnon:

It is my understanding that a Senate Bill referred to your committee for house action dealing with the subject of medical malpractice, contains therein a provision which would require notification to a doctor 90 days prior to the time when suit might be initiated against him. While I am certain that there can be argument presented that such a requirement would enable a physician to contact his insurance carrier in order to attempt to resolve the matter prior to litigation, such procedures, if they may be profitably pursued, are now a rather uniform procedure amongst those handling malpractice litigation without mandatory legislation.

In those cases where such a procedure would not prove to be profitable, which I submit would constitute the majority of claims, this 3 month delay would further complicate and extend the period of time when an injured person could expect to receive just compensation.

There is already on the books a provision in our law, passed by our legislature several years ago and applying only to malpractice litigation, where the plaintiff is barred from all discovery pending a report by an expert advisory panel, which is supposed to be appointed immediately by the Court, and is required to submit their finding within 30 days.

In practice, however, in those cases where this procedure has been utilized, it has taken as long as 14 months to find physicians and others willing to serve upon the board, and it has often proven impossible even then, to have an expert recommendation presented. Coupling this delay, which has proved to be unwarranted and unjust, with an additional 3 month delay prior to the time when the plaintiff could even initiate litigation, would tend to so delay the possibility of recovery as to effectively preclude an injured person from seeking prompt

compensation for injuries which have occurred as a result of medical negligence.

I would request that not only the 3 month provision which is contained in the present bill be eliminated, but further that the existing medical malpractice legislation be amended so as to permit discovery to proceed while the advisory board is being appointed and meeting to make their recommendation.

I apologize for not having before me the Senate Bill dealing with the medical malpractice situation which I understand is presently pending before your committee, but I am certain this should present no problem for your staff to address itself to the problem which I have set forth in this correspondence.

Best regards,

KELLY & LUCE

L. Ames Luce

LAL/cb

cc Representative Fred Brown
Representative Bob Bradley
Representative Charles H. Parr
Representative Larry Carpenter
Representative C. V. Chatterton
Representative Joe L. Hayes

SB 326

LAW OFFICES
KELLY & LUCE
A PROFESSIONAL CORPORATION
1015 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 279-9571

BERNARD P. KELLY
L. AMES LUCE

KENAI OFFICE
HIGHLAND BUILDING
P. O. BOX 3762
KENAI, ALASKA 99611

March 23, 1978

Representative Joseph H. McKinnon
Chairman, House Commerce Committee
Pouch V, State Capitol
Juneau, Alaska 99811

RE: Pending Medical Malpractice Legislation

Dear Representative McKinnon:

It is my understanding that a Senate Bill referred to your committee for house action dealing with the subject of medical malpractice, contains therein a provision which would require notification to a doctor 90 days prior to the time when suit might be initiated against him. While I am certain that there can be argument presented that such a requirement would enable a physician to contact his insurance carrier in order to attempt to resolve the matter prior to litigation, such procedures, if they may be profitably pursued, are now a rather uniform procedure amongst those handling malpractice litigation without mandatory legislation.

In those cases where such a procedure would not prove to be profitable, which I submit would constitute the majority of claims, this 3 month delay would further complicate and extend the period of time when an injured person could expect to receive just compensation.

There is already on the books a provision in our law, passed by our legislature several years ago and applying only to malpractice litigation, where the plaintiff is barred from all discovery pending a report by an expert advisory panel, which is supposed to be appointed immediately by the Court, and is required to submit their finding within 30 days.

In practice, however, in those cases where this procedure has been utilized, it has taken as long as 14 months to find physicians and others willing to serve upon the board, and it has often proven impossible even then, to have an expert recommendation presented. Coupling this delay, which has proved to be unwarranted and unjust, with an additional 3 month delay prior to the time when the plaintiff could even initiate litigation, would tend to so delay the possibility of recovery as to effectively preclude an injured person from seeking prompt

compensation for injuries which have occurred as a result of medical negligence.

I would request that not only the 3 month provision which is contained in the present bill be eliminated, but further that the existing medical malpractice legislation be amended so as to permit discovery to proceed while the advisory board is being appointed and meeting to make their recommendation.

I apologize for not having before me the Senate Bill dealing with the medical malpractice situation which I understand is presently pending before your committee, but I am certain this should present no problem for your staff to address itself to the problem which I have set forth in this correspondence.

