

HB

204

# HOUSE COMMITTEE REPORT

(7)

Date Referred: April 26, 1989

FURTHER REFERRALS:

Date of Committee Action: 3-23-90

The JUDICIARY Committee considered:

HB 204

HOUSE BILL NO. 204

[AMENDMENTS TO NEW CORPORATIONS CODE]

"An Act relating to corporations; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CS HB 204 (Jud)  the same title  
 have attached amendment(s)  a new title
- do pass  
 do not pass  
 no recommendation  
 individual recommendations  
 additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(s):   
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact \_\_\_\_\_  
 zero fiscal note DIED  
 zero with analysis \_\_\_\_\_

- fiscal note(s) \_\_\_\_\_  
 zero fiscal note(s) \_\_\_\_\_  
 zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not  
Pass  
No Rec  
Amend

[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNING:	Do Not Pass	No Rec	Amend
<u>Mike Miller</u>		<input checked="" type="checkbox"/>	
_____			
_____			
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_____			

[Signature]  
Chairman's Signature

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: Delaying the effective date of the new corporations code  
Sponsor: Rules Committee/Leg. Council  
Requestor: House Judiciary

Agency Affected: Commerce & Economic Dev.  
BRU: Banking, Securities and Corporations  
Components: Corporations

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

<b>CAPITAL</b>	0	0	0	0	0	0
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<b>REVENUE</b>	0	0	0	0	0	0
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

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

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

No fiscal impact for FY 90.

Prepared by: Willis F. Kirkpatrick, Director  
Division: Banking, Securities and Corporations

Phone: 465-2521  
Date: 3-23-90

Approved by Commissioner: Larry Mercurieff  
Agency: Department of Commerce & Economic Development

Date: 465-2500 3/23/90

**Distribution (by preparer):**

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

Original sponsor(s): Rules/Legislative Council

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 204 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the classification of directors  
7 on boards of corporations."

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

9 \* Section 1. AS 10.06.455(a) is amended to read:

10 (a) If the board consists of three [NINE] or more members, the  
11 articles of incorporation may provide that instead of electing all the  
12 directors annually the directors be divided into either two or three  
13 classes, each class to be as nearly equal in number as possible, with  
14 the term of office of directors of the first class to expire at the  
15 first annual meeting of shareholders after their election, that of the  
16 second class to expire at the second annual meeting after their elec-  
17 tion, and that of the third class, if any, to expire at the third  
18 annual meeting after their election. At each annual meeting after the  
19 classification the number of directors equal to the number of the  
20 class whose term expires at the time of the meeting shall be elected  
21 to hold office until the second succeeding annual meeting if there are  
22 two classes, or until the third succeeding annual meeting if there are  
23 three classes. A classification of directors is not effective before  
24 the first annual meeting of shareholders.

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: Delaying the effective date of  
the new corporations code  
Sponsor: Rules Committee/  
Requester: Legislative Council  
House Labor & Commerce

Agency Affected: Commerce & Economic Dev.  
BRU: Banking, Securities and  
Corporations  
Components: Corporations

**EXPENDITURES / REVENUES : (Thousands of Dollars)**

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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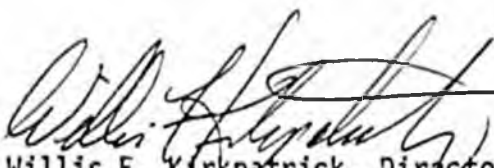
**FUNDING: (Thousands of dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**POSITIONS:**

FULLTIME	0	0	0	0	0	0
PARTTIME						
TEMPORARY						

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



Prepared by: Willis F. Kirkpatrick, Director  
Division: Banking, Securities and Corporations

Phone: 465-2521  
Date: 4-26-89

Approved by Commissioner: Larry Mercurieff  
Agency: Department of Commerce & Economic Development

Phone: 465-2500  
Date: 4-26-89

**Distribution (by preparer):**

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

page \_\_\_\_\_ of \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act relating to corporations  
Sponsor: Rules Committee  
Requester: Legislative Council

Agency Affected: Commerce & Economic Dev.  
BRU: Banking, Securities and Corporations  
Components: \_\_\_\_\_

