

HB

204

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 6, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 4-25-89

The LABOR & COMMERCE 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(L+C) 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 _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Mark Boyer
Bob C. ...
Allen A. ...
...
...
...
...

	Do Not Pass	No Rec	Amend

d. ...

Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to corporations

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

Sponsor: Rules Committee
Requester: Legislative Council

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
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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

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						
TOTAL OPERATING	0	0	0	0	0	0

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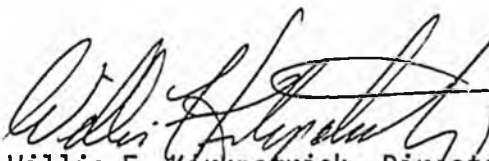
FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
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: 4-26-89

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 ____

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 5
Juneau, Alaska 99811

Dear Ms. Baim:

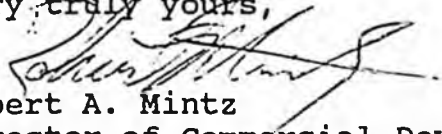
Thank you for the information respecting House Bill 204 and Senate Bill 204. In our opinion, there is a serious deficiency in the new Alaska Corporation's Code (effective July 1, 1989) treatment of Shareholder Agreements that the proposed Amendments to House Bill 204 and Senate Bill 204 fail to rectify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

HB204 FILE

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

April 24, 1989

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

via Facsimile

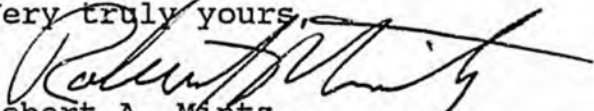
RE: H.B. 204

Dear Representative Donley:

Enclosed find a revised shareholder agreement amendment for the Corporation Code. In substance, this is identical to the amendment previously provided to you. However, some additions have been made to the enclosed amendment in order to better integrate them with the new Alaska Corporation Code. We made the revisions in response to an objection by John Abbott of the Code Revision Commission.

We understand that you are considering a bill to postpone the effective date of the new Corporation Code. If it is too late for the Legislature to consider and pass the substantive amendments to the new Corporations Code, then we strongly support postponing the effective date of the Code.

In summary, we would prefer that either the Corporation Code effective date be postponed, or the enclosed shareholder agreement amendment be incorporated into the new code. We are strongly opposed to allowing the new corporation code to go into effect without the amendment addressing shareholder agreements.

Very truly yours,


Robert A. Mintz
Director of Commercial Development
and Finance
RAM/ms

cc: Stan Reitman
BJG
LJC

**CARR
GOTTSTEIN INC.**

10.06.424(a) The shareholders of a corporation may enter into an agreement among all the shareholders of a corporation which agreement may:

- (1) Impose restriction on the transfer or registration of shares of the corporation to:
 - (A) Maintain the corporations's status, including, but not limited to, election of S Corporation status under the Internal Revenue Code, when that status is dependent on the number or identity 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) Obligate the shareholder first to offer to the corporation or other persons (separately, consecutively, or simultaneously) an opportunity to acquire the restricted shares;
 - (G) Obligate the corporation or other persons (separately, consecutively or simultaneously) to acquire the restricted shares;
 - (H) 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;
 - (I) 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 inspections or furnish a copy thereof without charge. If the stock of a corporation is certificateless, pursuant to _____, there shall be a statement sent within a reasonable time to each shareholder which references the existence of a shareholders agreement.

(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 sections "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

(e) Provisions contained in a shareholders agreement may not alter or waive the following provisions of this chapter:

§.350 (Information contained on certificates)

§.358 - .360 (Distributions)

§.430 Inspection Books/Records

§.438 Liability of shareholders

§.544 Approval of merger

§.570 Approval of Transaction not in regular course

§.633 + .648 Involuntary Dissolution

§.653 Claims Against Corporation Article II Reports, Fees and Penalties

HR 204 FILE

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

N

April 13, 1989

11/106
248-4995 -H
276-5152 -W

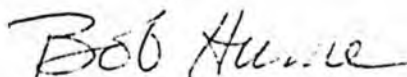
Representative Dave Donley
P.O. Box V
Juneau, Alaska 99811

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,



Robert H. Hume, Jr.

RHH\misc\ltdon:ah

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 19071 276-8433

MARK G. COPELAND, P.C.**
THOMAS M. LANDYE, P.C.
J. DAVID BENNETT, P.C.
DAVID P. WOLF, INC.*
ROBERT B. HOPKINS, P.C.
RICHARD L. SADLER, P.C.
RANDALL L. DUNN, P.C.***
JAMES S. CRANE, INC.*

ROBERT H. HUME, JR., INC.**
MITCHEL R. COHEN, P.C.
DAVID N. GOULDER
P. STEPHEN RUSSELL III
THOMAS M. DILLON***
MARK J. DAVIS
MARGOT POZNANSKI

OREGON OFFICE

3500 FIRST INTERSTATE TOWER
PORTLAND, OREGON 97201
15031 224-4100

*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
David P. Wolf

cc: Alaska Federation of Natives

DPW\749\LDONLEY.01:mv

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH V STATE CAPITOL
JUNEAU ALASKA 99801
907 465 2800

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

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,

Tamara Cook for

John Abbott
Chair
Alaska Code Revision Commission

JA:gc
WKG7/087

Enclosure

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.

STATE OF ALASKA
THE LEGISLATURE

POUCH V. STATE CAPITOL
JUNEAU ALASKA 99808
907 465 3820

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 enjoy 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.

Representative Mike Davis
Page 4
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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.

Representative Mike Davis
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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.

TLB:lmb
L7/024

6-0395E
Bannister
4/14/89

Original sponsor: Rules/Legislative Council

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 204 (L&C)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act delaying the effective date of the new corpo-
7 rations code; and providing for an effective date."

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

9 * Section 1. Section 37, ch. 166, SLA 1988, is amended to read:

10 Sec. 37. This Act takes effect July 1, 1990 [JULY 1, 1989].

11 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).



Representative Dave Donley, Chair House Labor & Commerce Committee

SUBJECT OF MEETING:

HJ 445 HB 204
 SB 51 HB 286
 HB 245 HB 284

DATE: 4/25

PLACE: C#17

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT WHICH BILL?
Richard Arab	Dept of Labor	Box 21149, Juneau, AK 998	99802		465-7856	(Y) N	HB 286
Willis F Kulepatnick	Div Corporations	DCED			465 2501	(Y) N	HB 204
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	