Best regards,

KELLY & LUCE

L. Ames Luce

LAL/cb

cc Representative Fred Brown
Representative Bob Bradley
Representative Charles H. Parr
Representative Larry Carpenter
Representative C. V. Chatterton
Representative Joe L. Hayes

ALASKA STATE MEDICAL ASSOCIATION
1135 W. Eighth Avenue • Suite 6 • Anchorage, Alaska 99501 • (907) 277-6391

March 20, 1978

Mr. Terry Gardiner, Chairman
House of Judiciary Committee
Alaska State Legislature
Juneau, Alaska 99801

Dear Representative Gardiner:

At this time, as President of the Alaska State Medical Association, I request your help in the rapid resolution of the ongoing medical malpractice problem by speedy deliberation and passage of HCS for CS SB 326.

At the House of Delegates meeting, which was held at Alyeska on March 10 - 12, 1978, the members there were unanimous in their support for passage of this bill. There was representation from Juneau, Ketchikan, Soldotna, Kenai, Homer, Anchorage, Fairbanks, and the members-at-large as well. The only society which was not represented at our meeting was the society in Sitka. The doctors in Sitka report that four (4) are not in favor repeal of mandatory and exclusive parts of the bill and one (1) is. As far as I know, with careful investigation carried out in the last nine months, these are the only physicians in the State of Alaska who have a strong feeling that leans toward retention of the present law without change. It seems apparent that well over 360 of the 375 practicing physicians in the State of Alaska are in favor of repeal of the mandatory and exclusive parts of the previous malpractice bill.

Again, I would urge you to encourage your colleagues in helping in improving the quality of medicine as it is practiced in the State of Alaska by having the mandatory and exclusive parts of the medical malpractice bill repealed.

Sincerely yours,

David D Beal

David D. Beal, M.D.
President

DDB:ldh

ALASKA STATE HOSPITAL ASSOCIATION, INC.

5531 ARCTIC BLVD, SUITE 1
PHONE 277-1633

ANCHORAGE, ALASKA 99502

February 14, 1978

Joseph H. McKinnon, Chairman
Commerce Committee
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99801

Dear Representative McKinnon,

Several bills having to do with medical malpractice, as relates to our MICA regulations, are in your committee as amendments to MICA. These are HB 123 HB 280, HB 292, HB 309, HB 310 and HB 311. Plus SB 326 which is a companion to HB 484 which is now in Judiciary.

We are not going to attempt to pick out the bits and pieces of these various bills, or cut and paste to come up with what we think such a bill should look like. Rather, we would like to submit to you the three main issues we want to see addressed and let your committee and the Legislature do it up in a manner they see fit. Those three main issues are:

Elimination of the mandatory and exclusive provision of the law

A two-year statute of limitations where no claim can be brought against a provider unless the claim is filed within two years from the date of the alleged act (except in the case of a minor).

A 90-day period of notification where no action based on a provider's alleged negligence may be commenced unless the defendant has been given at least 90 days' notice of the intention to commence action.

Thank you for your consideration of this matter.

Sincerely,

Marion

Marion K Lampman
Executive Director

mkl

529 6TH AVENUE
FAIRBANKS, ALASKA 99701

March 1, 1978

Representative Terry Gardner
Chamber House Judicial Committee
Pouch 5
Juneau, Ak 99801

Dear Representative Gardner:

This letter is to state that the Fairbanks Medical Association agrees with Senate Bill #326, which allows freedom of choice regarding malpractice insurance.

We would like to go on record as agreeing with the Senate on Bill #326. Thank you.

Sincerely yours,

James R. Creps, M.D.
President

JRC:emc

Fairbanks
MEDICAL ASSOCIATION
529 6TH AVENUE
FAIRBANKS, ALASKA 99701

March 1, 1978

Representative Terry Gardner
Chamber House Judicial Committee
Pouch 5
Juneau, Ak 99801

Dear Representative Gardner:

This letter is to state that the Fairbanks Medical Association agrees with Senate Bill #326, which allows freedom of choice regarding malpractice insurance.

We would like to go on record as agreeing with the Senate on Bill #326. Thank you.

Sincerely yours,

James R. Creps, M.D.
President

JRC:emc

February 20, 1978

The Honorable Terry Gardiner
The House of Representatives
P.O. Box 1092
Ketchikan, AK 99901

Dear Mr. Gardiner:

The Kenai Peninsula Medical Society supports the House substitute for Senate Bill No. 325, A Bill for an Act entitled "An Act Relating to Medical Malpractice Insurance Coverage and Providing for an Effective Date."

