

SB

283

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSSB283(RLS)

Revision Date: Original Dept Affected: Natural Resources
 Title: An Act relating to filing, recording, and indexing of documents... BRU: Management & Administration
 Component: Recorder's Office/UCC
 Sponsor: Rules Committee
 Requestor: _____ Component Serial No. 802

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES				(140.0)	(140.0)	(140.0)
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING				(140.0)	(140.0)	(140.0)
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts				(140.0)	(140.0)	(140.0)
1006 GF/MHTIA						
Other						
TOTAL				(140.0)	(140.0)	(140.0)

Estimate of any current year (FY96) cost: \$ none

POSITIONS	FY97	FY98	FY99	FY00	FY01	FY02
FULL-TIME	0	0	0	-3	-3	-3
PART-TIME	0	0	0	-1	-1	-1
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This legislation addresses the dual goals of improving customer service and streamlining government processes. These proposed changes are principally housekeeping measures in the recording system operated by the Department of Natural Resources that would serve to resolve certain conflicts and ambiguities in existing statutes and improve the recording function for the tens of thousands of Alaskans who use this service on an annual basis. The passage of comprehensive recording legislation in 1988 helped consolidate many of the prior laws into a single source, but it also contained a number of somewhat ambiguous provisions that have placed recorders in the awkward position of having to frequently step beyond their basic ministerial functions and monitor documents for execution requirements or other legal criteria. This bill eliminates the restrictive classification statute which limited recording to sixty specific classes of documents. Under this bill, virtually any document is recordable so long as it meets specific minimum recording criteria. Further, ambiguities are removed from such statutory criteria, assuring that all documents

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 Division: Support Services Date: 26-Apr-96
 Approved by Commissioner: Nico Bus for John Alvarado Date: 26-Apr-96
 Agency: Natural Resources

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ANALYSIS continued

are treated equally in the examination and recording process. It is estimated that perhaps a third of all rejected documents would be able to be accepted for recording at their initial submission if the proposed changes were implemented. Based on a recent time study in all recording offices statewide, more than ten percent of the total duties of front line recording staff relate to the rejection process. Additionally, it is estimated that perhaps as much as a third of the front line examination and processing time would be reduced if recording staff no longer had to examine for execution/legal requirements, discuss these items with customers, re-process formerly rejected documents, etc. The time study documents that approximately 17 percent of total front line staff time is spent on examination and processing. Thus the estimated time savings resulting from implementation of the proposed legislation would approach ten percent of total front line recording staff time (roughly three percent for rejection processing and 5.6 percent for examination and processing).

This version of the bill incorporated the intent of HB438 (Recording index by location) into SB283. There is no fiscal impact for the Recorder's Office associated with this addition.

* The long term effect of this measure will ultimately reduce personal services costs throughout the section and is reflected as a savings in FY00 through FY02. While there would also be immediate savings recognized in earlier fiscal years, the section would need to redirect such resources toward the resolution of long-standing preservation and archival deficiencies (as detailed in a 1992 Ombudsman's investigative report) that it has been unable to address with existing staff. It is only after the preservation and archival issues have been addressed that the financial savings generated by this measure would be evident, and the section would be better positioned to continue operations with reduced staffing in future years, provided that recording volumes remain stable at existing levels.

April 27, 1996

Dear Representative Green,

I would like your assistance in scheduling SB283 " An act relating to filing, recording, and indexing..." in the House Resources Committee. This bill includes all of HB438 "Recording by location index.." which your committee passed earlier and HB438 had passed the House. This legislation is housekeeping in nature and it is supported by the Mining, Banking, and Title industries.

This legislation saves the public and the state time and effort as it streamlines the recording process. It has a positive fiscal impact which will allow us to accommodate the proposed FY97 senate reductions in the Recorder's Office.

If you have any questions please call me at 465-2406

Thanks!



Nico Bus
Acting Director, SSD

cc: Members House Resources Committee

Attached is a sectional analysis and a letter of support from the title industry which represents 40% of our business.

