

HPB

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STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	4/11/85	1:30 pm
"	4/27/85	9 AM

Alaska State Legislature



House of Representatives House Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

MEMORANDUM

To: Honorable Ben Grussendorf
Speaker of the House

From: Representative M.M. Miller, Chairman
House Judiciary Committee

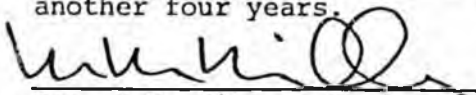
Re: Alaska Code Revision Commission

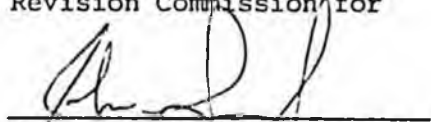
Date: April 11, 1985

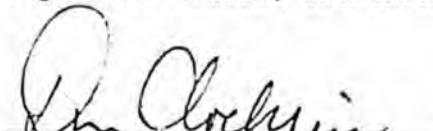
Pursuant to your referral under AS 44.66.050, the House Judiciary Committee has had under consideration for "sunset review" the Alaska Code Revision Commission.

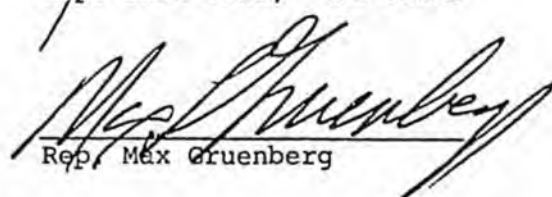
As required by statute, a public hearing was held on the review of the commission. The committee considered the findings and recommendations of the Legislative Audit Division and examined the proposed budget for the commission. The committee determined that the commission has demonstrated a public need for its continued existence.

After careful analysis, the committee approved HB 307 which extends the Alaska Code Revision Commission for another four years.



Rep. M.M. Miller, Chairman

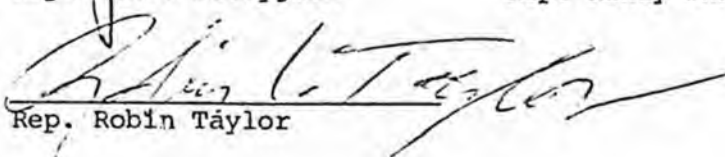

Rep. John Sund, Vice-Chair


Rep. Don Clocksin


Rep. Max Gruenberg


Rep. Fritz Pettyjohn


Rep. Randy Phillips


Rep. Robin Taylor

STATE OF ALASKA

ALASKA CODE
REVISION COMMISSION

1982 - 1984 REPORT



AUGUST 1984

ALASKA CODE REVISION COMMISSION
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811

Office Location: 110 Seward Street
Rooms 5 and 8

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ALASKA CODE REVISION COMMISSION

Commission Members
and
Appointing Authority

JOHN W. ABBOTT, Chairman
Governor--Public Member

JAMES L. BALDWIN, Vice Chairman
Governor--Executive

PATRICK M. RODEY, Member of
Senate, Alaska State Legislature

MARY A. NORDALE
Governor--Public Member

L.S. KURTZ, JR.
Board of Governors
Alaska Bar Association

CHARLIE BUSSELL, Member of
House of Representatives
Alaska State Legislature

JUDGE THOMAS B. STEWART [Ret.]
Chief Justice--Judicial Branch

FREDERIC E. BROWN
Governor--Public Member

TAMARA BRANDT COOK, Deputy Director
Division of Legal Services
Legislative Affairs Agency
EXECUTIVE SECRETARY

Dick Regan, Research Director
Alaska Code Revision Commission

Catherine H. Walsh, Secretary
Alaska Code Revision Commission

OFFICE: 110 Seward Street
Juneau, Alaska 99801
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Juneau, Alaska 99811

465-4378)]

ALASKA CODE REVISION COMMISSION



COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
JAMES L. BALDWIN - VICE CHAIRMAN
PATRICK M. RODEY
CHARLIE BUSSELL
L.S. KURTZ, JR.
JUDGE (Ret.) THOMAS B. STEWART
FREDERIC E. BROWN
MARY A. NORDALE

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878
OFFICE LOCATION:
ROOMS 5 AND 8
110 SEWARD ST.
JUNEAU, ALASKA 99801

EXECUTIVE SECRETARY
TAMARA BRANDT COOK

August 31, 1984

Senator Bill Ray, Chairman
Alaska Legislative Council
Pouch V, State Capitol
Juneau, Alaska 99811

Senator Ray:

The Alaska Code Revision Commission submits this report of its activities.

Statutes do not provide when or whether the commission shall make periodic reports. Unless the Legislative Council expresses some other preference, we plan to report biennially, at the completion of the work of each legislature.

Very truly yours,

A handwritten signature in cursive script that reads "John W. Abbott".

John W. Abbott, Chairman
Alaska Code Revision Commission

JWA:chw

REPORT FOR THE YEARS 1982-1984

INTRODUCTION

The primary objective of the Alaska Code Revision Commission, as established by AS 24.20.075, is to review and consider proposed changes in the law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, the Alaska Judicial Council, the Alaska Legislative Council, the supreme court, the state or local bar associations, principal departments, agencies, boards and commissions of the executive or judicial branch, and committees of the legislative branch. The commission also seeks out on its own and works on parts of Alaska Statutes where it finds revision is needed to eliminate antiquated and inadequate law and to bring the law into harmony with current needs and conditions.

The commission consists of (1) two legislators, one from each house, appointed by the respective presiding officers; (2) three public members who are not employees of the executive branch, appointed by the governor, and one member who is an employee of the executive branch, appointed by the governor; (3) a designee of the chief justice of the supreme court; and (4) a designee of the Alaska Bar Association, appointed by the board of governors of that association. The director of legal services for the Legislative Affairs Agency, or his designee, serves as the executive secretary for the commission.

The commission assists the legislature by carefully studying complex subjects, identifying major policy questions for legislative attention in the subject areas it studies, gathering the views of interested persons and organizations, and drafting legislation for consideration by the legislature. Its major service has been long term in-depth study and revision that the legislature has little chance to do. Thus, the commission assists the legislature in accomplishing needed reforms that otherwise might not be made because of heavy demands on legislative time.

OUTLINE OF THE PRINCIPAL WORK DONE BY THE COMMISSION

Work done by the code revision commission has contributed to enactment of various bills and revisions that do not bear the name of the commission. Following are the bills and studies that do bear the commission's name and have resulted in (1) enacted law; (2) bills that will be offered to the next legislature; (3) bills that were worked up but not introduced for reasons of priority or other reasons; and (4) broad studies done without specific bill drafting as the end product.

Bills Prepared by the Commission and Enacted Into Law.

1981: Oath, affirmation, acknowledgment, notarization and verification and adopting the Uniform Recognition of Acknowledgments Act--ch. 37, SLA 1981--(SB 80, 11th Legislature). Now mostly in AS 09.63.

1982: Commercial transactions--amending the Uniform Commercial Code--ch. 16, SLA 1982--(HCSSB 77 (Rls), 12th Legislature). Now mostly in AS 45.09.

1982: Rights of debtors and creditors--ch. 62, SLA 1982--(CSHB 74 (Rls) am, 12th Legislature). Now mostly in AS 09.38.

1983: Modifying or abolishing some common law property rules--ch. 51, SLA 1983--(SB 243, 13th Legislature, identical to HB 340). Now AS 34.27.

1984: Uniform Disposition of Community Property Rights at Death Act--ch. 47, SLA 1984--(HB 697/SB 515, 13th Legislature).

1984: Administration of Decedents' Estates--ch. 80, SLA 1984--(HB 694/SB 512, 13th Legislature).

1984: Principal and Income of Trusts--ch. 65, SLA 1984--(HB 693/SB 511, 13th Legislature).

1984: Renunciation of Rights in Decedents' Estates--ch. 51, SLA 1984--(HB 695/SB 513, 13th Legislature).

1984: Married Persons Rights in a Family Home--ch. 89, SLA 1984--(HB 696/SB 514).

Bills Previously Introduced in the Legislature but not Enacted and to be Offered to the 1985-1986 Legislature With Amendments.

First introduced in 1981--Recording and recorded documents.

First introduced in 1981--Security interests in real property.

First introduced in 1982--For profit corporations code.