As we understand it, this removes the onerous mandatory and exclusive clauses previously imposed by Ch 102 SLA 1976 and also allows means for the Medical Indemnity Corporation of Alaska to function as an insurer in the future.

Again, we support this Bill.

Thank you.

Sincerely,

ALEX B. RUSSELL, M.D.
President
Kenai Peninsula Medical Society

ABR/as
cc: Dr. David Beal

ALASKA STATE MEDICAL ASSOCIATION
1135 W. Eighth Avenue • Suite 6 • Anchorage, Alaska 99501 • (907) 277-6891

March 20, 1978

Mr. Terry Gardiner, Chairman
House of Judiciary Committee
Alaska State Legislature
Juneau, Alaska 99801

Dear Representative Gardiner:

At this time, as President of the Alaska State Medical Association, I request your help in the rapid resolution of the ongoing medical malpractice problem by speedy deliberation and passage of HCS for CS SB 326.

At the House of Delegates meeting, which was held at Alyeska on March 10 - 12, 1978, the members there were unanimous in their support for passage of this bill. There was representation from Juneau, Ketchikan, Soldotna, Kenai, Homer, Anchorage, Fairbanks, and the members-at-large as well. The only society which was not represented at our meeting was the society in Sitka. The doctors in Sitka report that four (4) are not in favor repeal of mandatory and exclusive parts of the bill and one (1) is. As far as I know, with careful investigation carried out in the last nine months, these are the only physicians in the State of Alaska who have a strong feeling that leans toward retention of the present law without change. It seems apparent that well over 360 of the 375 practicing physicians in the State of Alaska are in favor of repeal of the mandatory and exclusive parts of the previous malpractice bill.

Again, I would urge you to encourage your colleagues in helping in improving the quality of medicine as it is practiced in the State of Alaska by having the mandatory and exclusive parts of the medical malpractice bill repealed.

Sincerely yours,

David D. Beal

David D. Beal, M.D.
President

DDB:ldh

Gary R. Hedges, M.D.
P.O. BOX 609
JUNEAU, ALASKA 99801
586-6050

March 21, 1978

Terry Gardiner, Chairman Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Gardiner:

We the members of the Juneau Medical Society have received a plea to support HCS for CS for SB326 in the broad concept that it provides for the repeal of manditory and exclusive MICA malpractice insurance as a condition of medical licensure in Alaska, permits the perpetuation of MICA as a voluntary source of malpractice insurance and allows the entry of the continuation of the alternate source of malpractice insurance within the state.

Following numerous informal discussions and discussion of the problem at our Medical Society Meeting on 3-7-78, the above would appear not to accurately reflect the feelings of the Juneau Medical Society.

The section regarding notice to a health care provider is an interesting innovation and it was felt by all to be a positive step forward and quite possibly in many instances get parties to begin communicating rather than suing.

In summary, the feelings of the Juneau Medical Society in regard to this bill, except for the final section just mentioned are relatively neutral. If the Legislature of the State of Alaska in its wisdom feels that passage of this bill will permit the perpetuation of MICA and allow the entry of alternate sources of malpractice insurance within the state, it should be passed. However, we feel that the burden of these things occurring are then on the Legislature. It would appear to the Juneau Medical Society that the main advantages of this bill are financial. 1. It would save the Alaska Court System the difficulty of deciding the constitutionality of the present MICA bill. 2. It would save the medical practitioners the expense of pursuing the suit regarding its constitutionality. 3. It would obviate the need for numerous practitioners to pay back insurance premiums for approaching two years. The other major accomplishment of this bill is to further diminish the desirability of MICA insurance by making it a claims made policy, without a change in the statute of limitations to make a claims made policy adequate coverage.

It is our opinion that this bill in itself does nothing to make the Alaska malpractice insurance market more viable, more equitable or available. If, in its wisdom, the Alaska State Legislature passes this bill and also, in its wisdom, creates other tort reforms other than the notice to health care providers and indeed causes the malpractice insurance market in Alaska to be equitable, available, and viable the members of the Juneau Medical Society will be forever grateful.

Yours truly,

Gary R. Hedges, M.D.

ANCHORAGE MEDICAL SOCIETY
1135 W. 8TH AVE., SUITE 6
ANCHORAGE, ALASKA 99501
907-277-6891

March 3, 1978

Terry Gardiner, Chairman
Judiciary Committee
Alaska State Legislature
Juneau, Alaska 99801

Dear Representative Gardiner:

The Anchorage Medical Society supports HCS for CS SB 326 in the broad concept that it provides for the repeal of mandatory and exclusive MICA malpractice insurance as a condition of medical licensure in Alaska, permits the perpetuation of MICA as a voluntary source of malpractice insurance, and allows the entry and continuation of alternate sources of malpractice insurance within the state.

