

266

HJ

SB

290

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SB

354

266

House Judiciary Committee
April 17, 1975
page 2

after "violation" in line 12, page 6 insert "unless the action brought by the Department has been dismissed without prejudice."

page 6, line 13 delete "either by the department or the tenant, as the case may be,"
delete lines 14 and 15 "under this section for damages"
delete line 16 and 17 "before the bringing of the action in which the judgment was rendered."

page 6, line 16 - 19 Delete the language "When an action is brought by the tenant, the damages which shall be awarded to the tenant shall be the same as if the action were brought by the department."

Insert page 6, line 12 "When an action is brought by the tenant, the landlord is liable as in subsection (d)."

page 6, line 23 insert "The department, upon application by the landlord, shall issue a certificate of eviction if it finds that the reasons given by the landlord are reasonable and consistent with the purpose of this chapter." Delete "when" and insert "After"

page 6, line 25 - 29 delete "and a tenant voluntarily . . . under law"

page 7, lines 1 and 2 delete to "occupied by it, or" and insert "evicts the tenant, and"

page 7, line 2 delete "it" and insert "the residential housing accommodation"

page 7, line 7 insert after "property" "and any increased rent"

page 7, lines 10 and 11: delete "with intent to cause the tenant to vacate" and insert "intentionally"

100

House Judiciary Committee
April 18, 1975

page 2

Mr. Brown moved the addition of new language to form sections (f) and (g) to state that the official map shall be published 90 days before becoming effective and that owners would be notified by registered mail. No municipality may exercise powers in this bill unless they require by ordinance, building permits. The amendment passed.

Mr. Parr moved that the 18 months be changed to 12 in sections (b) and (e). The amendment passed.

Mr. Brown moved that the five year period be changed to seven years, but that reference to a second five year period be deleted. The amendment passed.

Mr. Brown moved CS HB 140 out of committee.

SB 290 Rent Control

Mr. Turnbull went through the bill with the committee, explaining how their previous amendments had been incorporated. He deleted the definition of overcharge since the term had been changed to damages in the bill. Mr. Brown mentioned the need for a one line committee report defining adjustments.

The committee signed CS SB 290 out.

No person may demand or receive rent for a residential housing accommodation without justification for an increase as set out in regulation pursuant to this chapter.

(a)

proclaimed

During a housing emergency, regardless of any existing contract, lease or other agreement, rental prices on residential housing accommodations shall ~~remain not exceed the price level at~~ not be increased, except as provided in (c) of this section.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 29, 1975

The Honorable Terry Gardiner
Alaska State House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska 99811

Dear Representative Gardiner:

As you probably know, my administration has endeavored to develop a workable solution to the residential-rent problem in various areas of the State. This month alone, we have studied a dozen different "rent-control" plans, held hearings in Fairbanks and Valdez, issued a statement of findings, declared that an emergency housing crisis exists in the two areas and created what appears to be a completely workable solution to the problem including the drafting of a set of regulations.

After advising the Valdez City Council and the Fairbanks Borough Assembly on the details of the plan, each body unanimously approved the plan.

In essence, the Emergency Rent Review Program is composed of four points:

1. A local advisory board of adjustment is created in each area wherein an emergency exists;
2. Landlords are required to give 30-day notice of rent increases. Upon complaint, the board of adjustment advises the Commissioner of Commerce on the validity of the rent increase within 15 days of submission;
3. An appeal to the Commissioner of Commerce or to the courts is provided;
4. Reasonable expense and profit increases are allowed.

Members of my administration have, in the past, testified at many committee hearings on four rent-control bills. Regularly, they have supported my theory of opposition to a broad-brushed approach: such an approach is cumbersome, costly and inappropriate for the problems facing Alaska today.

The Honorable
Terry Gardiner

-2-

April 29, 1975

Hence, I feel obliged to strongly urge you to introduce the amendments below deleting reference to "maximum rent established in H.C.S.S.B. 290:

AMENDMENT 1. Page 2, lines 7-8: delete "including but not limited to provision for the establishment of maximum rents"

AMENDMENT 2. Page 2, lines 27-28: replace "in excess of the maximum rent established for the accomodation by the Attorney General by regulation," with "without justification for an increase as set out in regulations pursuant to this chapter,"

AMENDMENT 3. Page 3, lines 2-3: Replace "increases in the maximum rent established under this subsection to allow for increases in" with "rent increases under this subsection to allow for increases in reasonable rate of return,"

Furthermore, in that the Department of Commerce has had substantial input into this program, I would prefer that the statutory authority for implementation of any such program remain with that department.

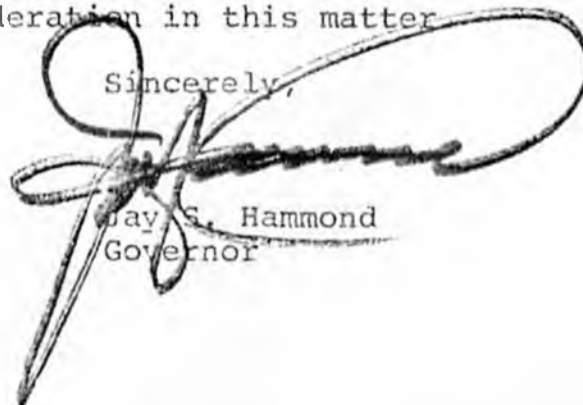
And finally, I feel that the following sections of H.C.S.S.B. 290 will be covered in the regulations now being prepared by the Attorney General in conjunction with the Department of Commerce and, therefore, should be deleted from the bill:

1. Sec. 34.06.042. Injunctive Relief;
2. Sec. 34.06.044. Action for Damages;
3. Sec. 34.06.045. Certificate of Eviction.

It is unfortunate that the timing of completion, presentation and subsequent approval of the rent-review program by the most affected areas (any many members of the legislature) coincided with the diligent work you have performed and as such we did not have the opportunity to formally present the program to your committee. Nevertheless, I feel that an unamended H.C.S.S.B. 290 could detract from the program as understood and approved by local communities, that it is (unamended) a broad control program vice and individual case-by-case approach that we found acceptable and desirable through public hearings.

Thank you for your consideration in this matter

Sincerely,



Jay S. Hammond
Governor

REPLY MEMO

State of Alaska

MESSAGE

REPLY

to Rep. Terry Gardner DATE 4/28

TO _____ DATE _____

Just heard that S.B. 290
is on today's calendar.
Is it possible to hold it for
a day for an amendment to
the section 34.06.042(a)
relating to the Commissioner
establishing maximum rents
by regulation? Would cause
excessive delay, I think.

SIGNED

Bill Miles
Bill Miles

SIGNED

1. KEEP YELLOW COPY.

2. SEND WHITE AND PINK COPIES WITH CARBON INTACT.

1. WRITE REPLY.

2. DETACH STUB, KEEP PINK COPY. RETURN WHITE COPY TO SENDER.

S. Bill 290

April 8 - Fairbanks 200 people

John Carlson - Borough Mayor

C.W. Bare - chamber

Emergency - Do it now

Delay action on 290 - slow down emergency action

- ① Rent control should exclude new housing
- ② Allows passing on of costs

1. Gen regulations -
2. hearings
3. then proclamation

Original sponsor: Miller, Huber,
Ray and Butrovich

Offered: 4/26/75
Referred: Rules

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 290

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to rent regulation and control in
7 emergency situations; and providing for an effective
8 date."

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

10 * Section 1. AS 34.06.020 is amended to read:

11 Sec. 34.06.020. DECLARATION OF HOUSING EMERGENCY. (a) In accor-
12 dance with regulations promulgated under sec. 30 of this chapter, when
13 the governor finds that emergency conditions exist with regard to resi-
14 dential rental housing, after public hearings in the area or areas
15 affected, he may by written proclamation declare that a state of housing
16 emergency exists. A housing emergency exists when the rate of vacancies
17 in residential rental housing is so low that there is a substantial
18 impairment of free choice in residential rental housing [OR WHEN THE
19 AVERAGE VACANCIES IN RESIDENTIAL HOUSING RENTALS FALLS BELOW THREE PER
20 CENT IN THE AREA, OR AREAS, AFFECTED AND REMAINS BELOW THREE PER CENT
21 FOR A PERIOD OF AT LEAST 90 DAYS]. The proclamation shall state the
22 nature of the housing emergency, the area or areas affected, and shall
23 be published generally through the state in the manner provided by law.
24 When the state of emergency no longer exists, the governor shall issue a
25 written proclamation stating this fact and publish it generally through-
26 out the state in the manner provided by law.

27 (b) After the governor issues [ON ISSUING] a proclamation of a
28 housing emergency, the attorney general [GOVERNOR] may invoke the pro-
29 visions of this chapter to regulate and control residential rents and

1 evictions in some parts or all of the state.

