

**SB**

**186**

**HFIN**

**FILE**

**PRESENTATION TO THE SENATE LABOR AND COMMERCE  
COMMITTEE ON SENATE BILL 186**

MISTER CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS PETER DENN AND I AM AN ALASKAN CPA, HAVING LIVED AND WORKED IN THE STATE FOR THE LAST 22 YEARS. I AM THE MANAGING PARTNER OF THE ALASKA PRACTICE FOR DELOITTE & TOUCHE, WHICH NOW EMPLOYS APPROXIMATELY 50 ALASKANS, AND I AM HERE TODAY AS A MEMBER OF AND BEHALF OF THE ALASKA SOCIETY OF CPA'S. I GREATLY APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO SPEAK IN FAVOR OF SB 186, THE PROPOSED REGISTERED LIMITED LIABILITY PARTNERSHIP LAW.

BEFORE I TALK ABOUT THE BILL, I WOULD LIKE TO THANK YOU, SENATOR KELLY, THE MEMBERS OF YOUR COMMITTEE AND YOUR STAFF FOR YOUR PATIENCE OVER THE LAST YEAR. WE HAVE WORKED CLOSELY WITH THE ALASKA BANKERS, ESPECIALLY JOE SCHIERHORN AND JOHN BEARD, TO ARRIVE AT CONSENSUS BEFORE TODAY'S MEETING AND I BELIEVE YOU HAVE THE RESULTS OF THAT EFFORT BEFORE YOU

I WOULD LIKE TO POINT OUT THAT I AM NOT AN ATTORNEY THOUGH TODAY I AM ADDRESSING LEGAL FORMS OF ORGANIZATION. I BELIEVE AS A



BUSINESSMAN, THAT THE LLP WILL BENEFIT SMALL AND GROWING BUSINESSES IN ALASKA AND ENHANCE OUR BUSINESS FRIENDLY ENVIRONMENT.

SELECTING THE FORM IN WHICH TO OPERATE IS ONE OF THE MOST SIGNIFICANT DECISIONS A CLIENT STARTING A BUSINESS, OR CONTINUING AN EXISTING ONE, WILL HAVE TO MAKE WITH RESPECT TO THAT BUSINESS.

THE CHOICE OF ENTITY WILL HAVE BROAD IMPLICATIONS. IT WILL AFFECT HOW THE BUSINESS IS CONDUCTED, THE PERSONAL AFFAIRS OF ITS OWNERS, AND EVEN IMPACT ON THE BUSINESSES' EMPLOYEES. TO CONTINUE TO ATTRACT AND RETAIN BUSINESSES, IT IS IMPORTANT THAT BUSINESSES HAVE, AND ALASKA PROVIDES, A FULL CHOICE OF FORMS IN WHICH BUSINESSES MAY OPERATE.

THE LIMITED LIABILITY PARTNERSHIP (OR LLP) IS A NEW TYPE OF GENERAL PARTNERSHIP THAT IS BEGINNING TO SWEEP THE NATION. THIRTY-EIGHT (38) STATES AND THE DISTRICT OF COLUMBIA HAVE ALREADY ADOPTED LLP LEGISLATION. TWELVE (12) ADDITIONAL STATES, NOW INCLUDING ALASKA, ARE CONSIDERING LLP LEGISLATION IN 1996.

THE LLP FORM IS APPEALING TO LOTS OF PARTNERSHIPS, BUT PARTICULARLY TO THE SEGMENT OF THE ECONOMY THAT IS GROWING THE FASTEST - SMALL

BUSINESSES AND START-UP VENTURES. THIS IS BECAUSE IT HAS LOW START-UP COSTS, IS FLEXIBLE, AND RELATIVELY EASY TO OPERATE.

LLP'S PROVIDE A FLEXIBLE FORM OF ORGANIZATION FOR SMALL BUSINESSES THAT HELPS THEM OBTAIN PARITY WITH LARGER, BETTER CAPITALIZED ORGANIZATIONS WHICH CAN AFFORD THE ANCILLARY BENEFITS OF MORE COMPLICATED BUSINESS ORGANIZATIONS. AT THE SAME TIME, THE LIMITED LIABILITY PARTNERSHIP RETAINS MANY OF THE POSITIVE ATTRIBUTES OF A GENERAL PARTNERSHIP.