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

  
Prepared by: Willis F. Kirkpatrick, Director  
Division: Banking, Securities and Corporations

Phone: 465-2521  
Date: 4-25-89

Approved by Commissioner: Larry Mercurieff  
Agency: Department of Commerce & Economic Development

Phone: 465-2500  
Date: 4/25/89

Distribution (by preparer):

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

3963D-2/042589a

# COPELAND, LANDYE, BENNETT AND WOLF

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

420 L STREET, SUITE 302  
ANCHORAGE, ALASKA 99501

(907) 276-5152

TELECOPIER (907) 276-8433

OREGON OFFICE

3500 FIRST INTERSTATE TOWER  
PORTLAND, OREGON 97201  
(503) 224-4100

MARK G. COPELAND, P. C. \*\* ROBERT H. HUME, JR., INC. \*\*  
THOMAS M. LANDYE, P. C. MITCHEL R. COHEN, P. C.  
J. DAVID BENNETT, P. C. DAVID N. GOULDER  
DAVID P. WOLF, INC. \* P. STEPHEN RUSSELL III  
ROBERT B. HOPKINS, P. C. THOMAS M. DILLON \*\*\*  
RICHARD L. SADLER, P. C. MARK J. DAVIS  
RANDALL L. DUNN, P. C. \*\*\*\* MARGOT POZNIANSKI  
JAMES S. CRANE, INC. \*

\*ALASKA STATE BAR

\*\*ALASKA STATE AND OREGON STATE BARS

\*\*\*ALASKA STATE AND WASHINGTON STATE BARS

\*\*\*\*WASHINGTON STATE AND OREGON STATE BARS

ALL OTHERS OREGON STATE BAR ONLY

April 19, 1989

VIA FACSIMILE 465-3700

Dave Donley  
House of Representatives  
P. O. Box V  
Juneau, AK 99811

Re: Alaska Corporations Code

Dear Representative Donley:

I represent the Alaska Federation of Natives with respect to amendments to the Alaska Corporations Code.

There are significant problems with the Alaska Corporations Code as passed last year. Assurances were given that the amendments would be made to the Code before it became effective this July.

The Code as it was passed last year, without amendments, would cause great difficulty for Native corporations.

If the Code is not going to be amended this year, then at the very least the effective date of the Code should be postponed at least one year.

Sincerely,

COPELAND, LANDYE, BENNETT and WOLF

*David P. Wolf*  
David P. Wolf

cc: Alaska Federation of Natives

DPM\749\LDONLEY.01:mv

ROBERT H. HUME, JR.  
3101 Brookside Drive  
Anchorage, Alaska 99517

HB 204 File

April 13, 1989

N  
11/106  
248-4975-H  
276-5152-W

Representative Dave Donley  
P.O. Box V  
Suneau, Alaska 99811

Re: Revisions to Alaska Corporation Code

Dear Representative Donley:

I understand that your committee is considering the proposed amendments to the new Alaska Corporations Code. I am familiar with the amendments. They will make operations under the new corporations code easier for the various corporations which I work with. On behalf of those companies, my friends and neighbors in Spenard, and myself, I request that you schedule a hearing so that those amendments and any other appropriate amendments can become law. Last year the Alaska Corporations Code was passed over the objections and without input from the Bar. However, there was a promise that amendments would be passed this year. It is very important that amendments be approved this session. If you have any questions about the bill, you might consider speaking with Senator Rodey, who also represents us in Spenard.

Sincerely,

*Bob Hume*

Robert H. Hume, Jr.

RHH\misc\ltdon:ah

Sec. 10.06.424 SHAREHOLDER AGREEMENTS.