2 * Sec. 2. AS 34.06.030 is amended to read:

3 Sec. 34.06.030. SCOPE OF EMERGENCY HOUSING REGULATIONS. Subject
4 to the Administrative Procedure Act (AS 44.62), the attorney general
5 [COMMISSIONER OF COMMERCE], who is charged with the administration of
6 this chapter, shall promulgate regulations concerning the control of
7 residential rents, ^{which may include a} ~~including but not limited to~~ provision for the estab-
8 lishment and adjustment of maximum rents, the classification of residen-
9 tial housing accommodations, [AND] the regulation of evictions and the
10 standards for issuance of certificates of eviction.

11 * Sec. 3. AS 34.06 is amended by adding a new section to read:

12 Sec. 34.06.035. INVESTIGATIONS. (a) The attorney general may
13 make studies and conduct investigations and hearings when necessary for
14 the enforcement of the provisions of this chapter.

15 (b) The attorney general may administer oaths and affirmations,
16 and, when necessary, may issue subpoenas and order a person to appear
17 and testify, or appear and produce documents, at any designated place.
18 If a person refuses to obey a subpoena served upon him by the attorney
19 general, the superior court of the judicial district in which that
20 person resides or transacts business may issue an order requiring him to
21 appear and testify, produce documents, or both. Failure to obey an
22 order of the superior court is punishable by the court as contempt.

23 * Sec. 4. AS 34.06 is amended by adding new sections to read:

24 Sec. 34.06.041. PROHIBITIONS. (a) During a proclaimed housing
25 emergency, regardless of any existing contract, lease or other agree-
26 ment, no person may demand or receive rent for a residential housing
27 accommodation in excess of the maximum rent established for the accom-
28 modation by the attorney general by regulation, or to perform or omit to
29 perform an act which violates this chapter or a regulation or order

allow option

May not need if eviction selection deleted

1 issued under this chapter. [However, the attorney general may by regu-
2 lation permit increases in the maximum rent established under this
3 subsection to allow for increases in] local property taxes, actual
4 maintenance costs, or charges for utility services including but not
5 limited to heat, water, electricity, natural gas, garbage or other solid
6 waste disposal services when supplied by the landlord.]

delete

7 (b) During a proclaimed housing emergency, no person may remove or
8 attempt to remove from a residential housing accommodation the tenant or
9 occupant of the accommodation or refuse to renew the lease or agreement
10 for the use of the accommodation because the tenant or occupant has
11 taken or proposes to take action authorized by this chapter or a regu-
12 lation or order issued under it.

13 (c) During a proclaimed housing emergency no landlord or person
14 acting on his behalf, with intent to cause a tenant to vacate, may
15 engage in a course of conduct including but not limited to interruption
16 or discontinuance of essential services which interferes with or is
17 intended to interfere with the quiet enjoyment of the tenant in his use
18 or occupancy of a residential housing accommodation.

19 (d) No officer, employee, agent, or consultant of the department
20 may disclose, other than in the course of his official duty under this
21 chapter, information obtained under this chapter or use any of that
22 information for his personal benefit.

23
24 X Sec. 34.06.042. INJUNCTIVE RELIEF. When a person has engaged or
25 is about to engage in acts or practices which constitute or will con-
26 stitute a violation of this chapter or a regulation or order issued
27 under it, a tenant or the department may apply to the superior court in
28 the judicial district where the alleged violation has occurred or is
29 about to occur for an order enjoining these acts or practices, or for an
order enforcing compliance with this chapter or the regulations or

1 orders issued under it, or for an order directing the landlord to
2 correct the violation. Upon a showing that a person has engaged in or
3 is about to engage in a violation a permanent injunction, temporary
4 restraining order, or other appropriate order shall be granted without
5 bond.

6 Sec. 34.06.043. CRIMINAL PENALTIES. A person who wilfully vio-
7 lates a provision of this chapter or a regulation or order issued under
8 it is guilty of a misdemeanor and upon conviction is punishable by a
9 fine of not more than \$2,500, or by imprisonment for not more than one
10 year, or by both. *Willful violation of this chapter or reg*

11 *will include falsification of information given for violation*
12 Sec. 34.06.044. ACTION FOR DAMAGES. (a) If a landlord violates
13 a provision of this chapter or a regulation or order issued under it,
14 an aggrieved tenant, within one year from the date of the violation, may
15 bring an action against the landlord for damages, except as provided in
16 this section. In an action for damages the landlord is liable for
17 reasonable attorney fees and costs as determined by the court, plus
18 whichever of the following sums is the greater: (1) an amount not more
19 than three times the damages upon which the action is based, as the
20 court in its discretion may determine; or (2) \$100.

21 (b) If a landlord violates a provision of this chapter or a regu-
22 lation or order issued under it and the aggrieved tenant fails to insti-
23 tute an action under (a) of this section within 90 days from the date of
24 the violation, the department may bring an action under this section
25 within one year from the date of the violation, and for damages provided
26 in (a) of this section. If the department brings the action, the
27 tenant affected is barred from bringing an action for the same viola-
28 tion, unless the action brought by the department has been dismissed
29 without prejudice. If judgment is rendered in favor of the department,
the department shall pay the affected tenant one-third of the recovery,

1 exclusive of costs and attorney fees.

2 (c) A judgment in an action for damages under (a) or (b) of this
3 section is a bar to recovery in any other action under this section
4 against the same landlord for the same violation.

5 (d) A tenant who has vacated his residential housing accommodation
6 because the landlord or person acting on his behalf intentionally
7 engaged in a course of conduct, including but not limited to interrup-
8 tion or discontinuance of essential services, which interfered with the
9 quiet enjoyment of the tenant in his use or occupancy of the residential
10 housing accommodation, may within 90 days after vacating apply for a
11 determination from the department that the housing accommodation was
12 vacated as a result of that conduct, and may within one year after the
13 determination bring an action against the landlord by reason of his
14 misconduct under this subsection. In this action the landlord is liable
15 to the tenant in an amount not more than three times the damages sus-
16 tained on account of the landlord's misconduct plus reasonable attorney
17 fees and costs as determined by the court. In addition to any other
18 damages the cost of removal and storage of property and any increase in
19 rent is a lawful measure of damages.

20 X Sec. 34.06.045. CERTIFICATE OF EVICTION. During a proclaimed
21 housing emergency the department, upon application by the landlord,
22 shall issue a certificate of eviction if it finds that the reasons given
23 by the landlord are reasonable and consistent with the purposes of this
24 chapter. If after the department has granted a certificate of eviction
25 allowing the landlord to pursue his legal remedies to acquire posses-
26 sion, the landlord evicts the tenant and permits use of the residential
27 housing accommodation in any manner other than contemplated in the
28 eviction certificate, unless good cause is shown, the landlord is liable
29 to the tenant in an amount not more than three times the damages sus-

1 tained on account of the removal plus reasonable attorney fees and costs
2 as determined by the court. In addition to any other damage, the cost
3 of removal and storage of property and any increase in rent is a lawful
4 measure of damage.

5 * Sec. 5. AS 34.06.050(1) is repealed. ² 6

6 * Sec. 5. AS ~~34.06.050(2)~~ is amended to read:

7 (2) "department" means the Department of ~~Law~~ Law [COMMERCE].

8 * Sec. 7. AS 34.06.050 is amended by adding a new paragraph to read:

9 (4) "essential services" means running water, hot water,
10 heat, sanitary facilities, or the supply of other like services; and
11 electricity and garbage or other solid waste disposal services when
12 supplied by the landlord.

13 * Sec. 8. Section 3, ch. 128, SLA 1974, is amended to read:

14 Sec. 3. This Act expires July 1, 1977 [1975].

15 * Sec. 9. This Act takes effect immediately in accordance with AS 01.10.-
16 070(c).

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
315 FIFTH STREET, SUITE 8
JUNEAU, ALASKA 99801
TELEPHONE 586-~~XXX~~ 6425

MEMORANDUM

TO: Representative Terry Gardiner
FROM: Donald E. Clocksin
RE: HCSSB 290 - Rent Control
DATE: April 29, 1975

The following are proposed amendments to the rent control bill to satisfy some of the concerns of the governor in his April 29 letter to you, and to eliminate unnecessary confusion and inconsistencies between the governor's plan and the bill.

1. On p. 2, line 8, after "rents" insert "or rent increases"

Explanation: This clarifies that the program implemented by the governor could adopt either of the two alternative systems of rent control - across-the-board rent maximums or individually authorized rent increases. The governor's plan adopts the second alternative, but the situation may require more flexibility in the future.

2. On p. 2, line 27, after "rent" insert "or rent increases"

On p. 2, line 28, after "general" strike "by regulation"

Explanation: Same as above. In addition, the deleted language would not allow the attorney-general to forbid a rent increase in an order, as opposed to an across-the-board regulation.

