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STATE OF ALASKA  
THE LEGISLATURE

POUCH V STATE CAPITOL  
JUNEAU ALASKA 99811  
907 455 3800

LEGISLATIVE AFFAIRS AGENCY

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*

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John Abbott  
Chair  
Alaska Code Revision Commission

JA:gc  
WKG7/087

Enclosure

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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1-10-20  
POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

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.

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.

STATE OF ALASKA  
THE LEGISLATURE

POUCHY STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 24, 1989

SUBJECT: Sectional analysis of CSSB 204(Jud)  
(Work Order 6-0953E)

TO: Senator Pat Rodey

FROM: Theresa L. Bannister<sup>ab</sup>  
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 "limited" or an abbreviation of "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 makes a technical deletion in order to make AS 10.06.230(a) consistent with the other changes made in the bill regarding the number of directors.

Section 7 (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 8 (AS 10.06.348). Coordinates AS 10.06.348 with the proposed new AS 10.06.349.

Section 9 (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 10 (AS 10.06.353). Coordinates section with new ability to issue certificateless shares.

Section 11 (AS 10.06.355). Coordinates section with new ability to issue certificateless shares.

Section 12 (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 13 (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 14 (AS 10.06.358(d)). Eliminates the unqualified requirement that the eligibility to make certain dis-

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

Section 15 (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 16 (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.

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Section 19 (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 20 (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 21 makes technical changes to make AS 10.06.413(a) consistent with the 10-day notice requirement in sec. 45 of this bill.

Section 22 makes a technical change to make AS 10.06.413(c) compatible with the 10-day notice requirement in sec. 45 of this bill.

Section 23 (AS 10.06.418(b)). Makes two minor changes relating to revocation of a proxy.

Section 24 (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 25 (AS 10.06.418(f)). Coordinates the section with the changes in AS 10.06.425.

Section 26 (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 27 (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 28 (AS 10.06.420(i)). Coordinates subsection with new ability to issue certificateless shares.

Section 29 (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 30 adds a new section addressing the use of shareholder agreements.

Sec. 10.06.424(a) authorizes the use of unanimous shareholder agreements that impose restrictions on the transfer or registration of corporate shares to accomplish certain listed purposes and any other reasonable purpose.

Sec. 10.06.424(b) authorizes the use of unanimous shareholder agreements to provide for the selection of directors and officers.

Sec. 10.06.424(c) establishes disclosure requirements when there is a shareholders' agreement under this section.

Sec. 10.06.424(d) removes certain shares in certain circumstances from being covered by a shareholders' agreement under this section.

Sec. 10.06.424(e) defines "shares" to include a security that is convertible into shares or that carries a right to subscribe for or acquire shares.

Section 31 (AS 10.06.425(a)). Indicates that the subsection doesn't invalidate an irrevocable proxy that complies with AS 10.06.418(e).

Section 32 (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 33 (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 34 (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 35 (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 36 (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 37 (AS 10.06.435(a)). Coordinates subsection with new ability to issue certificateless shares.

Section 38 (AS 10.06.450(c)). Is taken from Sec. 8.30(c) of the Revised Model Business Corporation Act and indicates that a director cannot be considered to be acting in good faith.

Section 39 (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 40 (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 41 (AS 10.06.453(b)). Coordinates subsection with AS 10.06.230 and the new language of AS 10.06.453(a).

Section 42 (AS 10.06.465(d)). Allows a director to resign at any time.

Section 43 (AS 10.06.470(a)). Coordinates subsection with new language of AS 10.06.453(a).

Section 44 (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 45 (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 46 (AS 10.06.483(e)). Allows officers a limited right to rely on legal counsel and public accountants.

Section 47 (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 48 (AS 10.06.576(f)). Coordinates subsection with new ability to issue certificateless shares.

Section 49 (AS 10.06.576(g)). Coordinates subsection with new ability to issue certificateless shares.

Section 50 (AS 10.06.578(c)). Coordinates subsection with new ability to issue certificateless shares.

Section 51 (AS 10.06.580(f)). Coordinates subsection with new ability to issue certificateless shares.