(a) An agreement among all the shareholders of a corporation may:

(1) impose restrictions on the transfer or registration of shares of the corporation to:

(A) maintain the corporation's status when it is dependent on the number or identify of its shareholders:

(B) to preserve exemptions under federal or state securities laws:

(C) to ensure that shareholders will be able to control who may participate in the corporation's business:

(D) to ensure that shareholders who wish to retire will be able to liquidate their investment without disrupting corporation affairs:

(E) to ensure that estates of deceased shareholders will be able to liquidate the decedent's shares in the corporation:

(F) to ensure that the election of S Corporation status under federal and state corporate income tax laws can be effected and preserved:

(G) obligate the shareholder first to offer to the corporation or other persons (separately, consecutively or simultaneously) an opportunity to acquire the restricted shares:

(H) obligate the corporation or other persons (separately, consecutively or simultaneously) to acquire the restricted shares:

(I) require the corporation, the holder of any class of its shares, or any other person, to approve the transfer of restricted shares, if the requirement is not manifestly unreasonable: and

(J) for any other reasonable purpose:

(2) provide for selection of directors and officers.

(b) The existence of a shareholders agreement consistent with this section shall be noted conspicuously on the front or back of each stock certificate together with a statement that the agreement (or a copy thereof) is on file at the principal office of the corporation and the corporation will allow inspection or furnish a copy thereof without charge.

(c) Shares issued before compliance with subsection (b) of this section shall, if acquired by a person without knowledge of the shareholders agreement, not be subject to such shareholders agreement.

(d) For purposes of this section "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

Dec-Bill file  
File



RECEIVED APR 27 1989

April 27, 1989

Hand Delivered

The Honorable Peter Goll  
The honorable Max F. Gruenberg, Jr.  
Cochairs, House Judiciary Committee  
Alaska House of Representatives  
P.O. Box V  
Juneau, Alaska 99811

Re: Alaska Corporations Code

Dear Representatives Goll and Gruenberg:

Enclosed is a copy of David Wolf's April 19 letter to Representative Donley, written on behalf of the Alaska Federation of Natives, advocating either amending the new Corporations Code during the current session or extending by at least one year the effective date of the new Code.

Now that the House bill is before the House Judiciary Committee for consideration, Sealaska Corporation wants to express its emphatic concurrence with the AFN's request, for the reasons given by Mr. Wolf.

Please contact Sam Kito or me if you have questions regarding Sealaska's position in this matter.

Sincerely,

SEALASKA CORPORATION

Byron I. Mallott  
Chief Executive Officer

Enclosure: April 19, 1989 letter  
cc: Sam Kito  
Chris E. McNeil, Jr.  
E. Budd Simpson

COPELAND, LANDYE, BENNETT AND WOLF

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

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\*\*\*\*\* OREGON STATE BAR ONLY

April 19, 1989

VIA FACSIMILE 465-3700

Dave Donley  
House of Representatives  
P. O. Box V  
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Re: Alaska Corporations Code

Dear Representative Donley:

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There are significant problems with the Alaska Corporations Code as passed last year. Assurances were given that the amendments would be made to the Code before it became effective this July.

The Code as it was passed last year, without amendments, would cause great difficulty for Native corporations.

If the Code is not going to be amended this year, then at the very least the effective date of the Code should be postponed at least one year.

Sincerely,

COPELAND, LANDYE, BENNETT and WOLF

David P. Wolf

cc: Alaska Federation of Native

DPW\749\LDONLEY.01:mv

HB204 File

Carr-Gottstein Properties  
6401 A Street  
Anchorage, Alaska 99518  
(907) 564-2424

April 12, 1989

Ginger Baim  
Attn: Labor and Commerce Committee  
c/o Representative Dave Donley  
House of Representatives  
PO Box V  
Juneau, Alaska 99811

Dear Ms. Baim:

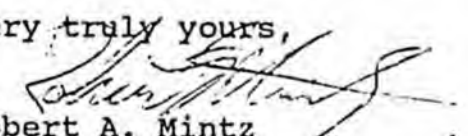
Thank you for the information respecting House Bill 204 and Senate Bill 204. In our opinion, there is a serious deficiency in the new Alaska Corporation's Code (effective July 1, 1989) treatment of Shareholder Agreements that the proposed Amendments to House Bill 204 and Senate Bill 204 fail to rectify or properly address.

We believe it is imperative the new code expressly and precisely authorize shareholders to enter into agreements. The code should spell out clearly the types of provisions a Shareholders Agreement may contain. As currently written, the new code, with the proposed amendments, is unacceptably vague and ambiguous on this issue.