3. On p. 3, line 2, after "permit" insert "rent" and ^{after} "increases" delete "in the maximum rent established"

Explanation: Same as #1 above.

4. On p. 3, line 3, after "allow for" delete the remainder of the sentence and insert "certain justifiable cost increases in accordance with regulations adopted by the attorney general."

Explanation: The proposed regulations allow the pass-along of costs and have identified other justifiable costs not included in the bill. The change would allow the regulations to specify what costs could be passed along.

5. On p. 3, line 26, strike "a tenant" and insert "an aggrieved person"

Explanation: This achieves balance by recognizing that either party can be injured.

6. On p. 4, line 1, strike "landlord" and insert "responsible person"

Explanation: same

7. On p. 4, line 11
On p. 4, line 14
On p. 4, line 15
On p. 4, line 20, after "landlord" insert "or tenant"

Explanation: Either landlord or tenant could hypothetically violate this chapter.

8. On p. 4, line 13
On p. 4, line 21
On p. 4, line 26
On p. 4, line 29, strike "tenant" and insert "person"

Explanation: same

9. On p. 5, line 4, strike "landlord" and insert "person"

Explanation: same

DEC:mjb

Again
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STATE
of ALASKA

MEMORANDUM

TO: [Rep. Terry Gardiner, Chairman
House Judiciary Committee

DATE : April 18, 1975

FROM: Bill Miles *B Miles*
Department of Commerce

SUBJECT: Rent Control

Attached is the information on rent control you requested. Although the file is not, by any means, complete, it will give you a fair idea of what's been coming in. I purposely left out much redundant material, inter-department memos and letter carbons because the Xerox machine threatened a walk-out.

Should you wish additional material or information, just give me a call.

EDITORIAL PAGE

Anchorage Daily Times

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN
Associate Editor
And General Manager

CLINTON T. ANDREWS JR.
Managing Editor

Page 4

Wednesday, April 9, 1975

Rent Gouging

SUREST WAY TO CONTROLS

ANCHORAGE IS in no position to sit back and point a finger at Fairbanks when it comes to accusations of rent-gouging as a result of the pipeline boom. There are mounting indications that abuses are occurring here and some formal note needs to be made of the fact before the situation gets completely out of hand.

One example to prove the point:

A friend of ours, apartment shopping last summer, found a two-bedroom unit renting for \$290 a month — a reasonable enough figure for a quality place to live. By last month, however, rentals in the same building for the same type unit were up to \$325. This month the price jumped to \$375.

That's an increase of 29.3 per cent over a nine-month period.

TO BE SURE, the life of a landlord is not all gravy. Financing new homes and new apartment buildings is an expensive proposition. Real estate taxes are on the rise, and charges for such services as sewers and utilities seem to know only one way to go — and that's up.

But there is a limit to reasonable and justified increases to meet real or anticipated tax hikes.

In defense of sudden and apparently outrageous increases in rents, some landlords say they are forced to take such steps in order to protect their investments from the possibility that stringent rent controls might be imposed by the state.

If rent controls come, they argue, they will be unable in the future to meet increased tax assessments and to set aside sufficient funds to cover necessary upkeep and maintenance.

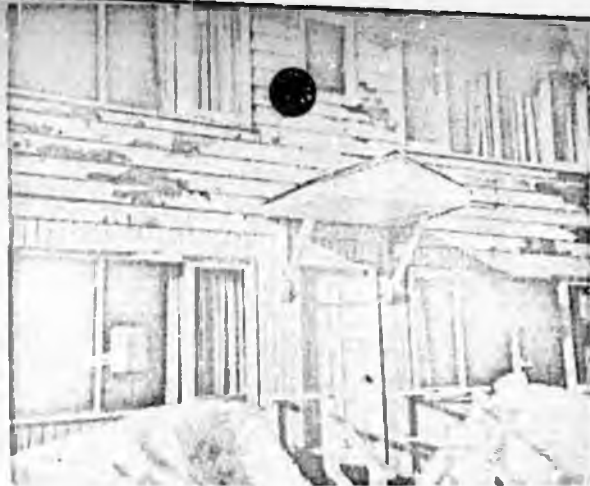
THERE IS some merit to this concern, of course. One of the evils of artificially controlled rents and rent ceilings is that the regulations tend to devalue property and over the years create slum conditions.

On the other hand, outlandish and arbitrary rent increases merely to make a financial killing can hardly be condoned. And the surest way to get incentive-stopping controls is to permit rent gouging on a rampant scale without any pressure or effort to bring about voluntary restraint on those who would act in an unscrupulous manner during boom periods when housing is in short supply.

There is a happy medium that needs to be struck.

If Anchorage is to avoid the bad name now being given to some other communities of the state, and if government imposed rent ceilings are to be avoided, the business community — in its own self-interest — is going to have to take some action.

The Greater Anchorage Chamber of Commerce should look into this matter. Its leadership in avoiding what could become a crisis would be a feather in its cap and a plus-mark for the entire community.



Kathy Reid's Valdez apartment building.

\$1,600 a month for apartment

By PAM MILLSAP
Daily News Staff Writer

When teacher Kathy Reid moved into the two-bedroom unfurnished apartment she shares with another teacher in Valdez the rent was \$286 a month, plus tax. That was in December.

On Jan. 29 the two women were informed that beginning March 1 the rent would be \$520, plus tax. The reason? Rampant inflation which made it impossible to cover current expenses, maintenance, taxes and insurance in income from the four-plex, according to the owner — an Anchorage investment firm.

ON MARCH 30 Kathy and her roommate, Allison Pike, were told the building had been sold. They also received a notice they were being evicted as of May 1. They asked the new owners if they could stay in the apartment until the end of May when school gets out. They were told they could — if they allowed two other tenants to move in with them, and if they paid a new rent of \$1,600 a month.

"I was outraged at the price increase and decided to stand up and protest," said Kathy in an interview with the Daily News Friday. "We went to the school board and they appointed one of the members to talk with the new owners to see if they would allow a more reasonable rent until the end of the school term. The owners informed us they would let four teachers live in the apartment during the month of May only — for \$940."

The teachers cannot afford the \$940, so they plan to move temporarily into a trailer provided by Harborview Hospital. But that won't solve the problem of where they and a lot of other Valdez residents will live next year.

"IF YOU AREN'T into big money, and school teachers and others not employed by the pipeline companies aren't, you can't afford the rents," said Kathy. "The whole town is upset, but nothing is being done to solve the problem."

According to Valdez City Manager Herb Lehfeldt, there is little that can be done, at least on the local level.

"The rental problem here is absolutely atrocious," he said Tuesday. "The people of Valdez are very irate about it. The fact that there isn't any housing available puts the existing housing in extremely high demand, and people all over town are being evicted because they can't pay the high rents."

LEHFELDT ADDED that apartment owners won't have much trouble getting as much as \$1,600 a month for a small apartment.



Kathy Reid

"They're not talking about a family moving in but turning the apartments into a barracks or dormitory," he said. "If they put two guys in a room paying \$250 or more each they can hit that \$1,600 in a hurry."

He said holding more rent control hearings in Valdez as recently proposed by the state won't solve the problem. "They're only talking about rent gouging, not providing the additional housing we need," he said. "And I don't think anything will ever come of rent gouging, it's too touchy a political problem."

In the meantime, he expects as many as 600 trailers and campers carrying transients looking for pipeline work to move into Valdez within the next two months. Accordingly, the city is asking the state for \$250,000 in impact funds to build a temporary camper park. And to help alleviate the high cost of housing for local residents, the city has developed a number of trailer sites which are being made available to city employees and teachers at reasonable rents.

NEVERTHELESS, Superintendent of Schools Herman Hutchins is still worried about finding housing for teachers next year. "We had 21 students register yesterday and today and all but one came from pipeline families," he said. "We have 44 teachers now and we're projecting 61 for next year. And not all the new teachers will be able to afford trailers." He said several construction companies had been buying apartment buildings and converting them into places where their men can bunk "for a night or two."

High rent deposit penalty rejected

JUNEAU (AP) — A double-damages clause applied to landlords who overcharge on security deposits or prepaid rent was rejected Wednesday by the State House.

Reversing a Tuesday vote 22 to 14, the House left intact the ability of tenants to recover the actual amount of an overcharge. Deposits and prepaid rent now are limited to the total of two months' rent.

KETCHIKAN Democrat Terry Gardiner argued that a double assessment was needed to prevent landlords from deliberately gouging tenants on the grounds that "they have nothing to lose."

Nine legislators, most of them saying a double penalty was too stiff and not clearly defined, switched their votes.

The penalty clause was contained in a bill requiring landlords to make an inventory of damages before a tenant moves in or be prohibited from collecting prepayments. The bill now goes to the Senate.

Earlier, the House rejected 19 to 16 an amendment removing a penalty clause leaving landlords liable for twice the amount of any overcharges.