FIRST, IT IS SIMPLE TO FORM.

SECOND, IT IS SIMPLE TO OPERATE -- UNLIKE GENERAL CORPORATIONS, THERE ARE NO REQUIRED ARTICLES OF INCORPORATION BY-LAWS, BOARD OF DIRECTORS MEETINGS, ETC.

THIRD, IT IS TAXED LIKE A PARTNERSHIP -- MEANING THAT THE TAX LIABILITY FLOWS THROUGH DIRECTLY TO THE LLP'S PARTNERS.

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Similar to Sub C

THE LIMITED LIABILITY PARTNERSHIP ALSO HAS ONE OF THE POSITIVE ATTRIBUTES OF MORE COMPLICATED BUSINESS FORMS -- PARTIAL LIMITED LIABILITY.

INDIVIDUAL PARTNERS IN AN LLP ARE NOT PERSONALLY LIABLE FOR THE DEBTS AND OBLIGATIONS OF THE LLP ARISING OUT OF ERRORS, OMISSIONS, NEGLIGENCE, INCOMPETENCE, OR MALFEASANCE COMMITTED IN THE COURSE OF THE PARTNERSHIP BUSINESS BY ANOTHER PARTNER OR REPRESENTATIVES OF THE PARTNERSHIP NOT WORKING UNDER THEIR DIRECTION OR SUPERVISION.

PLEASE NOTE THAT ALL PARTNERS CONTINUE TO BE PERSONALLY LIABLE FOR THEIR OWN ACTS AND OMISSIONS AND THE ACTS AND OMISSIONS OF PERSONS OVER WHOM THEY HAVE CONTROL. ALL PARTNERS ALSO CONTINUE TO BE PERSONALLY LIABLE FOR ALL OTHER DEBTS AND OBLIGATIONS OF THE PARTNERSHIP.

THE LLP ITSELF REMAINS LIABLE FOR ALL OF THE ACTIONS OF ITS OWNERS AND EMPLOYEES AND THE LLP OWNERS REMAIN PERSONALLY LIABLE FOR THEIR OWN ACTIONS AND THE ACTIONS OF THOSE UNDER THEIR CONTROL. BUT, BEYOND ANY INVESTMENTS IN THE LLP ITSELF, THE PERSONAL ASSETS OF THE OWNERS AND THEIR FAMILIES NEED NOT BE SACRIFICED TO PAY JUDGMENTS ARISING FROM EVENTS OR ACTIONS OVER WHICH THEY HAVE NO CONTROL.

WHILE THE OTHER FORMS OF ORGANIZATION, SUCH AS CORPORATIONS, PROFESSIONAL CORPORATIONS, AND LIMITED PARTNERSHIPS, PROVIDE FAR MORE COMPREHENSIVE PROTECTION FOR THE PERSONAL ASSETS OF A BUSINESS OWNER AND GENERALLY PROTECT OWNERS FROM ANY ACTION AGAINST THE ENTITY, THEY ALSO CARRY WITH THEM SIGNIFICANT COSTS AND REQUIRE A LEVEL OF SOPHISTICATION TO SET UP AND OPERATE.

CONSEQUENTLY, THE LIMITED LIABILITY PARTNERSHIP SHOULD APPEAL TO THE TYPES OF BUSINESSES TODAY THAT ARE OPERATING AS PARTNERSHIPS AND THAT CAN NOT AFFORD OR DO NOT HAVE THE TIME TO DEAL WITH STATUTORY AND REGULATORY REQUIREMENTS OF QUALIFYING AND OPERATING AS THESE OTHER BUSINESS FORMS.