First introduced in 1983--Nonprofit corporations code.

Bills Expected to be Offered for the First Time in the 1985-1986 Legislature.

Cooperatives; Administrative Procedure Act; Probate Amendments.

Bills Worked Through Various Drafts but on Which Work was Discontinued and May be Pursued Later.

Occupational Licensing (AS 08)

Small Loans

Vital Statistics

Uniform Limited Partnership Act

Studies Done Without Bill Drafting.

1982: Alaska Hire/Durational Residency

1983: Laws relating to computers and telecommunications systems--privacy, intellectual property, computer crime

GENERAL REVIEW

In the Eleventh Legislature one bill prepared by the commission was enacted. In the Twelfth Legislature two bills were enacted. In the Thirteenth Legislature six bills were enacted. Several major work products of the commission remain for consideration of future legislatures.

The commission has worked to involve interested persons and groups in the formulation of its draft bills. It has written into its legislative proposals the consensus of its diverse membership as to where the public interest lies. As final arbiter of the content of the proposed legislation it prepares, it has not always agreed with persons or groups representing special interests that would be affected by the legislation. When there is substantial disagreement, it has noted the alternative view in commentary accompanying the draft bill, going so far in some instances as preparing the amendments that would accomplish the alternative result.

The commission was created in 1976. Since its creation, it has generally reviewed the uniform acts proposed for adoption by the National Conference of Commissioners on Uniform State Laws and has reviewed and discussed many parts of the Alaska Statutes for possible revision in depth. However, it has concentrated its attention on these projects described below.

JUDGMENT CREDITOR AND JUDGMENT DEBTOR. An early project was revision of debtor and creditor law relating to exemption from execution. The resulting bill was introduced in 1979 and again in 1981. In 1982, with some changes by the legislature, it was enacted and became ch. 62, SLA 1982. Among other changes from existing law, the bill contained new provisions designed (1) to assure that the exemption amounts and procedures are made known to the judgment debtor and are followed; (2) to adjust the dollar amounts of exemptions based upon a cost of living index; and (3) to ease the burden on the judgment creditor by provisions for a continuing garnishment on wages while leaving the judgment debtor basic living costs out of each paycheck.

ALCOHOLIC BEVERAGES. In 1978 the commission undertook a major revision of AS 4--Alcoholic Beverages. Since the legislature later established an interim committee specifically for this purpose, the commission forwarded its draft and extensive commentary to the Legislative Council for referral to the appropriate committee for further consideration. A complete revision of AS 4 was enacted as ch. 131, SLA 1980. The commission's work was studied by the interim committee and used in the markup for that revision.

AMENDMENTS TO UNIFORM COMMERCIAL CODE. Studied in 1978, first introduced in 1979 and again in 1981, a series of amendments to the Uniform Commercial Code were enacted as ch. 16, SLA 1982. Alaska had adopted the UCC in 1962. In 1972 and 1973 many uniform amendments were adopted by the Commissioners on Uniform State Laws. These amendments to Article 9 on secured transactions and to a lesser degree to Article 8 on investment securities had not been adopted in Alaska, and Alaska's law in this commercial area had become seriously out-of-date. The 1982 law picked up these amendments bringing Alaska into conformity with most other states. After study, the commission recommended against adopting certain 1977 amendments that provided for uncertificated securities. Little support for the 1977 proposals had been generated in other states.

Although it was not a project of the commission itself, the commission pursued the important issue of uniform section numbering for our commercial code and the numbering changes were done by the revisor of statutes in 1980.

RECORDING. In 1978 a review of the real property conveyancing laws was begun. Then in 1979 this major project was divided into two areas: (1) recording and recorded documents; and (2) security interests in real property.

In 1981 a bill on recording and recorded documents (which included much of the Uniform Federal Lien Registration Act) was introduced but not enacted. The purpose of the bill was to gather together and clarify the law on recording and to provide a structure that would make possible the use of advanced technology to transmit, index, store, retrieve and search title documents. Reintroduced in 1983 in amended form, the bill again was not enacted. Differences of opinion with the Department of Natural Resources over aspects of the bill were an obstacle to its passage. The differences have been resolved, and it is the commission's intention to offer the bill again to the Fourteenth Legislature.

SECURITY INTERESTS IN REAL PROPERTY. In 1982 a bill on real property security interests was introduced. During the time the bill was being formulated, the lending industry was undergoing changes brought about by unprecedented high interest rates and a realization that rates may fluctuate in the future much more widely than in the past. A central issue was whether, or to what extent, a home buyer who resold before paying off his purchase loan would be able to pass on to his purchaser the benefit of the low interest rate on the original loan. Stated differently, to what extent were loan terms to be allowed that permitted a lending institution to declare the entire balance of the loan due if the property was resold?

Efforts to deal with this "due-on-sale" question by legislation proved to be too controversial, and the bill was not

enacted. At the same time, events were overtaking the due-on-sale issue--primarily enactment of state and federal statutes and regulations and general acceptance of variable rate mortgages by the public. Reintroduced in the next legislature without the controversial due-on-sale restrictions, the bill failed to get committee hearings, presumably because the bill had been labeled "controversial" in the previous legislature. Removing the due-on-sale controversy did not remove the label. The bill will be offered again in the next legislature with an effort to make clear the differences between the revised bill and the original bill.

OATH, AFFIRMATION, ACKNOWLEDGMENT, NOTARIZATION AND VERIFICATION. As it worked on these real property bills, the commission saw the need for revision of the state law on acknowledgment. The existing Alaska law was enacted in 1915 and was hopelessly out of date. Various similar technical requirements of law also needed clarification and definition. The bill that resulted was SB 80 on oath, affirmation, acknowledgment, notarization and verification. It was enacted as ch. 137, SLA 1981.

PROFIT CORPORATIONS. Late in 1979 work on Title 10--Corporations and Associations--was begun. In successive efforts the commission developed a revision of Alaska business corporation law and Alaska nonprofit corporation law, and it is now working on a revision of AS 10.15 on cooperatives.

Each of these major projects has built upon work done in the previous project and has started with an extensive review and scholarly appraisal of the Alaska law and an assessment of the need for revision. Because work on the law of these organizational structures has been cumulative, the commission has contracted with the same legal expert in the business organization field as a consultant on the three kinds of structures.

After doing a separate study on the issue, the commission rejected the concept of a separate Alaska business corporation law for corporations formed under the Alaska Native Claims Settlement Act. The commission and a subcommittee of the Alaska Federation of Natives then worked together over several months to assure that the bill for a general revised corporation code would be consistent with Native corporation needs. The bill was introduced late in the 1982 legislative session and again in 1983. It was the subject of 1982 Alaska Bar Association seminars attended or viewed on videotape around the state. However, the weighty bill and legal analysis appear to have been slow going for most legislators, and it was not until 1984 that issues emerged. Although a section on limited contingent liability of officers and directors consistently drew interest, the pervading issue in 1984 was a broad one: whether enacting a corporation code revision for Alaska should be delayed until a Revised Model

Business Corporation Act in progress had reached its final form, been accepted by the American Bar Association, and been studied by Alaska practitioners.

The commission urged that its draft should be enacted since the revised model act (exposure draft) paralleled its bill, and its bill was custom made for Alaska. However, legislators and ultimately the commission, concluded there was something to be gained by a more detailed comparison and study of the two parallel codes. The commission with its consultant undertook to do the detailed comparison between sessions and will offer it to legislators and other interested persons along with a bill for the Fourteenth Legislature. The revised bill will incorporate certain desirable features of the revised model act in an effort to gain the best from the two similar codes.

NONPROFIT CORPORATIONS. The nonprofit code was introduced in 1983. It was made available throughout the state through the Legislative Information Offices. A teleconference on the bill was held early in 1984 after mailing notice to nearly 3,000 nonprofit corporations. Because questions raised at the teleconference should be dealt with, the commission is revising the bill for reintroduction in 1985. There is no uniform or model legislation on nonprofit corporations, and the commission's social and legal analysis and draft bill are being used in other states that are studying their nonprofit corporation laws as well as in Alaska.

STUDY ON COMPUTERS AND TELECOMMUNICATIONS SYSTEMS--PRIVACY, INTELLECTUAL PROPERTY AND COMPUTER CRIME.