Sincerely yours,

William C Compton MD

William C. Compton, M.D.
President

WCC:mlm

cc. Jeff Landry, Lobbyist

URGENT - RETURN IMMEDIATELY IN ENVELOPE PROVIDED

February 27, 1978

Terry Gardiner, Chairman
Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Dear Representative Gardiner:

I, the undersigned member of the ANCHORAGE MEDICAL SOCIETY support HCS for CS SB 326 in the broad concept that it provides for the repeal of mandatory and exclusive MICA malpractice insurance as a condition of medical licensure in Alaska, permits the perpetuation of MICA as a voluntary source of malpractice insurance, and allows the entry and continuation of alternate sources of malpractice insurance within the state.

MICHAEL NEWMAN, MD — Michael Newman, MD.

(print name) (signature)

URGENT - RETURN IMMEDIATELY IN ENVELOPE PROVIDED

February 27, 1978

Terry Gardiner, Chairman
Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Dear Representative Gardiner:

I, the undersigned member of the ANCHORAGE MEDICAL SOCIETY support HCS for CS SB 326 in the broad concept that it provides for the repeal of mandatory and exclusive MICA malpractice insurance as a condition of medical licensure in Alaska, permits the perpetuation of MICA as a voluntary source of malpractice insurance, and allows the entry and continuation of alternate sources of malpractice insurance within the state.

David D. Leal. David D Leal
(print name) (signature)

HB 326

MICA Medical Indemnity Corporation of Alaska

1200 AIRPORT HEIGHTS ROAD • SUITE 510
ANCHORAGE, ALASKA 99504
TELEPHONE 907 274-9232

March 3, 1978

Mr. Terry Gardiner, Chairman
Alaska House of Representatives
Judiciary Committee
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Representative Gardiner:

In the past two months, the M.I.C.A. legislative committee has met several times to discuss the proposed changes concerning the Medical Malpractice Act. It was the general concensus of the members that the suggested changes would not only be acceptable but might obviate many of the objections emanating from the physicians who resisted active participation in the program. Since MICA is currently writing indemnity policies for less than forty percent (40%) of the physician population, eighty percent (80%) of whom are the low premium policy holders, it would seem that modifications in the current act would be appropriate.

The most objectionable feature concerning the physicians of the current act involves the mandatory and exclusive provisions. Since the mandatory condition was legislated with the intent to prevent "adverse selection" which would effect appropriate underwriting and since th exact opposite has occurred (the "low risks" have joined and the "high risks" have not), then it would seem that the mandatory clause is purposeless while creating most of the physicians objections. Obviously there would be no reason for these current low risk (low premium) policy holders to abandon this program if it were made voluntary. The latter change might logically encourage greater participation from the non-participating physicians.

At a recent MICA board meeting it was the unanimous opi on that the proposed legislative changes were acceptable. There were also several other salient changes which the MICA board would endorse.

We would have to see a clearer and consistent definition of health care providers throughout the statute. Many problems have arisen classifying clinic members, corporate employees, hospital personnel etc.

Medical Indemnity Corporation of Alaska

Although Section 21,88.030 (f) limits liability against MICA governors, officers and employees, insolvency might create a problem wherein we might find ourselves as defendents in a law suit which could result in a substantial cost. If this is known then it might restrict recruitment of talented people to administer the program.

The language in Section 21,88.050 (1) and (7) seems to obligate MICA to write insurance for any physician or hospital on request. We would much rather be allowed to have some underwriting discretion which might be accomplished by eliminating the legal directive "shall" and substituting "may".

Also Section 21,88.090 which may limit our right to cancel a policy solely due to non payment seems too restrictive. Again, we feel that there should be more underwriting discretion allowed which could be judiciously administered.

Section 21,88.055, regarding the decision affecting termination of the corporation, would be more acceptable to us if the MICA board were given some authority in arriving at this decision.

In conclusion the MICA Board members strongly support the proposed legislative changes but would also appreciate legislative consideration regarding the above mentioned issues.

Sincerely,

James A Baldauf

James A. Baldauf, M. D.
Chairman, Legislative Committee

JAB/jb
CC: Board of Governors *Mr. Art Weatherford* *Division of Ins.*
Administrator *Mr. Ove Arvidson* *Marilyn Van Vleit*