"You're not helping the tenant," said Rep. Leshe Swanson, a Nenana Democrat who owns apartments himself. "The penalty is going to cause the landlord to raise the rent to protect himself" and to recover possible attorneys' fees.

SPONSORED by Rep. Joe McKinnon, D-Anchorage, and others, the bill was held for additional debate.

The measure removing rent-control administration from the department of commerce also extended the life of the emergency law two years until mid-1977.

And, it deleted a clause

Fairbanks hearing

By JANE PENDER

Our Fairbanks Correspondent

FAIRBANKS — Landlords and tenants squared off Tuesday night in a hearing on rent controls conducted by Commerce Commissioner Tony Motley.

One tenant said his apartment rent had been raised \$250 to \$750 for a three-bedroom apartment. Another said rent for his three-bedroom unfurnished apartment is being raised to \$525 from last June's \$375.

Ed Noonan, supervising attorney for Alaska Legal Services, said there has been a "very significant increase" in landlord-tenant cases. He said in some instances people just don't have the money and cited one individual who after rent increases found his rent cost \$12 more than his income.

Landlords on the other hand said they felt rent controls would be unfair. Some said the only solution was to build more houses. Others mentioned higher costs of fuel, electric surcharge, increases in general labor, water treatment costs (up 60 per cent), freight costs. The same men claimed garbage disposal was up six per cent and maintenance up 20 per cent and taxes up 50 per cent to 110 per cent.

Others talked about the prospect of a bust to follow the boom and mentioned the insecure economics of Fairbanks over the past few years as a reason the "get it while they could."

Chamber of Commerce general manager Wally Baer said, "It is the opinion of the Greater Fairbanks Chamber of Commerce that the imposition of rent controls is not the answer to the critical housing shortage." He said the chamber felt governmental action to ensure immediate construction of additional rental housing would be the best way to stabilize the market.

de a housing emergency
at 90-day period when the
y factor in a com
y falls below 3 per cent.
The remaining test would be
an administrative decision
that "there is a substantial
impairment of free choice" in
selecting rental housing.

DEMOCRATIC Rep. Steve Cowper said his constituents in Fairbanks would receive better service if the attorney general's office assumed control of the law. The Department of Commerce does not have a full-fledged office there.

Other amendments were needed, he said, because there were no reliable statistics on vacancy rates in most communities except Anchorage. The ceiling also might be indefensible in court, he said.

"Besides," Cowper said, "we cannot wait 90 days to find out" if a 3-per-cent rate exists.

Commerce officials held a hearing late Tuesday in Fairbanks to determine whether the law should be enforced for the first time. Other hearings were planned later in Anchorage and Valdez.

More views on the housing problem

Don't believe all landlords getting fat on rental gouge

Despite previously published reports of rent gouging in Fairbanks discovered in a Daily News-Miner survey, most landlords here are facing rising costs of doing business with minor increases and in some cases no increases.

This coupled with a pending decision facing Gov. Jay Hammond on whether to establish rent controls adds up to challenge for Fairbanksans to solve the housing problem as best it can.

Chairman of Commerce Manager Wally Base said today the chamber is starting a survey among renters and landlords alike to determine the need for rent controls and to discover exactly what problems both tenants and landlords are having.

A spokesman for the governor said today that some form of rent control is being considered but, said Hammond representative here, Larry Holmstrom, the governor wants comments from Fairbanksans to determine how he will proceed on the matter if at all.

The Daily News-Miner today contacted several apartment complex managers who indicated they are leary of rent control because, as one put it, "what's fair for one owner is not fair for another."

Holmstrom said the governor wants to know if residents think rent controls are justified, what specific examples persons have to justify them, and what form they want the controls to take.

The chamber began a survey of existing rental rates last week and discovered that rents in most large complexes have risen slightly to rent at all.

A comparison of reported rental rates between March of this year and April of last year, showed increases from 25 to 40 per cent to as much as 50 per cent.

Chenular Apartments, reportedly up for sale, recently increased rents 10 per cent for its two-bedroom unfurnished apartments which will cost existing tenants \$225 and new tenants about \$150 a month.

Although increases were not necessarily uniform, it appears that landlords are raising their fees to cope with rising costs for heat and utilities and maintenance and taxes.

Notable exceptions where no increases occurred during the year included Bienva apartments, Schena Court, Dixon apartments, Northward

Building, Polly Aiello, Pleasant Manor, Smith apartments, and some units at Tanana Village.

A sampling showed increases for two-bedroom furnished apartments at Ambassador, 23 per cent; Ballaine Lake, 10 per cent; E.P. Rentals, 13 per cent for unfurnished; Fairview Manor, 12 per cent; Golden, 8 per cent; Glenwood Manor, 10 per cent; and Midtown, 25 per cent.

The manager of the Ambassador, who asked not to be identified said, "I don't think rent controls are necessary in our case. I don't understand how they could make it a fair deal all around."

I don't think other owners are charging outrageous prices, especially for new apartments. They've got to charge high prices to come out on them due to high cost of building and furnishing.

"Your newspaper went from 10 to 15 cents in 15 years. That's a bigger increase than we've had," the manager said.

The manager said since 1958 Ambassador rents have been raised from \$175 to 1.50 for a one-bedroom unfurnished apartment, and from \$225 to \$300 for a one-bedroom furnished.

The Ambassador property is assessed at \$700,000, "so we pay a pretty good chunk in taxes," the manager said.

Zappa Testoni, who owns Ballaine Lake apartments and is business office manager for the Daily News-Miner, said she agrees there is some price gouging going on but, "prices for everything are going up. Maybe rent controls are necessary, but I can't really say I favor any type of controls. You have to keep in mind the high building costs now as well as interest rates."

(See LANDLORDS, page 3)

Scarce, high-priced housing poses problems for military

By CANNIACH KIMMER Staff Writer

Maintaining lists of available housing for newcomers in Fairbanks is an exercise in futility, officials at the school district and two military reservations report.

"We tell military families there is no civilian housing available here," Maj. J.S. Vincent, family housing manager at Ft. Wainwright, said. "We have nothing listed," Mrs. Jerry Andrews, manager at Eielson Air Force Base, said.

Both still try to find housing in the community and both are having almost no success. Vincent said "We maintain a list but housing is almost nonexistent and the prices are out of sight."

"What we find our people can't afford," Vincent said. "You know as well as I do what Alaska is paying for housing," Vincent said in reference to high offers by Alyeska Pipeline Service Company to find housing for employees.

Of six families that arrived in the first week in December, Vincent said one found a one bedroom apartment for \$200 a month. "An E-4 can't afford that kind of rent," he said.

Vincent said he heard of a captain who was looking and finally found a three bedroom house, with an \$800 a month price tag. "I'm sure he didn't take it," he said.

The housing crunch is apparently most critical at Ft. Wainwright, Vincent said he had requests for housing for about 75 individuals and families. Those waiting are jammed into transient living quarters which Vincent described as "like a hotel room but not as nice."

"Some families have been living there so long

that it has become a financial burden," he said. One family has been in the cramped quarters for three and a half months. Although 75 quarters are requested, Vincent estimated he would place "maybe 10-15 quarters."

The crisis was foreseen last fall but housing didn't literally dry up until just before Christmas, he said. Vincent said the base was hurt by a move within the Defense Department to stop moving people from post to post in order to save money. A freeze on such transfers is scheduled to go in effect from April to July.

Since no one is being transferred, no base housing is opening up. "Usually we could send people downtown for relief but not now."

Eielson has been spared from the housing shortage by selectively approving and disapproving requests by servicemen to bring their families with them, Andrews said. The serviceman must find housing before a transfer of his family is approved.

About 14 families are now living in transient housing at Eielson, Andrews said they would be housed within a day. There is sufficient bachelor housing at the base.

The school district doesn't maintain its housing list for new teachers from outside until later in the summer. But Dale Durrwachter, director of personnel, is anticipating "grave difficulties."

"With the reversed statistics of most of the teachers being hired within the community," he said the problem will be limited to placing 20 to 25 teachers and their families.

H.O. Williams, president of the Fairbanks (See SCARCE, page 3)



...at the home
...provides that the
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...er.

...icipating in the decision
...Justice Boechner were
...s Jay A. Rabinowitz,
...nnor, Robert Erwin and
...M. Fitzgerald

Health service starting Friday

...olic meeting on state wide
...service boundaries will be
...today at 7:30 p.m. in the
...tional Inn in Anchorage.
...missioner of Health and
...Services, Dr. Francine
...rs will address the opening
...cinar Friday morning.
...e meeting, the governor's
...l task force on im-
...tation of the new act will
...sent. Comments from the
...will be solicited.

...ording to federal
...tions, Alaska is eligible for
...the health service area
...g the entire state. The
...earch plan will replace
...cheensive Health Planning,
...al Medical and Hill-
...programs by local health
...principles.