A study done at the legislature's direction on "Laws Relating to Computers and Telecommunications Systems--Privacy, Intellectual Property and Computer Crime" was provided to the legislature in June 1983. Voluminous appendices to the study drew together a wealth of background material in these areas. Although model legislation was included, the commission made no specific recommendations in its study. However, its study contributed to enactment in 1984 of a bill on criminal use of a computer, ch. 79, SLA 1984, and has been used in this and other states as background for legislative work on the subjects covered.

OCCUPATIONAL LICENSING. In 1980 a major project to revise the law on occupational licensing, AS 08, was begun. Many drafts were done and mailed to an extensive list of occupational boards and other interested parties, and many public hearings were held on the drafts. Ultimately in 1983 it became apparent to the commission that a broader constituency than the commission would be needed if there was to be hope of enacting a major revision of the occupational title.

At about that time, the commission was informed that

the Governor's Office would like to take the commission's work product as a basis to work from, that it planned to get into a study of occupational licensing, work over the code revision commission's bill, and introduce a comprehensive administration bill. The commission, therefore, turned over to the Governor's Office its extensive work product on Title 8.

Although the administration is far behind its original time plan, the Governor's Office has informed the commission that it has not changed its plans or priorities regarding occupational licensing. The need for extensive organization and substantive revision remains, and the commission hopes that use will be made of its work product to meet this need, whether the commission or another body is the listed sponsor of a bill that is introduced.

THE UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT. In 1982 and 1983 the commission, together with the Probate Section of the Alaska Bar Association, generally reviewed the law relating to rights at death and to property arrangements that usually have their inception in death. The result was introduction and enactment of five bills in this subject area in 1984, and plans to offer another bill or two bills in the 1985-1986 legislature.

The first of these bills to be enacted was the property rights at death act. This bill was offered by the commission in 1979 (SB 58) and in 1981 (SB 79) and little interest was shown in it. When the bar's probate section reviewed the bill with the commission and determined to actively support it, it was reintroduced in 1984 and was enacted as ch. 47, SLA 1984. It sets out rules governing the disposition at death of real and personal property that was acquired as community property or with income from community property.

ADMINISTRATION OF DECEDENTS' ESTATES. Introduced in 1984 and enacted as ch. 80, SLA 1984, the bill adjusts dollar amounts in the Uniform Probate Code based upon changes in the consumer price index.

PRINCIPAL AND INCOME OF TRUSTS. The bill, introduced in 1984 and enacted as ch. 65, SLA 1984, adopts the Uniform Principal and Income Act (1962) with no substantial changes from the uniform act. Thirty-seven other states had adopted either the 1962 Act or an earlier 1931 version, and Alaska had grown into the need for it. The Act codifies rules a trustee shall follow when the document that established the trust does not provide instructions to cover all circumstances.

RENUNCIATION OF RIGHTS IN DECEDENTS' ESTATES. Introduced in 1984 and enacted as ch. 51, SLA 1984, the Act changes Alaska law on the right to refuse to accept property from a decedent's estate. Its purpose is to make possible the use in Alaska of certain estate planning (tax planning) devices that are

acceptable under the federal Internal Revenue Code, provided state law permits.

MARRIED PERSONS RIGHTS IN A FAMILY HOME. The bill, introduced in 1984, was amended by the legislature and enacted as ch. 89, SLA 1984. As amended, the sole effect of the Act is to remove from the statutes certain anachronistic provisions on dower, a common law right that no longer exists in Alaska.

COOPERATIVES. Although the commission held earlier hearings on cooperatives and a study was done, the cooperatives revision was not taken up as a project until 1984. It is now underway, and a bill will be ready for the 1985-1986 legislature. However, since exposure and revision are central to the commission's preparation of bills, timing always depends largely upon the extent and nature of public interest and comment on draft bills.

ADMINISTRATIVE PROCEDURE ACT. The commission has long recognized the need for revision of the Administrative Procedure Act. In order to avoid overlap with work being done by others, it did not formally vote to take up an APA revision as a commission project until 1983. Realizing the importance of the Act to Alaska, the commission contacted all members of the Alaska Bar, the members of an Alaska administrative hearing officers association and law faculty members from leading law schools. These persons and firms were invited to submit resumes to indicate an interest in performing consultant services for the project. Based upon the fifty or more resumes received, the commission invited submission of proposals from five Alaska lawyers and five professors of administrative law. By the time proposals were received, however, funds for consultant services were not available to permit contracting, so the commission had to reject all proposals.

The commission is now working with the Administrative Law Section of the Alaska Bar Association and with the Legislative Affairs Agency legal staff in preparing a bill. It is based upon the Model State Administrative Procedure Act (1981) and a draft done by the Administrative Law Section over an extended period of time. Although funds are not available for extensive work under contract, the commission still hopes to finance some academic assistance in reviewing drafts that will result from the present activity. A superior product should result based upon the strong practical background of Alaska drafters and the insights of academics who have expressed an interest in the project.

PROJECTS DROPPED OR POSTPONED. Throughout the years the commission has considered a variety of revisions. Several projects were either dropped or postponed so the commission could concentrate its efforts on revisions it believed to be more necessary and more consistent with the purposes for which it was

created. Of the various topics considered, the following are worthy of note: the insurance code, the class action act, the uniform comparative fault act, the uniform marriage and divorce act, the uniform brain death act, the uniform limited partnership act, guardians and conservators, the model product liability act, domestic violence, small loans and vital statistics.

Each of the commission's bills was developed through a process of study of the available materials on the subject for revision including any pertinent uniform laws, inquiry of persons, groups and agencies concerned, and distribution of proposed drafting for comment.

MEETINGS HELD DURING THE REPORTING PERIOD. During 1982 the commission held nine meetings consisting of fourteen work sessions. During 1983 eight meetings were held with ten days of work sessions. Through mid-1984, the commission has held five meetings consisting of nine work sessions. The time and place of these meetings was advertised in a major newspaper of the state, and special notice was given to persons and groups thought to be most directly interested in the subjects to be taken up at particular meetings. Public participation has been encouraged in all phases of the commission's work.

STAFFING AND SERVICES CONTRACTS. The staff of the Legislative Affairs Agency serves as staff for the commission as needed. Direct staff includes a research director and a secretary. The director of legal services or the director's designee serves as executive secretary for the commission.

The commission has entered into service contracts for assistance with its major projects.

PLANS FOR THE COMING LEGISLATURE. The commission has learned that its work products do not carry themselves in the legislature. In the Thirteenth Legislature nearly 1,300 bills were introduced. The amount of time and attention legislative committees will devote to commission proposals is limited.

The major revisions the commission has offered tend to involve substantial choices and options. The commission has offered testimony and extensive written analyses explaining the choices it has made in its drafts. When changes are made by legislative committees, it has assisted in fitting the changes into the bills and in revising explanatory materials to conform to the changes.

In the 1985-1986 legislature the commission primarily hopes to assist committees and staff in working with the proposed bulk revisions of law on business corporations, nonprofit corporations, cooperatives, and the Administrative Procedure Act. Each of these is a major project. In addition, it will offer its assistance with bills it will ask the Legislative Council to

reintroduce on recording and real property security interests.

The bill on business corporations will be offered with a comparison of the commission's proposal and the Revised Model Business Corporation Act and with changes from the commission's previous draft to incorporate certain desirable features of the Revised Model Act. The commission will offer its resources not so much to advocate the product it prepared as to make clear the content of the proposal and to work with whatever choices legislative committees may make.

The nonprofit corporation code involves perplexing issues, including issues of appropriate treatment of religious nonprofit corporations and appropriate treatment of nonprofit corporations that are funded solely or mainly through government contracts and grants.

The cooperatives bill will be an effort to reexamine a nineteenth century concept in the light of current conditions.

Preparation of a bill to revise the Administrative Procedure Act, as noted, is an effort of the commission in concert with the Alaska Bar Association's Administrative Law Section. The issues involved touch the lives of all Alaskans, and the legislature will be asked to give the bill very careful consideration.

The commission believes that enactment of these bills would make the Fourteenth Legislature an especially productive one.

SUNSET REVIEW OF THE COMMISSION. By AS 44.66.010(a), the commission is among a number of boards, commissions and agencies that will be terminated on fixed dates unless continued by legislative action. Since the commission's termination date is June 30, 1985, the legislature in 1985 will again consider the place of the commission in the state's governmental and legislative organization and whether it should be continued.