ALASKA LAND TITLE ASSOCIATION

P.O. Box 241511 • Anchorage, Alaska 99524

April 8, 1996

The Honorable Bert Sharp
Chair, Senate State Affairs Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Senator Sharp,

The Alaska Land Title Association wishes to express its support of SB 283. The Alaska Land Title Association feels this bill will enhance the recording process, as it relates to our industry and as it relates to the general public.

We appreciate the effort you and your committee makes as it debates several issues before it. We hope that SB 283 will receive due diligent review and speedy passage.

Sincerely



Mark A. Tomlinson
President

cc: Sharon Young, State Recorder

czm

For several years, the Recorder's/UCC section in the Support Services Division, Department of Natural Resources, has been working to reengineer its workflow and processes in an effort to provide better customer service and simultaneously streamline its internal operations. This effort has been hampered by ambiguities and conflicts in the wording of existing recording statutes, the effect of which has placed recorders in the problematic and awkward role of regularly attempting to identify and enforce execution or other substantive legal requirements and to read and attempt to interpret the intent of cumbersome legal documents. SB283 would bring much needed definition and clarity to the basic acceptance criteria used by recorders to determine document recordability. Further, it replaces an unwieldy and restrictive document classification scheme with a broad provision that essentially allows any document to be recorded if it meets the basic minimum acceptance criteria outlined in the revised provisions. SB283 also makes minor housekeeping revisions in other recording statutes and eliminates several obsolete or redundant provisions. This is a much needed piece of legislation and would greatly improve a service that is used by tens of thousands of Alaskans each year.

HB438 was added into this bill as section five. We support the mandate of recording by location.

Sectional Analysis:

SB283 provides some much needed clarification in the state's recording laws. The principal focus of this bill is to eliminate certain restrictive and ambiguous provisions in favor of a broader scope with delineated specific acceptance criteria for evaluating a document's recordability. As referenced in the department's fiscal note, the section anticipates substantial time savings would be generated as a result of implementing the provisions of this bill in its daily workflow. Specifically, the time savings are estimated at approximately three per cent of the total rejection process, and 5.6 per cent of the examination and recording process. In terms of total front line staff time, this equates to approximately \$140.0 annually (based on current personnel costs). The long term effect of this measure will ultimately reduce personal services costs and staffing throughout the section, while simplifying and streamlining the recording process for all Alaskans. While there would also be immediate savings recognized as well, the section would need to redirect such resources toward the resolution of long-standing preservation and archival deficiencies (as detailed in a 1992 Ombudsman's investigative report) for at least a three year period.

A section by section analysis begins on the next page.

The following is a section by section analysis of SB283:

Section 1. Providing copies of mining documents to the Division of Mining in the Department of Natural Resources has long been a function of the Recorder's Office. The minor wording changes in AS 40.05.020 better reflect the actual process in practice. Copies of all documents for the preceding month are forwarded to the Division of Mining by the tenth of the month. It is impractical and often impossible to perform this function on the first day of the month because of higher priority processing requirements mandated by the recording statutes. Copies of only those documents indexed into the system as "Mining" documents are provided, pursuant to a recent understanding reached with the recipient of the copies, the Division of Mining. The current statute requires recorders to provide copies of "every other document affecting title or possession of existing mining properties." While most mining related documents are indexed as such, many other documents can and do affect mining properties as well. This requirement is so broad that it is impossible for recording staff to meet without requiring them to read and interpret the intent of every single document submitted into the recording system. The recommended changes reflect the process as it exists in practice.

Section 2. The minor wording changes in AS 40.17.020(a) and (b) place the burden of determining the proper recording district for conveyance documents on the party presenting the document for recording. Existing law leaves recording staff in the untenable position of having to verify the physical location of the legal descriptions provided on conveyance documents in addition to reviewing the document for minimum acceptance criteria. The recorder's function is not to determine where a property is physically located, but merely to place recordable documents into the public record per the customer's request. If a conveyance document is presented to the wrong recording district, it could still be recorded in that district (so long as minimum acceptance criteria is met). If a conveyance document must appear on record in the recording district where land affected by the conveyance is located, the responsibility for ensuring delivery to the proper recording district should fall on the person offering the document for recordation. However, delivery of a conveyance document or any other document to another recording district should not preclude its recordation if minimum acceptance criteria are met.