FROM ALASKA'S PERSPECTIVE, IT WILL BE A TREMENDOUS ADVANTAGE TO OFFER BUSINESS THE LLP FORM FOR THE FOLLOWING REASONS:

THE LLP IS BUSINESS DEVELOPMENT ORIENTED. STATES AT THE FOREFRONT OF ECONOMIC DEVELOPMENT ARE THERE BECAUSE THEY OFFER AN EXPANSIVE MENU OF ORGANIZATIONAL ALTERNATIVES FOR DOING BUSINESS. THEY ENABLE THE BUSINESSES IN THEIR STATES TO BE COMPETITIVE WITH BUSINESSES FROM OTHER STATES AND ABROAD BY ENABLING THEM TO USE THE BUSINESS FORM MOST SUITABLE TO THEIR BUSINESS SITUATION

ENACTMENT OF LLP LEGISLATION IS CONSISTENT WITH PUBLIC POLICY POSITIONS ALREADY ADOPTED BY THE STATE. LIKE ANY BUSINESS FORM, THE PARTNERS IN AN LLP ALWAYS REMAIN RESPONSIBLE FOR THEIR OWN ACTIONS, AND THE PARTNERSHIP REMAINS RESPONSIBLE FOR THE ACTIONS TAKEN ON ITS BEHALF BY EMPLOYEES OR PARTNERS.

ADOPTION OF A LIMITED LIABILITY PARTNERSHIP LAW WILL PROVIDE A FAVORABLE BUSINESS CLIMATE - AND WILL ESPECIALLY BENEFIT THAT PORTION OF THE ECONOMY THAT HAS THE POTENTIAL TO GROW THE FASTEST, SMALL BUSINESSES AND START-UP VENTURES.

A LLP LAW WILL ENABLE ALASKA TO MAKE AVAILABLE AN ORGANIZATION FORM AVAILABLE TO 45 OF THE NATION AND ALLOW BUSINESSES THAT ARE RESIDENT HERE TO BETTER COMPETE WITH OUT-OF-STATE FIRMS.

FOR THESE REASONS, WE URGE YOU TO ADOPT THIS LEGISLATION.

THANK YOU FOR ALLOWING ME TO APPEAR HERE. IF YOU HAVE ANY QUESTIONS, I WILL BE HAPPY TO TRY TO ANSWER THEM.

House Finance Committee

State of Alaska

Testimony of William F. Ezzell re SB 186

April 29, 1996

Mister Chairman and members of the Committee

My name is Bill Ezzell. I am a partner in the accounting firm of Deloitte & Touche LLP. Our firm is one of the six largest public accounting firms in the world and we have offices in Anchorage, Alaska.

I am also currently the Chairman of a Coalition comprised of each of the six largest accounting firms. This Coalition was formed in part to seek an expansion of the types of organizational form that may be used by accounting firms and other professional service firms in the United States.

I greatly appreciate this opportunity to address the Committee today in support of SB 186, the proposed Alaska Limited Liability Partnership statute.

To date, 41 states along with the District of Columbia and Guam have passed LLP legislation. The remaining states, like Alaska, are considering similar legislation this year. The proposed Alaska LLP statute is consistent, in most significant respects, to the LLP legislation passed in the other states.

Selecting a form of organization in which to operate is one of the most important decisions an individual starting a new business or continuing an existing business will make. Providing reasonable protection for an owners personal assets, considering tax implications and finding an organizational form that complements the culture of the organization are all important factors. For many businesses, an LLP will be a good choice to meet these objectives.

Today I would like to address some of the more significant aspects of an LLP.

In a traditional general partnership, all of the partners are personally liable for all the obligations of the partnership and for damages caused by the actions of any other partner acting in the scope of the partnership business.

In an LLP, a partner is not personally liable for those partnership obligations arising out of negligence, wrongful acts, wrongful omissions, malpractice or misconduct committed by another partner of the partnership.

The LLP partnership itself remains fully liable to the extent of its assets, capital and insurance for the obligations of the partnership. In addition, the personal assets of the partner or partners directly involved in the negligent acts that caused the obligation are not protected by the LLP status. Only the personal assets of the partners not committing the negligent act, upon bankruptcy of the partnership, would be protected.