The commission believes it serves a needed function that is not performed by any other agency, and that it should be continued by the legislature in substantially its present form and role.

ENABLING ACT

The law establishing the Alaska Code Revision Commission and stating its duties follows:

Sec. 24.20.075. Alaska Code Revision Commission. (a) The Alaska Code Revision Commission is established as a permanent commission of the legislature.

(b) The commission consists of two legislators, one from each house, appointed by the presiding officer; three public members who are not employees of the state government, appointed by the governor; a designee of the governor, who is an attorney employed by the executive branch of the state government; a designee of the chief justice of the supreme court; and a designee of the Alaska Bar Association appointed by the board of governors of the association. Legislative members serve at the pleasure of the presiding officer; the designee of the governor and the designee of the chief justice serve at the pleasure of the governor and chief justice, respectively; the public members and the designee of the board of governors serve terms of six years each, beginning July 1 and ending on June 30 six years later. Members may be reappointed or redesignated. A vacancy in the membership of the commission occurring other than by expiration of term shall be filled in the same manner as the original appointment but, with regard to the legislative members, the public members, and the board of governors' designee, for the unexpired term only. Members who are not state employees or legislators are entitled to receive the standard per diem and travel allowance provided for members of independent boards and commissions. Legislative members are entitled to receive the regular legislative per diem and travel allowance for days spent on commission business, and members who are state employees are entitled to receive the regular state employees per diem and travel allowance for days spent on commission business. The commission selects its chairman and vice-chairman. The director of legal services for the Legislative Affairs Agency, or his designee, serves as executive secretary for the commission.

(c) The commission shall

(1) examine the statutes of the state and judicial decisions to discover defects and anachronisms in the law;

(2) review and consider proposed changes in the law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, the Alaska Judicial Council, the Alaska Legislative Council, the supreme court, the state or local bar associations, principal departments, agencies, boards and commissions of the executive or judicial branch, and committees of the legislative branch;

(3) receive and consider suggestions from the Alaska bench and bar, public officials, organizations, and individuals as to areas of law needing review and remedy;

(4) recommend changes in law needed to eliminate antiquated and inadequate rules of law and to bring the law into harmony with current needs and conditions.

(d) The commission may

(1) hold public hearings and other meetings as necessary throughout the state and shall determine an appropriate quorum for conducting business;

(2) establish one or more subcommissions to assist it in the performance of its duties.

(e) The staff of the Legislative Affairs Agency serves as staff for the commission. Subject to appropriation for the purpose, the commission may request the agency to contract with other agencies or persons for the performance of necessary services.

(f) The commission shall submit its reports and recommendations, and draft legislation as to revision of law, to the Legislative Council and shall distribute them to the governor, members of the legislature, and the chief justice of the supreme court. Each draft of legislation submitted by the commission shall be accompanied by a sectional analysis. The commission shall prepare the sectional analysis using language that is understandable to a layman.

(g) All branches of state government shall provide information and documents requested by the commission necessary to the accomplishment of its work.

(h) The commission shall make a formal request to the Legislative Council for funds it considers necessary for the per diem, travel, and contractual expenses of the commission. Funds appropriated to the commission are to be disbursed and accounted for under procedures required by the Legislative Affairs Agency. The commission chairman shall approve all expenditure documents. (§ 1 ch 114 SLA 1976; am § 1 ch 57 SLA 1977; am §§ 1, 2 ch 44 SLA 1980; am §§ 2--4 ch 65 SLA 1982)

Effect of Amendments

The 1980 amendment added "Alaska" to the beginning of the section heading, inserted "Alaska" preceding "Code Revision Commission" at the beginning of subsection (a), and rewrote subsection (b).

The 1982 amendment substituted "three public members who are not employees" for "one public member, who is not an

employee" in the first sentence of subsection (b), substituted "public members" for "public member" in the second and fourth sentences of subsection (b), substituted "American Law Institute" for "National Law Institute" and inserted "the Alaska Legislative Council" in paragraph (2) of subsection (c), and added the second sentence of subsection (f).

Editor's Notes

This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Section 4, ch. 44, SLA 1980 provides: "The public member and the designee of the board of governors, serving on the Alaska Code Revision Commission on the effective date of this Act [May 27, 1980], shall determine the length of their terms by drawing lots. The term of one of those members ends June 30, 1980, and the term of the other ends June 30, 1982. After these initial termination dates, the six-year-term provisions of AS 24.20.075(b) apply."

Pursuant to AS 44.66.010(a)(8), the Alaska Code Revision expires on June 30, 1985.

Section 5, ch. 65, SLA 1982, provides: "Transition. Notwithstanding the provisions of AS 24.20.075(b), the term of the additional public members added by this Act and appointed by the governor after the effective date of this Act [August 26, 1982] begins on the date of appointment; the term of one of the additional public members ends June 30, 1984 and the term of the other ends June 30, 1986, as designated by the governor."

STATE OF ALASKA

RECEIVED
3/4/85

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE BUDGET AND AUDIT COMMITTEE

March 4, 1985

The Honorable Ben F. Grussendorf
Speaker of the House
Pouch V
Juneau, AK 99811-3100

Dear Representative Grussendorf:

The Legislative Budget and Audit Committee released to the public the last three sunset audit reports of regulatory commissions that will terminate June 30, 1985. I am forwarding these reports to you so that they may be distributed to the appropriate standing committees you will designate to perform the legislative oversight function.

The three entities are:

- Jud
Jud
LoC
1. Board of Governors of the Alaska Bar Association (AS 08.08.040)
 2. Alaska Code Revision Commission (AS 24.20.075)
 3. Alaska Public Utilities Commission (AS 42.05.010)

Please note that AS 08.03.020(a) and AS 44.66.010 provide that upon termination, each board or commission continues in existence until June 30 of the next succeeding year for the purpose of concluding its affairs.

Sincerely,



Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit

Enclosures

ALASKA CODE REVISION COMMISSION



COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
JAMES L. BALDWIN - VICE CHAIRMAN
PATRICK M. RODEY
DON CLOCKSIN
L. S. KURTZ, JR.
JUDGE (Ret.) THOMAS B. STEWART
FREDERIC E. BROWN
WILSON L. CONDON

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878
OFFICE LOCATION:
ROOMS 5 AND 8
110 SEWARD ST.
JUNEAU, ALASKA 99801

EXECUTIVE SECRETARY
TAMARA BRANDT COOK

MEMORANDUM

TO: Representative Mike M. Miller, Chairman
House Judiciary Committee

FROM: Dick Regan, Research Director
Alaska Code Revision Commission. *Dick Regan*

DATE: March 7, 1985

RE: Continuation of code revision commission

As you know, the House Judiciary Committee has had referred to it the performance review of the code revision commission. By AS 44.66.050 the committee is required to hold a hearing and to make a recommendation by the 60th day of the session, March 14th. The hearing can be joint.

Enclosed is SB 200. The Senate State Affairs chairman, Mitch Abood, has the performance review in the Senate and is scheduling a hearing March 12 at 8:30 a.m.

Do you or the House Judiciary Committee wish to introduce a bill like SB 200? Does the Judiciary Committee wish to follow up on a possible joint hearing March 12th? I will be glad to discuss this.

DR:chw
Enclosures
cc: Sen. Patrick M. Rodey
Rep. Don Clocksin

Introduced: 2/27/85
Referred: State Affairs and
Judiciary

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

SENATE BILL NO. 200

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act extending the termination date of the Alaska Code Revision Commission and amending the statute relating to its responsibilities; and providing for an effective date."