...year if they are able to provide
...their own transportation. They
...must request to remain at their
...present school before July 15.

...Smith said major con-
...siderations in dividing at-
...tendance areas included keeping
...as many students in their present
...school as possible, placing
...students in schools nearest their

...Horn Road, Cushman Extension,
...the east side of Peger Road and
...St. Wainwright will also attend
...East.

...West students will come from
...Goldstream, Sheep Creek,
...Murphy Dome, Yankovich Road,
...Miller Hill, Balaine Lake Road,
...Farmers Loop from McGrath

SCARCE...

(Continued from page 1)

Education Association, said he expects turnover to be higher this year than normal as teachers here take higher paying pipeline jobs.

Addressing the school board Tuesday, he asked, "How can we ask new teachers to come and live here with no housing available?" Calling Fairbanks a "landlord and real estate agent paradise," he said that the quality of education would suffer if sufficient housing can't be found for needed teachers.

He asked the board to work with other governmental bodies to solve the problem.

"It's going to be super difficult. In my 14 years here, I've never seen housing as critical as it is now," Durrwachter said. "We've always been able to take care of our people. Last fall, only two of 25 people encountered long delays."

Durrwachter claims teachers have an advantage over others competing for shelter. "It will be teacher assisting teachers. Many teachers do own rentals and they will often call and place openings," he said.

He said many landlords prefer to rent to teachers because they have a steady income and aren't as itinerant as pipeline workers.

The situation with rental shortages has caused a shift in buying and renting statistics among teachers. "Far more are going out and buying a trailer or house. When large numbers were hired from outside, 80 per cent rented. Now I think it is 60-40." He said 60 per cent are renting.

He said teachers who buy and sell their house a year later at the end of their contract aren't losing money. Several teachers were amazed to find the value of their house increased three to four thousand dollars in the short time.

Durrwachter said the district isn't doing anything about securing commitments for housing. He added "Nobody seems too interested" in listing available units.

...building principals.

...Board members didn't com-
...length on the proposed
...division. Member Jim Movius
...said any decision would have to
...be final and asked that the vote
...be postponed until the next
...meeting.

...The board voted unanimously

...Lathrop, Assistant Principal of
...West Robert D. Cope will be
...principal at North Pole and a
...Skagway teacher Gordon C. Tope
...will be assistant principal at
...North Pole.

...Also approved at the meeting
...were names chosen by a board
...committee for the new schools in

...rushing to take graduate studies!

...She said the board should have
...a way to make sure the teachers
...weren't taking pipeline jobs for a
...year instead of studying fulltime.
...Mendenhall said she didn't think
...the district should guarantee jobs
...to those who quit to take pipeline
...work.

South Vietnamese abandon north Quang Tri province

SAIGON (AP)— A North Vietnamese troop buildup was reported in South Vietnam's northern provinces today, and thousands of frightened civilians are fleeing southward.

Foreign relief workers said about 100,000 refugees had collected in Hue, the former imperial capital 50 miles north of Da Nang. They fled from fighting in Quang Tri province, just below the North Vietnamese border.

Lt. Col. Le Trung Hien, the government's chief military spokesman, said there are five North Vietnamese divisions, or about 30,000 troops, in the northern part of the country. He said 10 per cent of them are in the Quang Tri-Hue area, where there has been heavy fighting for more than two weeks.

Hien said Hue is threatened by at least two divisions, including one that moved into the region recently.

Meanwhile, officials of the South Vietnamese ministry of social welfare said they expect as many as 450,000 refugees from the three Central Highlands provinces of Pleiku, Kontum and Dalat which the government is abandoning to the North Vietnamese and Viet Cong.

With the main highways to the coast cut, the swarm fleeing from the highlands stretched out from Pleiku southward along Highway 19, heading for the coastal city of Tuy Hoa.

It appeared that most of them would not reach the safety of the

coastal lowlands for three or four more days.

An exodus also was reported under way from Dalat, 140 miles northeast of Saigon in the lower central highlands. It is outside the three provinces the government is giving up, but its highway to Saigon has been cut by North Vietnamese and Viet Cong attacks on Dinh Quan, a district capital 75 miles northeast of Saigon.

The government reported more

Communist attacks on Binh Quan as well as on Hoai Duc and Gia Ray, two other district capitals south of Dinh Quan. The Saigon command said nearly 200 shells were fired into Hoai Duc.

In Cambodia, about 1,000 militant university students held a four-hour rally on their campus in Phnom Penh urging the U.S. Congress to cut off aid to the Cambodian government and demanding that President Long Nol resign.

LANDLORDS...

(Continued from page 1)

The manager at Moose Creek apartments reported a rent increase of 28 in the past year. Two bedroom apartments there including utilities cost \$293 monthly. The manager said there are 30 persons on the waiting list to move in.

A tenant at Midtown apartments, where rents increased more than 30 per cent in a year, said the rent was too high for the apartments offered.

Allen Brinker, manager for Sparkman and McLean's complex on Geist Road, said the complex is still below the market rate for increases while heating costs have gone up as much as 60 per cent over last year.

"I think it would be a wonderful idea (rent control)," she said. "I can see how some people recognize that with no vacancies

in town they can charge what they want. I'd rather keep our tenants than run them off by raising the rent."

Barbara Donathan of Sprucewood Manor reported their rents had gone up \$20 in the last year because the bank "raised its interest rate on us so we were forced to that. I imagine there will be another rent increase this summer because the manager is going to make some repairs.

Barbara Morris of Tanana Village said, "rent is getting out of control but not here because we're not that way. Compared to what I see in the paper people do need some sort of protection.

"There is such demand and no availability, they're asking high prices and getting them. I'm leaving at the end of the month.

Thanks News Miner, Mar. 24, 1975

Housing dominates

By SUZANNE RUSHONG
Family Editor

Although testimony wandered through topics ranging from child care to the State Office on Aging, impact hearings in Fairbanks Saturday turned out to be a forum on the housing crunch.

And though a few solutions to Fairbanks' housing shortage were offered, the two legislators conducting the hearings will take more complaints than suggestions back to Juneau.

State Sen. Pat Rody, of Anchorage summed up the feelings of many of those testifying: "This impact is coming from the oil companies, not the pipeline workers. They have brought us inflation on top of inflation and they should bear that cost as part of the cost of doing business. We must reduce the burden on the average Alaskan who is paying

the way for Standard Oil and P."

Rody and Charles Parr, representative from Fairbanks, were conducting the hearing to gather information for the legislature on the impact of pipeline construction, on low and fixed income persons. They also were looking for residents' opinions on rent control.

Three solutions suggested were installation of railroad sleeping cars in the town, erection of several small units for seniors at the 33 Mile Senior Citizen Center and development of parks for mobile and modular homes.

Doris Southall, who has been instrumental in getting the senior citizen high rise project started, suggested that the city look into stationing railroad cars around town for temporary housing this summer. She said the Canadian

railroad has several cars to lease or sell to the state, which could be used in Fairbanks the way railroad cars are used for housing at McKinley Park. Borough Mayor John Carlson said it would be difficult to find a place to put the cars, however, since the Alaska Railroad has plans to develop the railroad area for industry in the near future.

Joe Steinfeld, a member of the Senior Citizens of Interior Alaska, said the organization has land at the 33 Mile Center and about 1,000 logs which could be used to construct housing. He suggested the group look for assistance in the way of federal and state matching funds to put up several small units on the property. The units would be only for sleeping, with a utility building for laundry and showers

and meals provided at the main center.

Perry Stoop told the legislators mobile and modular units were the only answer for a temporary increase in housing. But he said utilities would have to be provided by the city before any sites could be developed for the units.

Older persons were one of the main concerns of the hearing, and many testified individually and as members of senior citizen groups.

Marjorie Lockwood said she was finding it impossible to locate a place to live. She is moving out of her large home, which she no longer can maintain, she said, and is looking for an apartment. She said she saw one place for \$250 a month, "but you would have to pay me \$250 a month to live in it." She noted

Daily News Miner, Fairbanks Alaska, Monday, March 24, 1975-3

Impact hearings

that several nice apartment complexes in town have kept their rates reasonable. "If one can do it, I can't understand why the others get such awful prices."

Sue Ohata, director of the North Star Council on Aging, testified that there are 40 elderly in the Golden Age Apartments on Ninth Avenue. That complex has 20 units. She also noted that there are many persons in Carriage North who don't need nursing care, but can't be released because there is no place for them to go. "It costs the state \$900 a month to keep them there and I don't think that's a good way for our tax money to be spent," she said.

There are persons taking up residence at the Salvation Army and Rescue Mission as well, Ohata said, preventing these agencies from providing the emergency relief services they are designed to provide.