Section 3. This section represents the very heart of SB283. It serves to repeal AS 40.17.030 in its entirety (a statute that contains many ambiguities and is exceedingly difficult to administer) and reenacts it with specific and identifiable requirements that every document must meet to be eligible for recording. The bill also incorporates several basic recording requirements that have previously been identified only in regulation. By doing so, the bill provides a concrete and specific listing of the requirements that every document must meet before it is eligible for recording, without regard to what any individual document is intended to accomplish.

AS 40.17.030(a)(1). As an example, currently AS 40.17.030(b) requires a document to contain a signature and/or acknowledgment "only when required for the specific document by this chapter or other law." This language has often sent recorders on a lengthy research mission to determine if any other provision of AS 40.17 or any other law might require that particular type of document to be signed or contain an acknowledgment. SB283 specifically states that a document must contain original signatures unless it falls within the exception provided for certified documents. Another revision discussed below (AS 40.17.110) identifies the specific documents that must contain an acknowledgment.

AS 40.17.030(a)(2) and (a)(3) are unchanged from current law. They appear in current law as AS 40.17.030(a)(1) and (a)(2). It is mandatory that recorded documents meet legibility standards in order to assure the highest quality images can be preserved in the permanent public record.

AS 40.17.030(a)(4) incorporates a regulatory provision that a document must contain a title reflecting the overall intent of the document in order to be eligible for recording. Documents are indexed into the system with a document type code and title. This requirement is necessary to ensure consistency in indexing. Recordors should not have to look beyond the title of a document to determine the function of a particular document.

AS 40.17.030(a)(5) is slightly modified from the present language of AS 40.17.030(a)(4). Currently, the statute allows indexing information to accompany a document or be included in it. Because cover letters or other information accompanying a document are frequently not recorded, the public record may appear to be incomplete. It is desirable that all indexing information (such as names of grantors and grantees) be included in the document being recorded. This ensures a completeness in the public record that is not currently possible.

AS 40.17.030(a)(6) incorporates a regulatory provision that requires a document to contain the book and page of a prior instrument that it amends, extends, modifies, etc. While not the primary research information in the recording system, prior book and page references streamline the research process for the public and are hugely popular in daily use. Inclusion of the book and page information also ensures a more complete and accurate public record.

AS 40.17.030(a)(7) is slightly modified from the present language of AS 40.17.030(a)(5). Currently, the statute allows "return to" information to accompany a document or be included in it. Because letters or notes reflecting verbal instructions are frequently not recorded, this information does not always appear in the public record. "Return to" information reflects the intended disposition of a document after the recording process is complete. It is desirable that this information be included in the document being recorded. This ensures a completeness in the public record that is not currently possible.

AS 40.17.030(a)(8) is modified from the present language of AS 40.17.030(a)(6). Currently, the statute requires a document to be accompanied by or include the mailing addresses of all persons named in the document who grant or acquire an interest under the document if it is a conveyance. SB283 requires such mailing addresses to be contained in the document (again the intent is to ensure more completeness in the information contained in the public record), and also limits the requirement to deed transactions. The existing statute applies to all "conveyance" documents, a broad terms that encompasses many different types of documents, including deeds of trust, leases, easements, etc. It is our understanding that this provision was originally enacted as a means of providing a source of information to municipalities to keep property tax rolls current. The recording section provides copies of deed transactions on a monthly basis to all taxing authorities who request them, and we have been informed that this adequately meets the needs of the assessors and taxing authorities who use this service. AS 40.17.030(a)(8) simply requires that mailing addresses be contained in deed transaction documents as these are the only documents transmitted to the taxing authorities. If addresses are not contained in such documents, they do not appear in the public record anywhere.

AS 40.17.030(a)(9) incorporates a regulatory provision that requires a document to be accompanied by or contain the name of the recording district in which it is to be recorded. Because many recording offices process documents for multiple recording districts, it is essential that the customer identify the specific recording district that applies to a document, even if it is not stated in the document itself. This requirement is essential to ensure proper processing of a document within the system.