7

8

9

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

11 * Section 1. AS 44.66.010(a)(8) is amended to read:

12

(8) Alaska Code Revision Commission (AS 24.20.075) -- June

13

30, 1989 [1985];

14

* Sec. 2. AS 24.20.075(b) is amended to read:

15

(b) The commission consists of two legislators, one from each

16

house, appointed by the presiding officer; three public members who

17

are not employees of the state government, appointed by the Legisla-

18

tive Council [GOVERNOR]; a designee of the governor, who is an attor-

19

ney employed by the executive branch of the state government; a desig-

20

nee of the chief justice of the supreme court; and a designee of the

21

Alaska Bar Association appointed by the board of governors of the

22

association. Legislative members serve at the pleasure of the presid-

23

ing officer; the designee of the governor and the designee of the

24

chief justice serve at the pleasure of the governor and chief justice,

25

respectively; the public members and the designee of the board of

26

governors serve terms of six years each, beginning July 1 and ending

27

on June 30 six years later. Members may be reappointed or redesign-

28

ated. A vacancy in the membership of the commission occurring other

29

than by expiration of term shall be filled in the same manner as the

1 original appointment but, with regard to the legislative members, the
2 public members, and the board of governors' designee, for the un-
3 expired term only. The term of a member continues until the member's
4 successor is appointed. Members who are not state employees or legis-
5 lators are entitled to receive the standard per diem and travel allow-
6 ance provided for members of independent boards and commissions.
7 Legislative members are entitled to receive the regular legislative
8 per diem and travel allowance for days spent on commission business,
9 and members who are state employees are entitled to receive the regu-
10 lar state employees per diem and travel allowance for days spent on
11 commission business. The commission selects its chairman and vice-
12 chairman. The director of legal services for the Legislative Affairs
13 Agency, or the designee of the director, serves as executive secretary
14 for the commission.

15 * Sec. 3. TRANSITION. Notwithstanding the amendment to AS 24.20.075(b)
16 in sec. 2 of this Act, the terms of public members appointed by the gover-
17 nor before the effective date of this Act continue until the normal ex-
18 piration of the terms for which they were appointed.

19 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-
20 10.070(c).

ALASKA CODE REVISION COMMISSION



COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
JAMES L. BALDWIN - VICE CHAIRMAN
PATRICK M. RODEY
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JUNEAU, ALASKA 99801

EXECUTIVE SECRETARY
TAMARA BRANDT COOK

MEMORANDUM

TO: Hayden Kayden, Committee Counsel
House Judiciary

FROM: Dick Regan, Research Director
Alaska Code Revision Commission

DATE: March 14, 1985

RE: Performance Review/Alaska Code
Revision Commission

Dick Regan

For you file on the continuation of the code revision commission (the Legislative Budget and Audit Committee Performance Review of the commission), we enclose the code revision commission's 1982-1984 Report.

The report was sent to all legislators when it was published. However, I imagine your committee members should have copies again. We will send them to committee members individually or will give you copies to distribute.

Your pleasure?

DR:chw
Enclosure

A PERFORMANCE REVIEW
OF THE
ALASKA CODE REVISION COMMISSION

conducted by
R. W. Pavitt and Associates, Inc.

Audit Control Number
30-1190-85-R

Members of the Alaska
Code Revision Commission

JOHN W. ABBOTT, Chairman
JAMES L. BALDWIN, Vice Chairman
SEN. PATRICK M. RODEY
REP. CHARLIE BUSSELL
HON. THOMAS B. STEWART
FREDERIC E. BROWN
MARY A. NORDALE

TAMARA BRANDT COOK, Executive Secretary

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

November 8, 1984

Members of the Legislative Budget
and Audit Committee:

In accordance with the intent of Title 24 and Title 44 of the Alaska Statutes, the Division of Legislative Audit was mandated to perform a "sunset" review of the Alaska Code Revision Commission.

Since this Division is part of the Legislative Branch, as is the Commission, we lack the apparent independence necessary to perform the review.

The Division contracted with Mr. R.W. Pavitt of R.W. Pavitt and Associates, Inc. to perform this review. This firm is a reputable planning and management consultant business that has been in operation for several years and is located in Juneau.

We feel this report discharges our responsibility, mandated under Title 24 and Title 44. The report is submitted for your review.



Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

R. W. PAVITT AND ASSOCIATES, INC.
PLANNING CONSULTANTS

October 31, 1984

LEGISLATIVE AUDIT DIVISION
State of Alaska
Pouch W
Juneau, Alaska 99811

Att: Merle R. Jenson, Deputy Legislative Auditor

Dear Mr. Jenson:

In accordance with the Contract for Services between the Legislative Audit Division and our firm, we have completed a performance review of the Alaska Code Revision Commission using guidelines and standards established in Alaska Statutes for such "sunset" reviews.

The report, entitled A PERFORMANCE REVIEW OF THE ALASKA CODE REVISION COMMISSION, is hereby submitted.

Respectfully,



R. W. Pavitt, AICP
President

RWP/bp

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with AS 24.20.271(1) and AS 44.66 (Sunset Legislation), a review of the Alaska Code Revision Commission was conducted to examine the commission's activities, operation, policies and accomplishments. The purpose of the review is to determine if the subject commission has operated in a fair, effective, efficient and economical manner in the performance of its statutory functions, duties and responsibilities.

As required by AS 44.66.050, this report shall be considered during the legislative oversight procedure in determining whether the Alaska Code Revision Commission should be continued or reestablished. It is currently specified in AS 44.66.010(a) that this commission will terminate on June 30, 1985, but will continue until June 30, 1986 for the purpose of concluding its affairs.

Scope

The major areas studied were the commission's operations, policies, administration and procedures; and the effectiveness of the commission in accomplishing its mandated objective of recommending changes needed to bring "the law into harmony with current needs and conditions." (AS 24.20.075(c)(4)).

The review consisted of examination, research, analysis and evaluation of the following:

- (1) Applicable Alaska Statutes and amendments thereto:
- (2) Minutes of the commission from October 12, 1981 to August 3, 1984
- (3) 1981 ANNUAL REPORT of the Alaska Code Revision Commission, dated February 1982
- (4) 1982 - 1984 REPORT of the Alaska Code Revision Commission, dated August 1984

- (5) Records and documents of the commission,
- (6) Contracts between the commission and its consultants,
- (7) Commission budgets for FY 83, FY 84 and FY 85,
- (8) Interviews conducted with:
 - Director of Legal Services, Legislative Affairs Agency
 - Revisor of Statutes, Legislative Affairs Agency
 - Assistant Revisor of Statutes, Legislative Affairs Agency
 - Executive Secretary of the commission
 - Three members of the commission
 - Research Director of the commission
 - Secretary to the commission
- (9) Observation of the Alaska Code Revision Commission during its meeting of September 7, 1984 in Anchorage.

*

HISTORY, ORGANIZATION AND FUNCTION

The Code Revision Commission was established as a permanent commission of the legislature by an act of that body (ch 114 SLA 1976). The act creating the commission established its membership as consisting of two legislators (one from each house appointed by the presiding officer); a public member appointed by the governor; a designee of the chief justice of the supreme court, and a designee of the board of governors of the Alaska Bar Association. The director of legal services for the Legislative Affairs Agency or his designee serves as executive secretary for the commission.

The commission was created to:

- (1) examine the statutes of the state and judicial decisions to discover defects and anachronisms in the law;
- (2) review and consider proposed changes in the law recommended by the National Law Institute, the National Conference of Commissioners on Uniform State Laws, the Alaska Judicial Council, the Supreme Court, the state or local bar associations, principal departments, agencies, boards and commissions of the executive or judicial branch, and committees of the legislative branch;
- (3) receive and consider suggestions from the Alaska bench and bar, public officials, organizations and individuals as to areas of the law needing revision and remedy;
- (4) recommend changes in law needed to eliminate antiquated and inadequate rules of law and to bring the law into harmony with current needs and conditions.

The commission was empowered to:

- (1) hold public hearings and other meetings as necessary throughout the state, and to determine an appropriate quorum for conducting business;

- (2) establish one or more subcommissions to assist it in the performance of its duties.

The staff of the Legislative Affairs Agency serves as staff for the commission, and (subject to appropriations for the purpose) contracts with other agencies or persons for the performance of necessary services for the commission.

Funds considered necessary for the commission (per diem, travel, contract expenses) are to be sought in a formal budget request to the legislative council. (Appropriated funds are dispersed and accounted for under procedures required by the Legislative Affairs Agency).

All branches of state government are directed to provide information and documents required by the commission necessary to the accomplishment of its work.

The commission is directed to submit its reports and recommendations, and draft legislation as to revision of law, to the Legislative Council, and shall distribute them to the governor, members of the legislature, and the chief justice of the supreme court.

In 1977, membership on the commission was broadened to include a "designee of the governor who is an attorney employed by the executive branch of the state government." (ch 57 SLA 1977).