But retired persons aren't the only ones on fixed income who are suffering from the housing crunch. Testimony also was received from many young people, including a teacher, a borough employee and a federal employee.

Pat Johnson, a federal government employee, said she has lived in Alaska all her life and in Fairbanks the last five years and doesn't want to move. She is, however, faced with finding an apartment because the building

in which she resides is being demolished to make way for the Steese Bypass. She said she had been trying to save money to buy her own home, "but I can't save anymore, I just can't afford to." She said although inflation on food and other items is causing problems, rent is the biggest cause. Johnson said she has been looking for housing since notification from the Highway Department, and hasn't had any luck yet.

Rody questioned her about trailers, and she said she would live in one if she had to, but preferred apartments to trailer parks. Parr pointed out that many banks have been reluctant to loan money for construction of trailer courts, and Carlson said there are not enough trailers coming into town to meet the demand anyway. "If someone could get 400 mobile homes in here tomorrow he would sell them all," the mayor said.

Pat Rutledge, a borough employee, said she may have to leave Fairbanks if she receives another rent increase. "I have lived here 15 years, I have worked in this area and spent my money here. I resent this situation. I consider Fairbanks my home and I am being driven out."

Rutledge said she does not think her landlord is gouging, and said the increases have been reasonable and over a reasonable period of time, but her salary has

not gone up accordingly. She said half of her pay goes toward rent and utilities. "There is a lot of money in town and I don't blame the people who own apartments. They could make a lot more. Everyone says if you can't make it in Fairbanks go work on the pipeline, but I don't think that's an answer," she said.

Rutledge, like many of those testifying, felt the permanent residents of Fairbanks with stable jobs were the ones suffering most from the impact of pipeline construction, and the ones who are being forced to move out, but she didn't know what the state could do.

One suggestion has been rent controls, but Mario Grassi, a landlord here, told the legislators that would be a mistake. He said if rent controls were instituted, landlords would raise rents to the maximum in order to insure income for the duration of the controls. Other problems landlords face, he said, are increased costs and the risks in any new construction here. "I was thinking of building, but I won't now with the possibility of rent controls," he said.

Other testimony included statements about lack of child care facilities, increase in juvenile delinquency, high food prices, high fuel costs, and hiring of out-of-state persons over Alaskan residents for pipeline jobs.

POLITICAL SCENE

Housing Hearings Slated Here

Governor Jay Hammond indicated this week that he had ordered that public hearings be held in Fairbanks, Anchorage, and Valdez to determine whether residents feel there is a need for imposition of rent controls.

Commissioner of Commerce Tony Motley will chair the meetings which are to be held in the next two weeks.

"I am concerned about the problems facing residents of communities impacted by pipeline construction activities. I want to do what is possible to help but at the same time I do not want to force state decisions on local residents where they are not desired."

"To date I've received no request for consideration of rent controls from the local governmental leaders of those cities.

"I am, therefore, sending letters to them asking they respond with their comments and recommendations. Requests for state action have already come from some local residents, from Fairbanks legislators, and I am aware of news reports on the rental situation.

"Commissioner Motley is organizing the public meetings at this time. He will seek public input to determine whether rent controls should be imposed."

The pipeline activity continues to escalate each week as does pipeline impact. And the housing crunch which began last year and provided the pressure for the passage of the rent control measure is the dying days of the last legislature continues to intensify.

The advertisements seeking housing are getting more and more desperate, with some making pleas for housing for the sake of children remaining in school, et cetera.

Local governmental leaders have not made it a point to call for rent control. One reason is that there are two groups of constituents, the landlords and the tenants. The landlords want to increase rents to cover climbing costs.

Some Chamber of Commerce people are concerned that rent control might put a damper on construction of more housing this summer. The Chamber has asked input from both tenants and landlords and for a while the chamber indicated it was getting very little response. This week, a spokesman indicated that the situation had changed and that quite a number of persons had contacted the chamber on the subject.

Most local leaders are receptive at least on the idea of having hearings to find out the wishes of the people.

Stampede Coming?

Many Fairbanksans are worried that Fairbanks will be overrun this summer by a stampede of jobseekers from the lower states and that to take care of the influx some kind of public campground or tent city will have to be devised so that there will be some place where those with little funds can at least have access to water and sanitary facilities.

Already the jobseekers are flooding into the city and even the public parking lots are beginning to fill up with campers, old buses being utilized as mobile homes, and even panel trucks, station wagons and old hearses fixed up for batching.

Some city councilmen Monday night pointed out that these

Nuggeleer ...

-Continued from page 1

clamping down on security as they did prior to the big 1969 lease sale.

THE RUMOR IS TRAVELING, however, of a significant strike by Mobil Oil Co. on the slope and the announcement is expected soon.

The strike reportedly is at the Gwydyr Bay South No. 1 exploratory well. Unofficially, reports indicate the strike was made in the Sadlerochit formation, the main producing zone in the Prudhoe Bay Field.

The Gwydyr Bay South No. 1 is located about 6 miles north of a B² development well.

MUS General Manager Wally Droz confirmed recently that the MUS System was still selling lists of its customers but only to organizations soliciting charitable contributions.

A Fairbanks woman had a non-list phone installed under her maiden name which name was known to only members of her immediate family and one other person. While her phone number may not have been divulged, the name and address was. She received a letter from the Easter Seal campaign which had purchased the list of telephone customers from MUS for about \$500.

Worshippers at the Easter Sunday will dow donated by Geo Preston was 1900 to mine gold a out, and he became became its manage Descendants' community.

IF YOU CAN
A CAR YOU

All-Alaska Weekly, Apr. 11, 1975 (76ms)

Mobile Homes a Solution?

With existing housing overpriced and over-crowded, it isn't long before people in need of a place to live start thinking about a mobile home, that modern-day answer to the tent.

At first some people might be put off by the price. ("\$4,500 down for a trailer?" exclaims a young mother. "Outside you can GET one for \$4,500.")

But nevermind. You'll have two months to find the money since it will take at least that long, according to one mobile home salesman, to get delivery.

And you needn't waste time wishing you could get it sooner — there isn't anyplace to put it anyway.

"Right now there are no spaces," said a woman at a sales yard, an amazing admission for someone who was hoping to sell mobile homes.

"Nothing," said the woman at the Lakeview Court. "No, we aren't expanding."

But another mobile home salesman was more optimistic. "There will be parks sprouting up all around," he said hopefully. "There should be spaces around the first of July." And he mentioned a 300 space development which he understands is going in somewhere on Badger Road.

But is it?

"Lots of people are coming in with the idea of building trailer courts," says John Jansen of the State Department of Environmental Conservation.

The department is still waiting, in most cases, for the necessary data to be supplied.

But, Jansen says, it appears that much of the land being purchased for this purpose has either a high water table or permafrost. Either condition makes it almost impossible to dispose of waste. If the waste water can not percolate down, says Jansen, there is no place for it to go but to the surface.

Even if they put in treatment facilities, he says, they still can't pump it into the ground if its going to come back up.

Of the larger courts which are proposed, Jansen says only one court looks like it will be

the state but also with borough zoning ordinances. "We get 25 to 30 calls a day," says borough Planning Director Donald Gilmer, "from people wanting to know what they can do."

Every case, Gilmer says, has to be studied on its merits. The

zone and the size of the parcel must be considered.

"But," he says, "we are remembering that what we put in we're going to have to live with after the boom is over. We have good examples from World War II of what not to do. People rented out spots in their back yard, side yard. We still have some of that junk left."

Any mobile home park — defined as any land parcel which is

occupied by more than two mobile homes — must get a borough permit. And in general the borough requires 3,000 square feet per trailer. The trailers must be at least 15 feet apart.

Anyone found operating a mobile home park in violation

of borough or state ordinances can be charged with a misdemeanor and if found guilty fined \$300 for every day the park continues to operate.

Illicit trailers are usually discovered, Gilmer says. Besides two employees whose duty it is to enforce the ordinances, the neighbors usually supply a tip.

"Then we take them to court," Gilmer says, "and we are currently winning our cases."

trols were justified only if housing was limited by a disaster like war. The solution, he said, was to build more housing and he warned that funds for housing could dry up if rent controls were instituted.

Landlord Dennis Osterdock, who has four rental installations, detailed the price increases landlords must face. Taxes are up 50-110 per cent, he said. Maintenance materials are up 20 per cent; general labor, 35 per cent; cost of water and heat, 85 per cent; garbage service, 60 per cent. Even with full occupancy, Osterdock said, two of his four operations were run at a loss in February.

And Jim Price, who said he was both a landlord and a tenant, suggested that if the state was going to control rents it should guarantee that landlords were able to cover their costs during times when their rental units were vacant.

The next step, according to the governor's office, will be for Motley to review the evidence given at the hearing with his staff and the governor's staff and come up with a recommendation for the governor. The recommendation is expected within two or three weeks.