Section 52 (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 53 (AS 10.06.528(d)). Coordinates subsection with changes to AS 10.06.425(d).

Section 54 (AS 10.06.530(e)). Coordinates subsection with changes to AS 10.06.425(e).

Section 55 (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. 61 of the bill.

Section 56 (AS 10.06.828). Makes an application for a certificate of authority or any other application subject to a filing fee.

Section 57 (AS 10.06.855). Requires that fees and charges provided for in AS 10.06 be paid in advance.

Section 58 (AS 10.06.960). Updates the citation for the Alaska Native Claims Settlement Act.

Section 59 (AS 10.06.960(e)-(g)). 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. States that a native corporation is governed by ANCSA (43 U.S.C. 1601 - 1629e) to the extent the act is inconsistent with AS 10.06, authorizes the corporation to take any action, including amendments of its articles, authorized by ANCSA, and considers the action approved and adopted if approved under ANCSA. States that an amendment approved under ANCSA and delivered to the commissioner under AS 10.06.512 shall be filed by the commissioner under AS 10.06.910, and a certificate of amendment issued.

Section 60 (AS 10.06.990(12)). Deletes the term "controlling interest" since it is not used in AS 10.06.

Section 61 (AS 10.06.990(47)). Defines "entire board" for the chapter.

Section 62 authorizes a native corporation, under certain conditions and after the effective date of the corporations code, to continue to elect its directors in the classes and for the terms provided under its bylaws, notwithstanding certain sections of AS 10.06. Withdraws this authorization if the corporation modifies or eliminates its bylaw provisions on the classification and terms of its directors.

Section 63 (AS 10.06.155). Repeals AS 10.06.155 ("Registration of agent by non-resident with controlling interest"), 10.06.210(1)(L), and 10.06.230(b). AS 10.06.210(1)(L) is repealed because it is not consistent with the changes made in sec. 37. AS 10.06.230(b) is inconsistent with the changes made in the bill regarding the number of directors.

Section 64 gives the bill an effective date.

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

*Halford*  
POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

MEMORANDUM

April 25, 1989

SUBJECT: Sectional comparison and analysis of proposed  
CSSB 204(Jud) and SB 204

TO: Senator Pat Rodey

FROM: Theresa L. Bannister *TB*  
Legislative Counsel

This provides a sectional comparison and analysis of the above described bills.

As a preliminary matter, note that a sectional comparison and analysis of a bill should not be considered an authoritative interpretation of the bills and the bills themselves are the best statement of their contents.

Section 1 (AS 10.06.070). Same as SB 204. 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). Same as SB 204. 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 by-laws 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)). Same as SB 204. Deletes language that created an internal conflict within AS 10.06.

Section 4 (AS 10.06.105(c)). Same as SB 204, except adds "or an abbreviation of "limited"."

Section 5 (AS 10.06.130). Same as SB 204. 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 10.06.230(a)). A new section. Makes a technical deletion in order to make AS 10.06.230(a) consistent with the other changes made in the bill regarding the number of directors.

Section 7 (AS 10.06.343). Same as sec. 6 in SB 204. 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 8 (AS 10.06.348). Same as sec. 7 in SB 204. Coordinates AS 10.06.348 with the proposed new AS 10.06.349.

Section 9 (AS 10.06.349). Same as sec. 8 in SB 204. 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 10 (AS 10.06.353). Same as sec. 9 in SB 204. Coordinates section with new ability to issue certificateless shares.

Section 11 (AS 10.06.355). Same as sec. 10 in SB 204. Coordinates section with new ability to issue certificateless shares.

Section 12 (AS 10.06.356). Same as sec. 11 in SB 204. 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 13 (AS 10.06.358(c)). Same as sec. 12 in SB 204. Eliminates the unqualified requirement that the amount of

distributions payable in property be based on generally accepted accounting principles.