The enabling legislation was further amended by ch 44 SLA 1980 to:

- (1) clarify the name of the commission as the Alaska Code Revision Commission;
- (2) establish 6 year terms for the public member and the designee of the Alaska Bar Association board of governors, and prescribe the manner in which vacancies are filled;

- (3) clarify the per diem and travel allowances provided members of the commission;
- (4) prescribe the manner in which the public member and the designee of the board of governors shall determine the length of their respective terms of office;
- (5) bring the Alaska Code Revision Commission within the purview of the sunset law (AS 44.66.010); and,
- (6) add the name of the commission to the list of boards and commissions scheduled to expire on June 30, 1982.

In 1982, following consideration of the performance review of the Alaska Code Revision Commission conducted in accordance with the requirements of AS 44.66, the commission was continued until June 30, 1985. The enabling legislation was further amended by ch 65 SLA 1982 which provided for:

- (1) three public members (bringing total commission membership to eight), and specified the length of terms for the additional public members;
- (2) addition of the Alaska Legislative Council and the American Law Institute (formerly National Law Institute) to those organizations whose proposed changes in the law are to be reviewed and considered by the commission;
- (3) a requirement that the commission's recommendations as to revisions of Alaska law shall be accompanied by a sectional analysis "using language that is understandable to a layman."

*

*

In view of the considerable amendments that have been made to the organization and structure of the Alaska Code Revision Commission, the entirety of the enabling legislation (AS 24.20.075) has been reproduced, and appears as APPENDIX A to this performance review.

REPORT CONCLUSION

Policy Issues

This review discusses issues raised as a result of our analysis and evaluation of the commission's organization and structure, responsibilities, operations and procedures. Resolution of these policy matters will require legislative action. In debating these issues, the legislative oversight committees should consider the findings and alternatives presented in this report in reaching their decision.

Report Conclusion

In our opinion, the Alaska Legislature should continue the Alaska Code Revision Commission as a permanent commission of the legislature; but should mandate substantive changes to the commission's organization and structure.

The conclusion recommending continuation of the commission is supported by the following rationale:

- The commission serves an important function that is not duplicated by any other agency; i.e. substantive review of entire bodies of state law.
- The commission has the time, objectivity, experience and expertise to conduct exhaustive research into the often complex areas of law that it seeks to improve.
- The commission conducts a continuing forum where interested parties are welcome to provide testimony and to participate in debate with respect to areas of the law in need of amendment or reform.
- The commission provides a valuable service to the legislature by its study, hearings and resulting recommendations to the legislative council concerning improvement of state statutes.

The conclusion recommending changes to the organization and structure of the commission is supported by the following findings:

- The relationship between the commission and the Legislative Affairs Agency is not clearly defined in the law establishing the commission (AS 24.20.075). This has tended to create friction between the agencies which can be ameliorated by clarifying the intended linkage.
- Although the commission's mandated function is to serve the legislature, only 25 percent of its membership is appointed by the legislature.
- The overall effectiveness of the commission's efforts could be enhanced by increased visibility and greater utilization of special subcommittees (of Alaskan attorneys and laypersons) working together with the commission and its professional staff.

Discussion

The Alaska Code Revision Commission is a dedicated and diligent organization which, since the last sunset review was conducted in October 1981, has devoted literally thousands of hours to its task of preparing recommendations of changes needed to bring the law into harmony with current needs and conditions. The continuing weakness of the commission's rapport with the legislature, however, was brought into sharp focus when neither house included any funding for the commission in the FY 85 budget; and only through last-minute negotiation was the current budget of \$180,000 approved by the legislature.

It would not be equitable to use the same criteria in judging the performance of the Code Revision Commission, whose job is to make recommendations to the legislature, as would be employed in the audit of an agency or board directly serving the citizens of Alaska. Thus, the focus of this review is not the number or importance of the commission's recommendations that have actually been enacted by the legislature--but

rather, the fairness, effectiveness and efficiency of the commission's procedures in arriving at its recommendations for improvement of Alaska's laws.

F A I R N E S S

Minutes of the commission indicate a genuine concern with providing opportunities for persons and interests affected by commission projects and recommendations to testify. While it tries to be fair, the generally low visibility of the commission and its failure to correctly perceive which parties are going to be affected by its recommendations has sometimes resulted in strong opposition surfacing at legislative committee hearings on law revisions advocated by the commission.

E F F E C T I V E N E S S

The "bottom-line" in judging the effectiveness of a commission has to involve the ultimate resolution of major projects undertaken by the organization in its attempt to achieve its objectives. The effectiveness of the Alaska Code Revision Commission, using this criteria, must be rated only fair.

The commission's review and recommendations regarding recording, commercial transactions, property rights and estates resulted in eight enactments by the legislature since 1982 (see Appendix B). Yet, the Profit Corporations component of Title 10, on which the commission and its consultant has labored diligently since 1979 (and which was introduced in the 1982 legislative session), has apparently not progressed well; and the Nonprofit Corporations segment, introduced in 1983, encountered substantive opposition, and is presently being revised for reintroduction in 1985.

Although the commission has the authority to "establish one or more subcommittees to assist it in the performance of its duties" (AS 24.20.075(d)(2)), it has only occasionally availed itself of this

method of enlarging its base of knowledge and experience, and broadening its constituency in advocating beneficial improvements to major bodies of Alaska law.

E F F I C I E N C Y

AS 24.20.075(e) states that "The staff of the Legislative Affairs Agency serves as staff for the commission. Subject to appropriation for the purpose, the commission may request the agency to contract with other agencies or persons for the performance of necessary services."

In practice, however, the staff of the Legislative Affairs Agency has infrequently been able to serve as staff for the commission; and contracting with consultants has been the rule, rather than the exception.

The commission, for example, has for the past five years contracted with Prof. Daniel M. Fessler of Davis, California. Fessler, a well-regarded expert in business and corporate law, was first retained in 1979 to work on the Profit Corporations segment of Title 10. His contract was extended in June, September and November of 1980. In February 1981, a new contract was drawn to include Nonprofit Corporations, and to work with the issue of Alaska Native corporations (formed pursuant to the Alaska Native Claims Settlement Act). That contract was extended in March 1982; and a new contract for "work on Native corporations statute" was signed in June 1982 and extended in April 1983. In June 1983, a new agreement was entered into with Prof. Fessler to "work with the legislature on profit and nonprofit codes and commentary." This was extended in May 1984 to include a report on the Cooperatives statute. Records of the Legislative Affairs Agency indicate that contracts with Professor Fessler from 1979 to date have totalled \$341,000.

In 1982, the commission employed Dickerson Regan, an attorney with substantial state governmental experience, as its Research Director. Having its own professional staff has improved the commission's liaison with the Legislative Affairs Agency and with other agencies of state government, as well as reducing the amount of travel required of commission members with respect to testimony at legislative committee hearings on commission recommendations.

* * *

The findings and recommendations contained in the following section of this review are designed to improve the fairness, effectiveness and efficiency with which the commission conducts its service to the legislature.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Legislative Affairs Agency should exercise more positive control with respect to the administration of the commission.

AS 24.20.075(b) specifies that the "director of legal services for the Legislative Affairs Agency, or his designee, serves as executive secretary for the commission." AS 24.20.075(e) further cements the administrative relationship in its declaration that "the staff of the Legislative Affairs Agency serves as staff to the commission", and by requiring the commission "to request the agency to contract with other agencies or persons for the performance of necessary services."

AS 24.20.075(h) specifies that "funds appropriated to the commission are to be disbursed and accounted for under procedures required by the Legislative Affairs Agency."

- A. Other than a chronic shortage of physical space available to the Legislative Affairs Agency, no compelling reason is seen for the commission to rent private office space for its Research Director and Secretary. In fact, liaison with legal services staff of the Legislative Affairs Agency, and the economies to be realized in the ready availability of library and computer facilities seem to mitigate in favor of housing the commission's office with the legal services division at such time as space becomes available.
- B. The commission's executive secretary is essentially the liaison between the commission and the agency, and should assign agency legal personnel to assist the commission in the performance of its duties when available staff time and appropriate expertise permit.

C. The Legislative Affairs Agency should continue its recent efforts to closely scrutinize and monitor the commission's consulting contracts to assure that the specified product is forthcoming in a timely manner and within the monetary terms agreed on.