AS 40.17.030(a)(10) requires a document to be accompanied by the applicable recording fee set by regulation. This is part of the same provision currently appearing in AS 40.17.030(a)(3). SB283 also expands the fee provision to indicate that separate recording fees apply to multiple recordings of the same document, if multiple recording is requested by the customer. Documents frequently are presented with multiple functions appearing in their titles. If the customer wants the same document to be recorded for more than one purpose, a separate fee applies to each recording.

AS 40.17.030(b) incorporates and expands upon a regulatory provision allowing certified copies to be recorded and specifying the limited requirements they must meet to be eligible for recording. As is current practice, certified copies need only meet legibility, return to, recording district and fee requirements. Further, the provision would apply to any certified copy from any governmental office. Current law presently contains various restrictive language on the types of certified copies that can be recorded.

AS 40.17.030(c) is a holdover from the current classification statute where it appears as AS 40.17.110(b)(10). It covers those rare circumstances where the document submitted for recording is neither an original nor a certified copy from a government agency. This provision contains the requirements necessary for a conformed copy of a document to be eligible for recording.

AS 40.17.030(d) is slightly modified from the current provision, also appearing as AS 40.17.030(d). It allows the recorder to prescribe the style, size, form and quality that documents or plats must meet to be recordable. Currently, such details are set out in regulation and include document and plat sizes, and acceptable media for plats and other drawings. As new technology becomes available, such requirements may need further refinement in terms of type size, margin requirements, etc. This statute allows the flexibility to prescribe such standards via the regulatory process.

Section 4. AS 40.17.035 is largely unchanged from current law. The wording change in (2)(E) indicates that a certified copy may be from any government office and must meet the basic recording requirements identified for certified copies in AS 40.17.030(b). Recorders cannot reject such certified copies if those requirements are met. Additionally, subsection (3) expands the present wording to emphasize that a document can be recorded for more than one purpose if the applicable fee is paid for each recording.

Section 5. The section simply adds three words to A.S. 40.17.040(a) to require that the recording system provide a location index in addition to the presently mandated grantor/grantee index. The official index into the records is an alphabetical Grantor/Grantee index; however, the recording system has since 1972, approx., maintained a courtesy tract or location index as an additional research tool in all offices. Because this courtesy location index has been a discretionary function, it has become vulnerable during periods of high recording volumes or budget shortfalls, i.e., it has pockets of missing or incomplete information when staff time had to be re-directed toward the completion of mandatory statutory directives such as recordation, grantor/grantee indexing, and preservation functions. Thus, the historic location index is filled with many informational gaps and omissions of data. The viability and usefulness of such an index in the future depends on its completeness, which in turn can only be assured if it is a mandatory rather than a discretionary index. Since its implementation statewide, in 1972, approx., as a courtesy index, more than a third of all research activity by the public is connected with locative research. Requiring a location index on a par with grantor/grantee indices will ensure that the index information will be available in a consistent and complete format to present and future generations of Alaskans who want and need this service.

Section 6. Because the classification statute in AS 40.17.110 is proposed to be repealed, the reference to that statute is deleted in AS 40.17.060. The grandfather provision basically extends to any document that was executed in accordance with the law in effect at the time it was executed.

Section 7. Deletes reference to AS 40.17.020 as a recording duty. (It is customer's responsibility to present conveyance documents in proper district under AS 40.17.020).

Section 8. As noted above, the extensive classification provisions of AS 40.17.110 are proposed to be repealed. SB283 then reenacts this statute with a broad all-encompassing authorization for document recording, and sets out certain additional requirements for specific document types. Subsection (a) provides that any document can be recorded if it meets the basic criteria identified in AS 40.17.030, but if it is a certain type of document (in subsections b through d) it may have additional recording requirements which are also identified. Subsection b specifically indicates which documents must be acknowledged. From an operations perspective, this is far better than the current provision of AS 40.17.030(b) which says a document must be acknowledged only if "required for the specific document by this chapter or other law." As noted elsewhere in this analysis, the unclarity of this language frequently sends recorders on a labor-intensive research mission to try to locate other law that might apply and require an acknowledgment. This proposed bill identifies specific types of documents that must be acknowledged. However, the bill does indicate that a "conveyance" must be acknowledged, but does not provide specificity in identifying the particular document types that could be characterized as conveyances. This must be regarded as a limitation of the proposed bill, and will be a continuing gray area for recording staff until it can be clarified in regulation. Nevertheless, the proposed bill offers significant benefits to streamlining the recording process. If additional recording criteria apply to a particular type of document, they are delineated in SB283, e.g. subdivision plats, which must comply with AS 40.15, and declarations which must comply with AS 34.08.090(b). In this fashion, all known recording requirements can be identified, and the recording staff will no longer be mystified by the ambiguities of current law.