Section 14 (AS 10.06.358(d)). Same as sec. 13 in SB 204. 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 15 (AS 10.06.358(e)-(f)). Same as sec. 14 in SB 204. 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 16 (AS 10.06.360). Same as sec. 15 in SB 204. 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 17 (AS 10.06.385(b)). Same as sec. 16 in SB 204. Coordinates subsection with new ability to issue certificateless shares.

Section 18 (AS 10.06.385(d)). Same as sec. 17 in SB 204. Coordinates subsection with new ability to issue certificateless shares.

Section 19 (AS 10.06.405). Same as sec. 18 in SB 204. 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 20 (AS 10.06.410). Same as sec. 19 in SB 204. Substitutes a ten-day minimum notice of shareholders' meet-

ing 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 21 (AS 10.06.413(a)). A new section. Makes technical changes to make AS 10.06.413(a) consistent with the 10-day notice requirement in sec. 45 of this bill.

Section 22 (AS 10.06.413(c)). A new section. Makes a technical change to make AS 10.06.413(c) compatible with the 10-day notice requirement in sec. 45 of this bill.

Section 23 (AS 10.06.418(b)). Same as sec. 20 of SB 204. Makes two minor changes relating to revocation of a proxy.

Section 24 (AS 10.06.418(e)). Same as sec. 21 of SB 204. Defines the term "pledgee" and makes a citation change to coordinate with the changes to AS 10.06.425.

Section 25 (AS 10.06.418(f)). Same as sec. 22 of SB 204. Coordinates the section with the changes in AS 10.06.425.

Section 26 (AS 10.06.418(g)). Same as sec. 23 of SB 204. 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.

[Former sec. 24 (AS 10.06.420(c)) of SB 204 has been deleted from proposed CSSB 204(Jud).]

Section 27 (AS 10.06.420(e)). Same as sec. 25 of SB 204. 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 28 (AS 10.06.420(i)). Same as sec. 26 of SB 204. Coordinates subsection with new ability to issue certificateless shares.

Section 29 (AS 10.06.421). Same as sec. 27 of SB 204. 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 30 (sec. 10.06.424). Adds a new section to SB 204 addressing the use of shareholder agreements.

Sec. 10.06.424(a) authorizes the use of unanimous shareholder agreements that impose restrictions on the transfer or registration of corporate shares to accomplish certain listed purposes and any other reasonable purpose.

Sec. 10.06.424(b) authorizes the use of unanimous shareholder agreements to provide for the selection of directors and officers.

Sec. 10.06.424(c) establishes disclosure requirements when there is a shareholders' agreement under this section.

Sec. 10.06.424(d) removes certain shares in certain circumstances from being covered by a shareholders' agreement under this section.

Sec. 10.06.424(e) defines "shares" to include a security that is convertible into shares or that carries a right to subscribe for or acquire shares.

Section 31 (AS 10.06.425(a)). Sec. 28 of SB 204. Indicates that the subsection doesn't invalidate an irrevocable proxy that complies with AS 10.06.418(e).

Section 32 (AS 10.06.425(b)). Sec. 29 of SB 204. 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 33 (AS 10.06.430(a)). Sec. 30 of SB 204. Makes technical wording changes to make the use of the term "books and records of account" consistent throughout the section.

Section 34 (AS 10.06.430(b)). Sec. 31 of SB 204. 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 re-

quest 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 35 (AS 10.06.430(c)). Sec. 32 of SB 204. Makes technical wording changes, including one to make the use of the term "books and records of account" consistent throughout the section.

Section 36 (AS 10.06.433(a)). Sec. 33 of SB 204. 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 37 (AS 10.06.435(a)). Sec. 34 of SB 204. Coordinates subsection with new ability to issue certificateless shares.

Section 38 (AS 10.06.450(c)). Sec. 35 of SB 204. 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 39 (AS 10.06.450(f)). Sec. 36 of SB 204. 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 40 (AS 10.06.453(a)). Sec. 37 of SB 204. 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 41 (AS 10.06.453(b)). A slightly altered version of Sec. 38 of SB 204. Coordinates subsection with AS 10.06.230 and the new language of AS 10.06.453(a). Changes the references in the introductory phrase of the subsection.