The long-standing use, both within and outside of Alaska, of unanimously written shareholder agreements to express and enforce extremely helpful and efficient arrangements made among small independent entrepreneurs/owners, and their family or small corporations, regarding the sharing of corporate control, buy-sell (death, disability, new owners, etc.) plans, and other logical and traditional matters of vital concern to non-publicly traded or small enterprises, is simply not appropriately recognized, or sanctioned, by the new Alaska Corporations Code.

Accordingly, on behalf of Carr-Gottstein, Inc., I strongly urge you to include the enclosed Shareholder Agreement section in the pending Amendments in both bills. If such an amendment pertaining to shareholder agreements cannot be passed this year, then the July 1, 1989, effective date of the new Alaska Corporations Code should be postponed.

Very truly yours,

  
Robert A. Mintz  
Director of Commercial Development  
and Finance

**CARR  
GOTTSTEIN** INC.

# STATE OF ALASKA THE LEGISLATURE

## LEGISLATIVE AFFAIRS AGENCY

ALASKA STATE CAPITOL  
JUNEAU, ALASKA 99801  
907 465 1800

March 3, 1989

The Honorable Mike Davis  
Chair, Alaska Legislative Council  
Pouch V, State Capitol  
Juneau, Alaska 99811

Re: Bill on the Alaska Corporations Code (AS 10.06)  
(6-0953A and 6-0395A)

Dear Representative Davis:

The attached bills (one for the House and one for the Senate) are submitted to the Alaska Legislative Council pursuant to AS 24.20.075 with the request that they be introduced in the Sixteenth Legislature. A sectional analysis accompanies the bills.

The bills are the product of work done by the Alaska Code Revision Commission and the Task Force for the Alaska Corporation Code and represent a consensus of changes and additions to AS 10.06 which passed the Legislature during the second session of the Fifteenth Legislature.

By way of background, AS 10.06 (CSHB 322(Jud)(efd am S)), passed the House by a vote of 38-0 and the Senate by a vote of 14-4. During the final week of consideration of this bill, both individuals and groups indicated to various legislative members that they had not had sufficient time to consider the wholesale revision of the Alaska's for-profit corporation code (bills virtually identical to the bill that finally passed the Legislature were introduced and considered by the Legislature beginning in 1982 through 1988). In an effort to allow additional comments on AS 10.06, Senator Kelly offered an amendment in the Senate to postpone the effective date of the bill until July, 1989. The Legislature approved the amendment and the bill was forwarded to Governor Cowper where it was signed into law.

The purpose of the delayed effective date was to allow for the creation of a task force (the ACC Task Force) representing those interests which wanted additional time to consider

Representative Mike Davis  
Page 2  
March 3, 1989

AS 10.06 to propose changes and amendments to the bill as passed for consideration by the Legislature prior to the July 1989 effective date. The Task Force was comprised of the following interests:

1. Erik LeRoy representing the Alaska Bar Association's Business Law Committee and the interests of Native Village Corporations;

2. Willis Kirkpatrick, Director of the Division of Banking, Corporations and Securities (Mr. Kirkpatrick chaired the Task Force);

3. David Wolf representing the Alaska Federation of Natives and the interests of the Native Regional Corporations;

4. J.P. Tangen representing the interests of the State Chamber of Commerce;

5. John W. Abbott representing the Alaska Code Revision Commission.

The Task Force was also to have included Elizabeth Johnstone because she had earlier led a group of five attorneys designed by the Alaska Federation of Natives to work with the Code Revision Commission in tailoring the new code so that it reflected the interests of Alaska Native Corporations. Her whereabouts were unknown and, as such, she did not participate. A representative of the Anchorage Chamber of Commerce was also contacted to participate in the Task Force but did not do so.

The Task Force first met in November of 1988 and essentially finished its work (which was approved by the Alaska Code Revision Commission) on February 28, 1989. The draft bill accompanying this letter of transmittal is basically the work product of the Task Force. Although the Task Force has not seen the final form of the bill, it is our understanding that the Task Force agrees with the changes proposed by the bill.