Recommendation No. 2

AS 24.20.075 should be amended to specify that the "three public members who are not employees of the state government" shall be appointed by the Legislative Council.

Currently, the governor appoints the three public members of the commission, as well as his designee "who is an attorney employed by the executive branch of state government"...thus giving the governor 4 appointments to this 8-member permanent commission of the legislature.

Although there has been some philosophical concern expressed (with respect to separation of powers) in the fact that the commission has representation from the judicial and executive branches of government, the current mix of governmental knowledge, viewpoint and experience seems to have worked well; and it is fitting and proper that the chief justice and the chief executive of these branches should appoint their respective designees. It does seem, however, that at least a majority of the members of a permanent commission of the legislature should be appointed by the legislative branch.

Implementation of this recommendation would result in the following organization of the commission:

<u>Number of Members</u>	<u>Representing</u>	<u>Appointing Authority</u>
1	Alaska State Senate	Senate President
1	Alaska State House	Speaker of the House
1	Judicial Branch	Chief Justice
1	Executive Branch	Governor
1	Alaska Bar Association	Board of Governors
3	"Public Members"	Legislative Council

Recommendation No. 3

AS 24.20.075 should be amended to change the name of the commission to "The Alaska Law Improvement Commission."

"Revision" is frequently defined as "minor textual change or editing", and does not adequately describe the duties of the commission which involve review of and recommendations for the improvement of entire bodies of Alaska law. Similarly, a state's "code" generally refers to the "compilation and codification of its laws", neither of which is a responsibility of the commission.

The recommended name change, however, is intended to serve a purpose beyond semantic correction...namely, that of enhancing the visibility and public understanding of the commission's important responsibilities and areas of concern.

Recommendation No. 4

The commission should consider more frequent use of subcommissions to assist it in the performance of its duties.

Subcommissions composed of qualified Alaskan attorneys and civic-minded laypersons knowledgeable in a specific area of concern under study by the commission can frequently provide broad insight and practical perceptions that will assist the commission in formulating more useful and pragmatic recommendations.

Additionally, persons agreeing to serve on such subcommissions have a heightened interest in the outcome of recommendations in which they have participated; and create a constituency that will tend to actively advocate in favor of commission recommendations.

*

*

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*

ANALYSIS OF PUBLIC NEED

Limited Analysis

The public need factors defined in the "Sunset" law pertain primarily to regulatory bodies, or to commissions, boards and agencies directly serving the public.

The following analysis of the Alaska Code Revision Commission addresses those factors deemed applicable to a permanent commission of the legislature that we were able to cover within the scope of our review.

- I. The extent to which the board, commission or agency has operated in the public interest.
 1. The commission has recommended revisions to Alaska law which in its judgement were in the general public interest.

- II. The extent to which the operation of the board, commission or agency program has been impeded or enhanced by existing statutes, procedures and practices which it has adopted, and any other matter, including budgetary, resource and personnel matters.
 1. The operation of the commission has been enhanced by its decision to employ professional staff in the person of its research director.

- III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.
 1. The commission has recommended statutory changes which in its judgement were of benefit to the public interest.

- IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

Not applicable to this commission.

- V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

1. The commission has consistently attempted to notify all parties of interest in topics that it was studying, and has encouraged their participation in its meetings.

- VI. The effectiveness with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which the board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

1. This review has not identified any record of complaints with respect to commission activities with either the Legislative Affairs Agency or the Office of the Ombudsman.

- VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

Not applicable to this commission.

- VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

Not applicable to this commission.

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to FINDINGS AND RECOMMENDATIONS section of this review.

* * * * *

APPENDIX A

AS 24.20.075. THE LAW ESTABLISHING
THE ALASKA CODE REVISION COMMISSION

APPENDIX A

Sec. 24.20.075. Alaska Code Revision Commission. (a) The Alaska Code Revision Commission is established as a permanent commission of the legislature.

(b) The commission consists of two legislators, one from each house, appointed by the presiding officer; three public members who are not employees of the state government, appointed by the governor; a designee of the governor, who is an attorney employed by the executive branch of the state government; a designee of the chief justice of the supreme court; and a designee of the Alaska Bar Association appointed by the board of governors of the association. Legislative members serve at the pleasure of the presiding officer; the designee of the governor and the designee of the chief justice serve at the pleasure of the governor and chief justice, respectively; the public members and the designee of the board of governors serve terms of six years each, beginning July 1 and ending on June 30 six years later. Members may be reappointed or redesignated. A vacancy in the membership of the commission occurring other than by expiration of term shall be filled in the same manner as the original appointment but, with regard to the legislative members, the public members, and the board of governors' designee, for the unexpired term only. Members who are not state employees or legislators are entitled to receive the standard per diem and travel allowance provided for members of independent boards and commissions. Legislative members are entitled to receive the regular legislative per diem and travel allowance for days spent on commission business, and members who are state employees are entitled to receive the regular state employees per diem and travel allowance for days spent on commission business. The commission selects its chairman and vice-chairman. The director of legal services for the Legislative Affairs Agency, or the designee of the director, serves as executive secretary for the commission.

(c) The commission shall

(1) examine the statutes of the state and judicial decisions to discover defects and anachronisms in the law;

(2) review and consider proposed changes in the law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, the Alaska Judicial Council, the Alaska Legislative Council, the supreme court, the state or local bar associations, principal departments, agencies, boards and commissions of the executive or judicial branch, and committees of the legislative branch;

APPENDIX A

(3) receive and consider suggestions from the Alaska bench and bar, public officials, organizations, and individuals as to areas of law needing review and remedy;

(4) recommend changes in law needed to eliminate antiquated and inadequate rules of law and to bring the law into harmony with current needs and conditions.

(d) The commission may

(1) hold public hearings and other meetings as necessary throughout the state and shall determine an appropriate quorum for conducting business;

(2) establish one or more subcommissions to assist it in the performance of its duties.

(e) The staff of the Legislative Affairs Agency serves as staff for the commission. Subject to appropriation for the purpose, the commission may request the agency to contract with other agencies or persons for the performance of necessary services.

(f) The commission shall submit its reports and recommendations, and draft legislation as to revision of law, to the Legislative Council and shall distribute them to the governor, members of the legislature, and the chief justice of the supreme court. Each draft of legislation submitted by the commission shall be accompanied by a sectional analysis. The commission shall prepare the sectional analysis using language that is understandable to a layman.

(g) All branches of state government shall provide information and documents requested by the commission necessary to the accomplishment of its work.

(h) The commission shall make a formal request to the Legislative Council for funds it considers necessary for the per diem, travel, and contractual expenses of the commission. Funds appropriated to the commission are to be disbursed and accounted for under procedures required by the Legislative Affairs Agency. The commission chairman shall approve all expenditure documents. (§ 1 ch 114 SLA 1976; am § 1 ch 57 SLA 1977; am §§ 1, 2 ch 44 SLA 1980; am §§ 2 — 4 ch 65 SLA 1982)

APPENDIX A

Effect of amendments. — The 1980 amendment added "Alaska" to the beginning of the section heading, inserted "Alaska" preceding "Code Revision Commission" at the beginning of subsection (a), and rewrote subsection (b).

The 1982 amendment substituted "three public members who are not employees" for "one public member, who is not an employee" in the first sentence of subsection (b), substituted "public members" for "public member" in the second and fourth sentences of subsection (b), substituted "American Law Institute" for "National Law Institute" and inserted "the Alaska Legislative Council" in paragraph (2) of subsection (c), and added the second sentence of subsection (f).

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Section 4, ch. 44, SLA 1980 provides: "The public member and the designee of

the board of governors, serving on the Alaska Code Revision Commission on the effective date of this Act [May 27, 1980], shall determine the length of their terms by drawing lots. The term of one of those members ends June 30, 1980, and the term of the other ends June 30, 1982. After these initial termination dates, the six-year-term provisions of AS 24.20.075(b) apply."

Pursuant to AS 44.66.010(a)(8), the Alaska Code Revision Commission expires on June 30, 1985.

Section 5, ch. 65, SLA 1982, provides: "Transition. Notwithstanding the provisions of AS 24.20.075(b), the term of the additional public members added by this Act and appointed by the governor after the effective date of this Act [August 26, 1982] begins on the date of appointment; the term of one of the additional public members ends June 30, 1984 and the term of the other ends June 30, 1986, as designated by the governor."