Section 9. This provision of the departmental authorization is included to denote that the recording fees are prescribed by regulation, and that separate fees do apply to documents that are recorded separately for multiple purposes.

Section 10. AS 44.37.027 is added to the departmental authorization to denote that the Uniform Commercial Code (UCC) central filing system is a function of the Department of Natural Resources. While this function was transferred by Executive Order to DNR many years ago, the departmental organizational statutes still only address the recording functions. This provision makes it clear that the department must maintain the UCC central filing office and adopt any necessary regulations regarding such records.

Section 11. This slight wording change in AS 45.09.401 is necessary to correct an ambiguity that causes considerable confusion for UCC customers. Currently, the statute has two paragraphs addressing local filings (in the recording district offices), and a provision that states "in all other cases, in the office of the Department of Natural Resources." The confusion arises because the local filing offices are also administered by the Department of Natural Resources. Many customers erroneously believe if their document is filed with any DNR office, it will suffice as a perfected filing, even if it addresses types of collateral that require filing with the central office. SB283 clearly emphasizes that in all other cases, the filing is to be in the "central filing office" of the Department of Natural Resources.

Section 12. Slight wording changes are incorporated into AS 45.09.402 regarding UCC financing statements. Subsection (c)(3) specifies that fixture filings are recorded (not filed) documents.

Section 13. AS 45.09.407 is clarified to provide that search requests must be submitted in writing. Additionally, the filing officer shall indicate whether a "currently active" financing statement exists for the particular debtor whose name is requested to be searched. Current statute requires the filing officer to indicate whether "presently effective" financing statements exist for the particular debtor. UCC search products delineate in detail all active filings and subsequent actions relative to a specific debtor name, but there are a lot of other issues that may determine whether a statement is "presently effective" in the legal sense, i.e. bankruptcy, improperly prepared statement, filing in wrong office, etc. Filing officers can provide a certification that indicates all active filings for that debtor are listed, but should not be required to state that they are "presently effective financing statements." By listing a filing on a response to a search request, the filing officer is only identifying its existence in the public record, not making assurances as to its effectiveness or compliance with the requirements of the Uniform Commercial Code.

Section 14. AS 45.05.030 is proposed to be repealed. There is no assurance that a copy presented by the customer is a true copy of the original document unless that copy is produced by the recorder. Recorders are required to prepare copies of all mining documents for the Division of Mining on a monthly basis. There is no need for customers to be providing copies of unrecorded documents that are not even used.

AS 40.17.040(b) is proposed to be repealed. It contains specific directions for indexing a specific type of document, a declaration. Providing indexing directions in statute for one specific document type to the exclusion of all others is inappropriate. Indexing procedures are best left to the recording system management, which establishes such internal indexing procedures for all document types on a consistent basis statewide.

AS 44.37.025(d) is proposed to be repealed. This statute requires the recording districts to supply the Department of Commerce with reports and copies of conveyances to non-resident aliens. The Department of Commerce has previously indicated that these reports and copies are unnecessary and would like them to be discontinued.

Section 15. This transitional provision allows the department to adopt regulations necessary to implement the changes in Sections 2 through 8 above. Recording section management states that these changes will likely not require additional new regulations. A current regulatory package in progress is not expected to be affected by these changes.

Section 16. Explains that this legislation is not retroactive. We have attempted to record the location index since 1972 as a courtesy. As time permits we will go back and fill in any voids, but this legislation does not mandate a retroactive clause.

Sections 17 and 18. While the transitional provision regarding regulations would take effect immediately, the effective date of the Act would be July 1, 1996.