Although the bill appears lengthy, in fact the number of changes is minimal. In many instances, sections of AS 10.06 which are being modified are duplicated in their entirety, even though only two or three words are added or deleted. New sections have been added to clarify the duties of offi-

Representative Mike Davis  
Page 3  
March 3, 1989

cers and directors so that the duties appear in respective sections dealing with directors or officers (the provisions generally mirror each other in language). In other sections of the bill, substantive changes have been made to AS 10.06, which substantive changes are reflected in the sectional analysis accompanying this letter of transmittal. A member of the Alaska Code Revision Commission will be available to testify as to the legal ramifications of each such change at any committee hearings.

The work of the Task Force has enhanced the clarity of AS 10.60 by the addition of new language spelling out what corporate conduct is acceptable. It also reflects the needs of a cross-section of the Alaskan community that will be operating under the corporations code. We feel that the changes made are good ones, are defensible and should be made to make AS 10.06 an even better statutory product. I would encourage the Legislative Council to give this bill serious consideration and to encourage its expeditious passage in both houses of the Legislature.

Because time is short for consideration of this bill, and because there may be questions concerning the changes and amendments, I can make myself available for telephone or teleconference consultation concerning the draft bill. Again, the Commission would appreciate your consideration of this bill which, if passed by the Legislature, will take effect at the same time that AS 10.06 is scheduled to become law in Alaska.

Respectfully submitted,

*Samara Cook for*

---

John Abbott  
Chair  
Alaska Code Revision Commission

JA:gc  
WKG7/087

Enclosure

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE COUNCIL  
ALASKA STATE CAPITOL  
600 EAST BRIDGEWAY  
ANCHORAGE, ALASKA 99506

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 3, 1989

SUBJECT: Sectional analysis  
(Work Orders 6-0395 and 6-0953)

TO: Representative Mike Davis  
Chair, Legislative Council

FROM: Theresa L. Bannister *TB*  
Legislative Counsel

This provides a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 (AS 10.06.010). Eliminates an inconsistency with AS 10.06.485 by making the loan approval requirement applicable to employee loans as well as loans to officers and directors. Clarifies that a corporation has the power to make guarantees to eliminate a question that they were included in corporate powers. Gives corporations the powers of a limited or general partner. Corrects the term for joint ventures.

Section 2 (AS 10.06.020). The current content is designed to protect third parties from an ability of the corporation, or any shareholder asserting a derivative claim, to evade liability for an act or undertaking of a corporate agent by claiming that it was done without real authority. The amendment allows the corporation to assert limitations on the powers of corporate agents set forth in the articles but not to assert limitations found in its bylaws or board resolutions as a defense to the third party's claim. This change would protect shareholders to the extent that the articles of the corporation contained such limitations on either the nature of agency power or the manner of its exercise.

Section 3 (AS 10.06.025(a)). Deletes language that created an internal conflict within AS 10.06.

Section 4 (AS 10.06.105(c)). Clarifies that the subsection is not intended to prevent a limited partnership from using the word "limited" in its name.

Section 5 (AS 10.06.130). Eliminates the need for a corporation to take any other steps to protect the exclusivity of its name and allows the corporation to enjoin the use of the same or a deceptively similar name.

Section 6 (AS 10.06.343). States that the corporation may issue stock purchase rights or options for shares of any class or classes. Substitutes "shall" for "must" as a technical change.

Section 7 (AS 10.06.348). Coordinates AS 10.06.348 with the proposed new AS 10.06.349.

Section 8 (AS 10.06.349). Allows a corporation to issue shares without certificates and establishes a procedure for notifying the shareholder of certain information that is usually disclosed on certificates under other sections of AS 10.06.

Section 9 (AS 10.06.353). Coordinates section with new ability to issue certificateless shares.

Section 10 (AS 10.06.355). Coordinates section with new ability to issue certificateless shares.

Section 11 (AS 10.06.356). Allows a corporation to establish procedures by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The purpose of the section is to facilitate communication between the corporation and the beneficial owner.

Section 12 (AS 10.06.358(c)). Eliminates the unqualified requirement that the amount of distributions payable in property be based on generally accepted accounting principles.