APPENDIX B

LEGISLATIVE ENACTMENT OF RECOMMENDATIONS OF THE
ALASKA CODE REVISION COMMISSION 1982, 1983, 1984

APPENDIX B

Legislative enactment of commission recommendations 1982, 1983, 1984.

1982

- Commercial transactions -- amending the Uniform Commercial Code
ch 16 SLA 1982
- Rights of debtors and creditors
ch 62 SLA 1982

1983

- Modifying or abolishing some common law property rules
ch 51 SLA 1983

1984

- Uniform Disposal of Community Property Rights at Death Act
ch 47 SLA 1984
- Administration of Decedents' Estates
ch 80 SLA 1984
- Principal and Income of Trusts
ch 65 SLA 1984
- Renunciation of rights in Decedents' Estates
ch 51 SLA 1984
- Married Persons' Rights in a Family Home
ch 89 SLA 1984

APPENDIX C

BUDGETS OF THE ALASKA CODE REVISION COMMISSION
FY 83, FY 84, FY 85

APPENDIX C

Budgets of the Alaska Code Revision Commission; FY 83, FY 84, FY 85

FISCAL YEAR 83

Appropriation approved by Legislative Council - \$ 219,000

Personal Services	\$ 101,956
Travel and Per Diem	35,414
Contractual (consultants, office rent, etc.)	76,452
Materials and supplies	5,178
	<u>\$ 219,000</u>

FISCAL YEAR 84

Appropriation approved by Legislative Council - \$ 245,600

Personal Services	\$ 111,258
Travel and Per Diem	37,539
Contractual Services	91,345
Materials and supplies	5,488
	<u>\$ 245,600</u>

FISCAL YEAR 85

Appropriation approved by Legislative Council - \$ 180,100

Personal Services	\$ 115,175
Travel and Per Diem	20,080
Contractual Services	39,025
Materials and supplies	5,820
	<u>\$ 180,100</u>

ALASKA CODE REVISION COMMISSION

-25-



COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
JAMES L. BALDWIN - VICE CHAIRMAN
PATRICK M. RODEY
CHARLIE BUSSELL
L.S. KURTZ, JR.
JUDGE (Ret.) THOMAS B. STEWART
FREDERIC E. BROWN
WILSON L. CONDON

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878
OFFICE LOCATION:
ROOMS 5 AND 8
110 SEWARD ST.
JUNEAU, ALASKA 99801

EXECUTIVE SECRETARY
TAMARA BRANDT COOK

February 9, 1985

R E C E I V E D
FEB 12 1985
LEGISLATIVE
AUDIT

Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit
Budget and Audit Committee
Pouch W
Juneau, Alaska 99811

Re: Performance review of the Alaska
Code Revision Commission

Dear Mr. Wilkerson:

In your transmittal to us of the preliminary audit report on a performance review of the code revision commission, you ask that the commission clearly state agreement or disagreement with the recommendations in the report.

The following comments give the commission's views on the various recommendations.

Recommendation No. 1.

A. The commission would have no objection to housing the commission's office with the legal services division of the Legislative Affairs Agency if space were available and if the commission's rental costs did not increase.

B. The commission welcomes the work that has been done with it and for it by the Legislative Affairs Agency, legal services division. A review function has always been performed. Presently in work on the Administrative Procedure Act, a staff member of the division has been actively participating in drafting as a bill takes shape. So much of the recommendation represents what is already taking place.

C. If there is a sympathetic understanding of the commission's contracting, exercise by LAA of its oversight function should cause no problems. A new executive director of the LAA has just been selected. Closer communication than in the past between the executive director and the code revision commission should avoid problems in the future.

Recommendation No. 2.

The commission favors appointment of public members by the Legislative Council rather than the governor. If that change were to be enacted, the commission suggests that existing public members continue to serve out their staggered terms, that the statutory terms of public members remain six-year terms, and that the term of each member continue until his or her replacement is named.

Recommendation No. 3.

The commission favors the name "Alaska Code Revision Commission" over "Alaska Law Improvement Commission". Many other states have bodies with a function like the commission that are called "code revision commissions".

Recommendation No. 4.

The commission agrees that more frequent use of subcommissions would be appropriate. In practice the commission has worked closely with sections of the Alaska Bar Association in a relationship similar to that of subcommissions with satisfactory results.

Very truly yours,

John W. Abbott

John W. Abbott, Chairman
Alaska Code Revision Commission

JWA:chw

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST Bill/Resolution No.: <u>HB No. 307</u> Title: <u>Act extending termination date</u> <u>Alaska Code Revision Commission, ef.d.</u> Sponsor: <u>House Judiciary Committee</u> Requestor: <u>Dickerson Regan</u> Date of Request: <u>4/11/85</u>	FISCAL DETAIL Agency Affected: <u>Legislative Affairs</u> Program Category Affected: <u>General Government</u> BRU, Program or Subprogram(s) Affected: <u>Council & Subcommittees</u>
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EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		115.2	115.2			
200 TRAVEL		43.0	43.0			
300 CONTRACTUAL		102.5	102.5			
400 SUPPLIES		6.2	6.2			
500 EQUIPMENT		2.7	2.7			
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	269.6	269.6			

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	269.6	269.6			
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		2	2			
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

The Alaska Code Revision Commission consists of 2 legislators, 3 public members, a designee of the Governor, a designee of the Chief Justice and a designee of the Alaska Bar Association. Travel funds are needed to support the Commission in carrying out their responsibilities. Two staff members are required to support the Commission members. They are a Research Director and a Secretary. Attached is a budget detailing the \$269.6.

Prepared By: Pamela A. Calhoon, Manager *Pamela A. Calhoon* Phone: 465-3850
 Division: Administrative Services Date: 4-11-85
 Approved by: Executive Director, Warren W. Endicott *Warren W. Endicott* Date: 4-11-85
 Agency: Legislative Affairs Agency

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

7/1/84

ALASKA CODE REVISION COMMISSION

REQUESTED BUDGET FOR FY 86

Personal Services

Secretary (Range 12, Step L)		
12 mos. at \$2,601	\$ 31,212	
30% benefits	<u>9,364</u>	
	40,576	
Research Director (Range 23, Step E)		
12 mos. at \$ 4,782	\$ 57,384	
30% benefits	<u>17,215</u>	
	74,599	\$115,175

Travel

12 monthly hearings		43,014
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Contractual Services

Telephone	\$ 4,198	
Printing/Advertising	2,801	
Rents/Leases	7,854	
Consultants	<u>87,686</u>	
		102,539

Supplies and Materials

Printing Supplies/Materials		6,218
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Furniture/Equipment

Office furniture as needed		<u>2,647</u>
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TOTAL FY 86 BUDGET:		\$269,593
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STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 307
 Title : An Act extending the termination date of the Alaska Code Revision Commission and amending the statute relating to its responsibilities, etd.
 Sponsor : House Judiciary Committee
 Requestor : Senator Patrick Rodey
 Date of Request : 5/7/86

FISCAL DETAIL

Agency Affected : Legislative Affairs
 BRU : Legislative Council
 Components : Legal Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL		23.0	23.0	23.0	23.0	23.0
CONTRACTUAL		3.6	3.6	3.6	3.6	3.6
SUPPLIES		1.0	1.0	1.0	1.0	1.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	27.6	27.6	27.6	27.6	27.6
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	27.6	27.6	27.6	27.6	27.6
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

This bill funds the Code Revision Commission under the Division of Legal Services. Existing Legislative attorneys will be used for bill drafting and research. The Director of Legal Services serves as the executive secretary for the commission.

Prepared by : Pamela A. Stoops, Manager *Pamela A. Stoops* Phone : (907)465-3850
 Division : Administrative Services Date : 5/7/85

Approved by Executive Director : Warren W. Endicott *Warren W. Endicott* Date : 5/7/86
 Agency : Legislative Affairs Agency

Distribution (by Agency preparing fiscal note):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 307

Travel funds are budgeted in the amount of \$23,040 for five two-day trips by 9 commission members. Contractual funds for \$3,600 are budgeted for phone charges and \$1,000 budgeted in supplies for stationery expenses.