Section 42 (AS 10.06.465(d)). Sec. 39 of SB 204. Allows a director to resign at any time.

Section 43 (AS 10.06.470(a)). Sec. 40 of SB 204. Coordinates subsection with new language of AS 10.06.453(a).

Section 44 (AS 10.06.470(b)). Sec. 41 of SB 204. 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 45 (AS 10.06.483(d)). Sec. 42 of SB 204. Corrects a citation. Deletes the reference to "share certificates" because they are covered by another section and there was a conflict.

Section 46 (AS 10.06.483(e)). Sec. 43 of SB 204. Allows officers a limited right to rely on legal counsel and public accountants.

Section 47 (AS 10.06.483(f)-(g)). Sec. 44 of SB 204. 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 48 (AS 10.06.576(f)). Sec. 45 of SB 204. Coordinates subsection with new ability to issue certificateless shares.

Section 49 (AS 10.06.576(g)). Sec. 46 of SB 204. Coordinates subsection with new ability to issue certificateless shares.

Section 50 (AS 10.06.578(c)). Sec. 47 of SB 204. Coordinates subsection with new ability to issue certificateless shares.

Section 51 (AS 10.06.580(f)). Sec. 48 of SB 204. Coordinates subsection with new ability to issue certificateless shares.

Section 52 (AS 10.06.605(b)). Sec. 49 of SB 204. In addition to technical changes, indicates that a corporation may dissolve if one of the three listed situations occurs.

Section 53 (AS 10.06.628(d)). Sec. 50 of SB 204. Coordinates subsection with changes to AS 10.06.425(d).

Section 54 (AS 10.06.630(e)). Sec. 51 of SB 204. Coordinates subsection with changes to AS 10.06.425(e).

Section 55 (AS 10.06.633(a)). Sec. 52 of SB 204. 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. 61 of the bill.

Section 56 (AS 10.06.828). Sec. 53 of SB 204. Makes an application for a certificate of authority or any other application subject to a filing fee.

Section 57 (AS 10.06.855). Sec. 54 of SB 204. Requires that fees and charges provided for in AS 10.06 be paid in advance.

Section 58 (AS 10.06.960). Same as sec. 55 of SB 204, except corrects citation. Updates the citation for the Alaska Native Claims Settlement Act.

Section 59 (AS 10.06.960(e)-(g)). An altered version of sec. 56 of SB 204. Adds a new subsec. (f). Makes SB 204's subsec. (f) now (g). 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. States that a native corporation is governed by ANCSA (43 U.S.C. 1601 - 1629e) to the extent the act is inconsistent with AS 10.06, authorizes the corporation to take any action, including amendments of its articles, authorized by ANCSA, and considers the action approved and adopted if approved under ANCSA. States that an amendment approved under ANCSA and delivered to the commissioner under AS 10.06.512 shall be filed by the commissioner under AS 10.06.910, and a certificate of amendment issued.

Section 60 (AS 10.06.990(12)). Same as sec. 57 of SB 204. Deletes the term "controlling interest" since it is not used in AS 10.06.

Senator Pat Rodey  
Page 9  
April 25, 1989

Section 61 (AS 10.06.990(47)). Same as sec. 58 of SB 204. Defines "entire board" for the chapter.

Section 62. A new section. Authorizes a native corporation, under certain conditions and after the effective date of the corporations code, to continue to elect its directors in the classes and for the terms provided under its bylaws, notwithstanding certain sections of AS 10.06. Withdraws this authorization if the corporation modifies or eliminates its bylaw provisions on the classification and terms of its directors.

Section 63 (AS 10.06.155). An altered version of sec. 59 of SB 204. Adds two additional items to be repealed: AS 10.06.210(1)(L) and AS 10.06.230(b). Repeals AS 10.06.155 ("Registration of agent by non-resident with controlling interest"), 10.06.210(1)(L), and 10.06.230(b). AS 10.06.210(1)(L) is repealed because it is not consistent with the changes made in sec. 37. AS 10.06.230(b) is inconsistent with the changes made in the bill regarding the number of directors.

Section 64 gives the bill an effective date.

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