Section 13 (AS 10.06.358(d)). Eliminates the unqualified requirement that the eligibility to make certain

distributions is limited to corporations that classify their assets under generally accepted accounting principles.

Section 14 (AS 10.06.358(e)-(f)). Allows a board to determine that a distribution is not prohibited either by generally accepted accounting principles or by accounting practices and principles that are fair and reasonable in the circumstances. States that statements and determinations prepared or arrived at under generally accepted accounting principles are fair and reasonable, but that the fairness and reasonableness of statements and determinations made under other practices and principles must be proved by the corporation.

Section 15 (AS 10.06.360). Changes the insolvency test. Allows existing directors to make the distribution and then determine whether the distribution did, in fact, render the corporation unable to meet its current debts. If it does, the corporation could theoretically recover the illicit dividend from the shareholders.

Section 16 (AS 10.06.385(b)). Coordinates subsection with new ability to issue certificateless shares.

Section 17 (AS 10.06.385(d)). Coordinates subsection with new ability to issue certificateless shares.

Section 18 (AS 10.06.405). States that the failure of a corporation to hold an annual meeting at the required time does not cause the corporation to forfeit its status, does not cause a dissolution of the corporation, and does not affect the validity of corporate action. Restores to the new corporations code the section from the former corporations code that indicated that the failure did not affect the validity of corporate action.

Section 19 (AS 10.06.410). Substitutes a ten-day minimum notice of shareholders' meeting for the current twenty-day requirement because some corporations find it difficult to know 20 days ahead that a meeting will be necessary. Makes a minor change relating to the mailing of the meeting notice to a shareholder's new address.

Section 20 (AS 10.06.418(b)). Makes two minor changes relating to revocation of a proxy.

Section 21 (AS 10.06.418(e)). Defines the term "pledgee" and makes a citation change to coordinate with the changes to AS 10.06.425.

Section 22 (AS 10.06.418(f)). Coordinates the section with the changes in AS 10.06.425.

Section 23 (AS 10.06.418(g)). Gives to a transferee (of a share having an otherwise irrevocable proxy) title clear of the proxy unless the transferee knows about the proxy provision or the proxy, or the irrevocability or notice of the proxy appears on the certificate.

Section 24 (AS 10.06.420(c)). Allows a shareholder's authorized attorney-in-fact to vote for the shareholder in person or by written proxy.

Section 25 (AS 10.06.420(e)). Clarifies the intent of the subsection. States that shares may not be voted if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and if the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for the directors of the second corporation. This section is based on a public policy objection to permitting a corporate subsidiary that is presumably under the direct or indirect control of the parent to vote shares of the parent at a meeting of the parent corporation's shareholders.

Section 26 (AS 10.06.420(i)). Coordinates subsection with new ability to issue certificateless shares.

Section 27 (AS 10.06.421). Based on the Revised Model Business Corporation Act, its purpose is to provide guidelines for election judges and directors when deciding whether to accept certain documents.

Section 28 (AS 10.06.425(a)). Indicates that the subsection doesn't invalidate an irrevocable proxy that complies with AS 10.06.418(e).

Section 29 (AS 10.06.425(b)). Rewrites the subsection to expressly allow shareholders to enter into a voting agreement or any other agreement if the agreement is consistent with this chapter.

Section 30 (AS 10.06.430(a)). Makes technical wording changes to make the use of the term "books and records of account" consistent throughout the section.

Section 31 (AS 10.06.430(b)). Conforms the section to the demand and scope provisions of Sec. 16.02(b)-(c) of the Revised Model Business Corporation Act. Requires that a shareholder's demand to inspect the books and records of a corporation be made with reasonable particularity. Places some burden on the shareholder making the request in order to avoid harassment requests. Substitutes "directly connected" for "relevant". Makes a technical wording change to make the use of the term "books and records of account" consistent throughout the section.

Section 32 (AS 10.06.430(c)). Makes technical wording changes, including one to make the use of the term "books and records of account" consistent throughout the section.

Section 33 (AS 10.06.433(a)). Exempts a corporation with less than 100 shareholders from the requirement of sending out an annual report, unless its articles or bylaws impose the requirement.