Hearings on the housing situation are also planned for Valdez and possibly Anchorage.

Rent Hearing

—Continued from page 1

stant al impairment of free choice in residential rental housing, or when the average vacancies fall below 3 per cent in the area and remain there for at least 90 days."

At the hearing Motley heard all sides. Nobody, though, told him that housing wasn't tight in Fairbanks.

There was general agreement that there isn't enough rental housing to go around and that the rental costs are making life difficult for many people, especially those on non-pipeline incomes. But there were clearly two opposing views of what should be done.

Those speaking for and against rental controls appeared to be out in equal force. Landlords and tenants followed one another to the podium to explain their positions.

Typical of the renters' positions was that of Ron Tracy who said his rent had been raised from \$395 in June to \$455 in November to \$525 this month.

"They cite heating, maintenance, taxing, insurance," said Tracy.

"As far as maintenance goes they haven't done anything. And I know fuel has gone up but they could save on the bill if they did something about the heat loss."

Tenant Rodney Blakestead

testified that the rent at his quadriplex had gone up from \$475 in October to \$750 this month.

Blakestead, a geologist, said he plans to move out and added that two of his neighbors in the quadriplex, a doctor and a computer technician, were moving away from Fairbanks because of the high rents. Only the construction worker, the fourth tenant, could afford to stay.

And tenant Ted Switz drew applause when he said that the rent increases imposed in his apartment complex added up to \$100,000 a year.

"That," said Switz, "is a hell of a lot of fuel."

On the other side Walter Sczudlo, president of Arctic

All-27-28 Weekly
Apr. 71
(Fairbanks)

Over 200 Attend Hearings

Is there a housing emergency in Fairbanks?

Does the situation justify the extreme measure of rent control?

More than 200 people came to the Alaskaland theatre Tuesday night to hear Fairbanksans give their views on what is happening and what should be done about housing in Fairbanks.

One of the 200 was Commerce Commissioner Tony Motley. On the basis of the testimony given, Motley will advise the governor on the necessity of imposing rent controls. A 1974 law gave the governor the power to "promulgate regulations concerning the control of resident rent."

An emergency, as defined by that law, exists when "the rate of vacancies in residential housing is so low that there is a sub-

—Continued on page 15



Hoffman

55

ALL-ALASKA WEEKLY

Vol. 5, No. 39

All-Alaska Weekly, April 11, 1975

Page 1

All Alaska Weekly, April 11 (Fairbanks)

HOUSING CRUNCH INTENSIFIES

★ ★ ★ Homeless Describe Their Dilemmas ★ ★ ★

Some Leave, Some Live in Hotels, Good Tent Business Seen



In a Housing Office sweat shirt, Rusty Myers, in a crunch lifting 250 lb. weight. — Jo K. Brown Photo

All-Alaska Weekly, April 11, 1975 (cont)

Rent Control - Pro and Con

In an attempt to clarify the arguments for and against rent controls, the All-Alaska Weekly interviewed Alaska Legal Services Supervising Attorney Ed Noonan, who favors some form of rental control, and Sam Barnes, Fairbanks realtor who opposes rent control.

Tenants aren't denying landlords the right to make a reasonable profit, says Noonan. Rent control is not a price freeze. It would allow increases. That point hasn't been brought out well.

Rent control is just control. It is just trying to control the gougers — as the landlord who

increases the rent from \$300 to \$850. There's no justification for that. It's usually clear who the gougers are.

With rent controls, says Noonan, landlords would be able to raise rents but they would have to give justification. They wouldn't be able to make unlimited increases in their profits. People shouldn't get fat with windfall profits when they are hurting other people. And they are. They are hurting all the people with fixed incomes, especially elderly people and people on welfare. We are having to ship some people out of the state, because they can't afford the rent.

What is gouging exactly? Going for the windfall profits, says Noonan. Going well beyond actual increases in cost.

There's a word, he says, used in law: unconscionability. It has to do with the relative bargaining power. If the tenant has no alternatives he has no bargaining power. This is what we are seeing in our office. We've had more people come in than we actually have represented. Most people don't dare to make waves because they have no place else to go.

We can go to court in landlord-tenant cases using the charge of unconscionability. We can get the rent back. But we can't secure the individuals' right

to stay in the apartment at the old rate.

Most rent control systems, says Noonan, exempt new housing from the controls. The purpose of this is to allow the long time residents to keep their apartments.

Will there be rent controls? There is enough momentum, Noonan says. I think there will be some sort of control. People are actually willing to listen to the problems of consumers, even though the consumers don't think they are. If people write

—Continued on page 3

"There's lots of rooms but they're all took."

The husky man in the brand-new parka was explaining why he had spent the night at the Salvation Army but he could have been telling the story of housing in Fairbanks.

"The tent business is gonna be good," said the man at Alaska Tent and Tarp. "We're building 'em as fast as we can." And indeed, a wall tent from Tent and Tarp was one of two offerings in the Unfurnished Apartment section of the daily newspaper one day last week.

No one has yet offered a prize for the best housing crunch story but everyone seems to have a candidate.

There are stories about apartment vacancies being auctioned off, about rents of \$1000 per month, of old-time residents being kicked out to make room for renters who can afford exorbitant rents.

But there are always stories. Is it really so bad?

"Yes," says Linda Resh. "This is the last straw." She has lived in Fairbanks all of her life and is now being forced not only to leave her log house on 2nd street but to leave Fairbanks entirely.

For a while it seemed that she was one of the luckier ones. Her landlord, who was living in Montana, was offered \$600 a month and more for the two-bedroom log house. But he only raised the rent to \$400.

Then the landlord decided to return to Fairbanks and sent word that he would want to move into his house. Resh doesn't blame him: "He's up the creek too."

"We checked everything," says Resh, who, with her daughter Jenny, shares the house with another woman and her two children. "We called all the realtors; we were willing to take a lease with an option to buy. But nothing."

"We put the word out to all of our friends. It seems that the only way you might find a place is through word of mouth. Somebody knows somebody who's leaving."

But nothing came of the efforts and so the two women, their three children, along with Grandma the parrot, the kids' pet rabbit and the baby plants which are just getting a start, will be moving out of the log house at the end of the month.

They will move, all five of them, into the spare bedroom of some married friends, where they will get along until they

make the move to Juneau. They are confident that the housing situation there, even when bad, is much better than the situation in Fairbanks.

"There are a lot of people — old-timers — who are leaving," says Resh, "either going to Southeast or to the bush."

Will the Fairbanksans who leave be coming back someday? "I don't know if this will ever be over," she says. "There are more pipelines to be built. It may be 20 years. And naturally people come; this is the only

—Continued on page 2



Ed Noonan



Sam Barnes

Rent Controls Pro and Con

—Continued from page 1

to the governor, if they speak out, public opinion will be felt. People have to give the governor an idea of what the public opinion really is.

Rent controls, says Fairbanks realtor Sam Barnes, are not going to do anything for the availability of housing at this point. And it is unlikely that they would have a large effect on price. It is conceivable that there could be a price roll back — what a mess that would create.

In considering controls we must be concerned about the bundle of rights the property owner has, Barnes says. I don't think Alaskans are extremists.

We would like to see the state moving toward helping with the problem. There is legislation now which would insure that money will continue to be available for low interest veteran loans. These loans can help people build single family housing and also small apartment units. We would like to see that money continue to be available in spite

of the problems with the general fund.

The state can help by moving quickly with its low income housing program. The state has already acquired land on Noble street and we hope that they get that building off the ground as soon as possible. With luck that building should be ready by this time next year.

The toughest problem is the low-income people. Those who come for a job can either afford the high rents or they leave.

But we don't think the rent controls are the answer at this time. The hearings and the input is important. But I hope the commission will hold this in abeyance. There may come a time when realtors favor rent controls. Opinion is not totally one-sided among realtors now.

And controls might even harm some tenants. If the Department of Commerce said a landlord couldn't charge more than X dollars a month, some landlords might be encouraged to take the maximum.

Also any time you institute controls, there is an expense involved. If the landlord has to fill out forms, comply with regulations, that's going to be a burden and cause additional overhead expense. In the end the tenants will end up paying.

Rent controls too will make it harder to get money to build new housing.

If the new housing is not affected by the rent controls, will money for new construction be hard to find? To exclude new construction, Barnes says, would be grossly unfair to the guy who has had rental units for years and who has suffered through vacancies. And besides, people in financing shy away from rent control areas.

How would landlords react to controls which did not freeze prices, but which asked land-

lords to justify rent increases?

Alaskans are individualistic. I think it would not set well with the landlords in the community to have to justify their actions to a review board. For one thing a lot of people don't

keep those kinds of records. If they had records of what their expenses were they would probably raise the rent more than they do.

What can be done in cases

of gouging? The community should try some jawboning. When a tenant is treated unfairly, he should discuss it with somebody who is knowledgeable. If he is truly being gouged he should go to the public.