In addition, as an added factor, the legislation provides for insurance or other financial assets to be set aside to substitute for the personal assets of any partner not involved in the acts causing the obligation of the partnership. These additional assets would be available to persons having claims against the partnership.

Generally, other forms of organization which are already available in Alaska provide far greater protection for the personal assets of their owners. A shareholder in a general corporation, a professional corporation or limited liability corporation has exposure only to the extent of his or her own stock investment from obligations arising out of the actions of other owners. However, these forms of organization can be expensive to establish and complex to maintain, particularly for small businesses.

The LLP is inexpensive to organize and is not complex to maintain. It also allows its owners to continue to operate as partners rather than individual owners. Such a distinction is often important to professional service firms such as attorneys, accountants, architects, engineers and others where all of the owners are typically active in the business.

LLP legislation has generally been viewed as assisting in economic development by expanding the organizational forms available and enhancing the ability of businesses to operate in multiple jurisdictions with similar protections.

My firm is currently an LLP so you might wonder why we are interested in LLP legislation in Alaska. Speaking for the six largest accounting firms that practice in all states, as LLP's we are interested in having consistent protections for all of our partners, no matter where they live and work, should the protections of the LLP ever be needed. Since these protections would only be applicable generally in the event of the bankruptcy of the firm, it is a protection we hope will never be called upon.

I hope the limited liability partnership legislation will receive your favorable consideration.

Thank you for allowing me to address the Committee today. I would be happy to respond to any questions you may have.

HOUSE COMMITTEE REPORT

(11)  
Date Referred to Committee: April 24, 1996

FURTHER REFERRALS:

Date of Committee Action: 4/29/96

The FINANCE Committee considered:

CSSB 186(L&C)

CS FOR SENATE BILL NO. 186(L&C)

LIMITED LIABILITY PARTNERSHIPS

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

recommends it be replaced with the following committee substitute \_\_\_\_\_  the same title  
 a new title

additional referral to \_\_\_\_\_ Committee

attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

fiscal note(s) \_\_\_\_\_

fiscal note(s) Senate DCFD, 2/18/96

zero fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Richard J. [Signature]</i>			X	
<i>[Signature]</i>	X			
<i>[Signature]</i>	X			
<i>[Signature]</i>			X	
<i>[Signature]</i>			X	
<i>[Signature]</i>	X			
<i>[Signature]</i>			X	
<i>[Signature]</i>	X			

CHAIR'S SIGNATURE \_\_\_\_\_

*Richard J. [Signature]*

# FISCAL NOTE

No. 1

Version: CSSB 186(L+C)

(5) Publish Date: 3/18/96

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_

Title: Limited Liability Partnerships

Department: Commerce and Economic Development

BRU: Banking, Securities and Corporations

Component: Banking, Securities and Corporations

Sponsor: Senate Labor & Commerce

Requestor: Senate Labor & Commerce

COMPONENT SERIAL NO. 1233

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>00</b>	<b>00</b>	<b>00</b>	<b>00</b>	<b>00</b>	<b>00</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES</b>	<b>800</b>	<b>840</b>	<b>1040</b>	<b>1090</b>	<b>1150</b>	<b>1210</b>
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**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>00</b>	<b>00</b>	<b>00</b>	<b>00</b>	<b>00</b>	<b>00</b>

Estimate of any current year (FY 96) cost: \$ \_\_\_\_\_

**POSITIONS**

FULL-TIME					
PART-TIME					
TEMPORARY					

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

The revenue figures are based upon the current number of Limited Liability Companies that have filed with the State of Alaska under the Limited Liability Act since July 1, 1995. Using those figures, the department estimates that approximately 324 Limited Liability Partnerships (LLP) would file in FY 1997, and would increase at 5% per year. Starting in FY 99, the revenue figure anticipates additional revenue derived from biennial license renewal fees.

Prepared by: William F. Kiepatrick, Director

Division: Banking, Securities and Corporations

Approved by Commissioner: William L. Hensley

Agency: Commerce and Economic Development

Phone: 465-2521

Date: 2-6-96

Date: 2-7-96

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