Section 34 (AS 10.06.435(a)). Coordinates subsection with new ability to issue certificateless shares.

Section 35 (AS 10.06.450(c)). Is taken from Sec. 8.30(c) of the Revised Model Business Corporation Act and indicates when a director cannot be considered to be acting in good faith.

Section 36 (AS 10.06.450(f)). Follows the suggestion of the ALI Statement on Corporate Governance and articulates the business judgment defense for directors. No jurisdiction has, to this point, ever attempted a statutory formulation of the business judgment rule. The reader is referred to the official comments of the ALI statement for a fuller understanding of the relationship between the duties of care and loyalty and the business judgment rule.

Section 37 (AS 10.06.453(a)). States that the board consists of one or more members. Establishes how the number of directors is fixed. Restricts changing the number of directors to amendment of the articles, if the articles fix the number of directors. Sets the number of directors at three if the number is not otherwise set.

Section 38 (AS 10.06.453(b)). Coordinates subsection with new language of AS 10.06.453(a).

Section 39 (AS 10.06.465(d)). Allows a director to resign at any time.

Section 40 (AS 10.06.470(a)). Coordinates subsection with new language of AS 10.06.453(a).

Section 41 (AS 10.06.470(b)). Allows a corporation to establish in its bylaws the machinery for holding a special board meeting or a meeting of a committee designated by the board. Shortens the general provision relating to the minimum required written notice of the meeting from 20 to 10 days and notice by other listed means from 72 to 24 hours. The general requirement that notice of a special meeting must disclose the proposed agenda is made subject to bylaw provisions.

Section 42 (AS 10.06.483(d)). Corrects a citation. Deletes the reference to "share certificates" because they are covered by another section and there was a conflict.

Section 43 (AS 10.06.483(e)). Allows officers a limited right to rely on legal counsel and public accountants.

Section 44 (AS 10.06.483(f)-(g)). Follows the suggestion of the ALI Statement on Corporate Governance and articulates the business judgment defense for officers. No jurisdiction has, to this point, ever attempted a statutory formulation of the business judgment rule. The reader is referred to the official comments of the ALI statement for a fuller understanding of the relationship between the duties of care and loyalty and the business judgment rule.

Section 45 (AS 10.06.576(f)). Coordinates subsection with new ability to issue certificateless shares.

Section 46 (AS 10.06.576(g)). Coordinates subsection with new ability to issue certificateless shares.

Section 47 (AS 10.06.578(c)). Coordinates subsection with new ability to issue certificateless shares.

Section 48 (AS 10.06.580(f)). Coordinates subsection with new ability to issue certificateless shares.

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Section 49 (AS 10.06.605(b)). In addition to technical changes, indicates that a corporation may dissolve if one of the three listed situations occurs.

Section 50 (AS 10.06.528(d)). Coordinates subsection with changes to AS 10.06.425(d).

Section 51 (AS 10.06.530(e)). Coordinates subsection with changes to AS 10.06.425(e).

Section 52 (AS 10.06.633(a)). Allows the commissioner to dissolve a corporation if the corporation is delinquent six months in paying its biennial corporation tax. Deletes paragraph (8) since AS 10.06.155 (registration of agent by nonresident with controlling interest) is repealed by sec. 57 of the bill.

Section 53 (AS 10.06.828). Makes an application for a certificate of authority or any other application subject to a filing fee.

Section 54 (AS 10.06.855). Requires that fees and charges provided for in AS 10.06 be paid in advance.

Section 55 (AS 10.06.960). Updates the citation for the Alaska Native Claims Settlement Act.

Section 56 (AS 10.06.960(e)-(f)). Grants the boards of native corporations the authority to amend their articles without the necessity of a vote of the shares if the purpose is to bring the articles into conformity with federal law. Defines "act" for the section.

Section 57 (AS 10.06.990(12)). Deletes the term "controlling interest" since it is not used in AS 10.06.

Section 58 (AS 10.06.990(47)). Defines "entire board" for the chapter.

Section 59 (AS 10.06.155). Repeals AS 10.06.155, "Registration of agent by non-resident with controlling interest".

Section 60 gives the bill an effective date.

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