Some landlords have gotten bad publicity in the past and there will be a stigma on those establishments for a long time. Public pressure.

What is the future for hous-

ing in Fairbanks? In the long terms, says Barnes, the future looks somewhere between good and wonderful. But we do have a legitimate concern: what happens during the lulls. A one year lull between the oil pipeline and the gas pipeline could really push a landlord out of shape. If anybody has an obligation to the landlord to see that he makes it through the "bust" periods it's the current "boomers."

Martial law in Da Nang

SAIGON, South Vietnam (AP) — Da Nang's military commander declared martial law in the refugee-clogged city Friday, imposed a 24-hour curfew and ordered his men to shoot to kill anyone causing disturbances.

Viet Cong gunners shelled the Da Nang area and some officials said the military situation was deteriorating and the city might fall to the enemy.

The United States began its emergency airlift of military equipment and medical supplies to South Vietnam Saturday, a U.S. Embassy spokesman said.

He said one plane already had landed in Saigon and although he was not certain he believed the airlift was being staged from bases in Thailand.

America also is financing an airlift of fuel, food and ammunition into the Cambodian capital of Phnom Penh and another plane shuttle to remove refugees from Da Nang in the crumbling

northern section of South Vietnam.

The Saigon command described the situation at Da Nang as "critical" Saturday as thousands sought to flee the city under North Vietnamese artillery attack.

Small North Vietnamese and Viet Cong probes were reported on the outer defense perimeter and radio contact was reported lost with Hoi An, the provincial capital of Quang Nam province 15 miles to the south. Da Nang is included inside Quang Nam province but is an autonomous city.

It was not clear whether Hoi An was attacked or whether the garrison simply fled in panic.

Officials said radio contact was lost before dawn with Da Nang command headquarters but later said contact was being maintained through other radio channels. There was no elaboration.

in terms of military economy while avoiding military entanglement — and that includes Cambodia," Woodcock said.

"Natural factors" such as climate and geology. They include the Tanana area near Fairbanks; the Cook Inlet area near Anchorage and the Kenai selection.

Where the legislature stands

By ANDY WILLIAMS
Our Juneau Bureau Chief

JUNEAU — The legislature is gearing up for a push for adjournment in early May, but legislative leaders say they may go home without passing what they consider their top priority — a tax on oil and gas reserves.

Senate President Chancy Croft, D-Anchorage, and House Speaker Mike Bradner, D-Fairbanks, both mentioned the reserves tax first when asked what their priorities were. And both indicated there might not be enough votes to pass it.

Croft said a reserves tax would be a major ingredient in the state's plan to raise revenue to bridge the deficit after the general fund runs dry and before oil from the North Slope begins to flow.

"But there are still a considerable number of senators who don't favor that approach," he said.

Bradner said the House intended "to put taxation of oil and gas in place in some sort of viable form."

"That doesn't mean it has to pass, but it means a substantial piece of homework should be done, expertise brought to bear, and that the bill should



Fink

Croft

reach its substantially finished form this session so that if it is held over, the critics can have something to shoot at during the interim," he said.

House Minority Leader Tom Fink, R-Dist. 7, predicted flatly the tax would not pass.

"The tax on oil and gas in ground is dead. The Natives have absolutely killed it," he said.

Fink said the nine-member Republican caucus would oppose it, as would Native legislators. He predicted enough conservative Democrats and others sympathetic to the Natives' arguments would split off from the

30-member Democratic caucus to kill the bill.

Representatives from five Native regional corporations opposed the bill at a recent Senate Resources Committee hearing. They said the tax could cost the Arctic Slope Regional Corporation \$2 million a year and harm other oil and gas development programs. Oil and gas companies also oppose the bill, which could bring to the state up to \$250 million a year.

Bradner and Croft said they hoped to get priority bills into the other house by the middle of April, allowing two weeks to a month to push for adjournment.

"I would call an early estimated departure date out of here as being the first week in May," said Bradner.

"I'm notoriously bad at predicting length of sessions, but I'd still say somewhere around the first of May," said Croft.

House Finance Chairman Hugh Malone, D-Kenai, said the budget would be ready for presentation by the middle of April and that it would reflect total state spending of about \$600 million. That figure, Malone said, is what the

(Continued on Page 2)

Feeling the pain of a housing crunch

By STEVE KLINE
Daily News Staff Writer
(c) 1975 Anchorage Daily News

Anchorage faces a summer housing shortage of crisis proportions, and the reaction of public officials ranges from unconcerned to unimpressed, tempered with political buck-passing.

Already the vacancy factor throughout the metropolitan area is about 1 per cent — but that figure includes homes, and the rental market is practically nil.

When asked about the anticipated problems, projections and possible solutions for the housing shortage,

News analysis

public officials said:

"We're not doing anything on it."

— George Sullivan, Anchorage mayor

"It's a statewide problem. The state should do something about it."

— Harry Donahue, staff director,

Greater Anchorage Area Borough

"I think probably these things can best be addressed at the local level."

— Jay Hammond, governor

"We can't get into it, even if the need is there."

— Robert Wilson, director of housing

management, Alaska State Housing Authority (ASHA)

"We know so little about it, we're going to wait and see."

— William Satchek, director,

Alaska Division of Parks

Everywhere the statistical signs point to a major influx of newcomers to Alaska by summer, with pie-in-the-sky pipeline jobs looming as the major attraction for unemployed Outsiders.

Border crossings have nearly doubled. Out-of-state unemployment claims and motor vehicle registrations are up dramatically. The population has soared to about 170,000 in the Anchorage

area, up from 126,389 logged in the 1970 census.

Ben Marsh, who represents mobile home court and dealer associations, predicts the area will run out of mobile home spaces by October. Landlords renting apartments report 50 to 100 responses per ad.

Demand for beds at the Armed Services YMCA is up 160 per cent over last year at this time. Monthly private housing costs are up 40 per cent. A man overhears a story of a woman who rents out seven beds in her suburban home.

The Marston Rental Office does not bother to advertise any more, and still

receives five calls an hour from persons seeking rentals.

"I was looking for an apartment about four months ago," said Patty Kelley, of the Marston office, "and I had trouble, too."

Cindy Thaxton, at the borough planning department, has been studying — and living — pipeline impact. She shares a duplex with four other women. And in her research, she has seen buck-passing assume absurd proportions.

"Once I made five calls to get the answer to one question," she said, "and

(Continued on Page 2)

S B

3 4 6

To: Terry

From: Rick

Re: SB 346

The question presented is ~~will~~ will the inactment of SB 346 emasculate the Uniform Alcoholism and Intoxication Treatment Act as indicated in the note to AS 47.37.250.

Answer: No

Reason: The note^{at 47.37.250} was the result of Peter v. State. The facts in Peter are that ~~the~~ State Trooper Sage arrested Peter after observing Peter in an intoxicated condition on a highway. Peter was brought to jail rather than his home. Later that night a burglary was reported and Trooper Sage recognized some of the missing items as having been taken from Peter as the result of a search incident to his arrest.

The question was did AS 47.37 impliedly repeal 13 AAC 02.175(c) which would mean Peter's arrest was illegal.

The court will find an implied repealer if a later act covers the whole subject of the earlier one and is clearly intended as a substitute. 13 AAC 02.175(c) provided "[a] person may not be upon or along a highway under the influence of an intoxicating liquor." ~~The~~ 13 AAC 10.115 defined highway to include public subdivision and the entire width between

property lines. The court ~~was~~ said that these two taken together were nothing more "than a law prohibiting public drunkenness in the guise of a traffic regulation" and hence should be impliedly repealed by AS 47.37.

SB 346 is not as ~~broad~~ all encompassing as 13 AAC.02.175(c) because ~~it~~ it is limited to the "traveled portion of a highway" and "so as to be a hazard to the motoring public." In other words SB 346 is not a bill imposing penalties for public drunkenness

Introduced: 4/3/75
Referred: Health, Education
and Social Services

1 IN THE SENATE

BY RAY, MILLER AND HUBER

2 SENATE BILL NO. 346

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the applicability of the Uniform
7 Alcoholism and Intoxication Treatment Act."

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

9 * Section 1. AS 47.37.250(a) is amended to read:

10 (a) Nothing in this chapter affects a statute, ordinance, or
11 regulation relating to (1) drunken driving, driving under the influence
12 of alcohol, or other similar offenses involving alcohol and the opera-
13 tion of a vehicle, aircraft, boat, machinery, or other equipment, [OR]
14 (2) the sale, purchase, dispensation, possession, or use of alcoholic
15 beverages at specified times and places or by a particular class of
16 persons, including prohibitions against drinking intoxicating beverages
17 in specified public places, or (3) being upon the traveled portion of
18 a highway while intoxicated, so as to be a hazard to the motoring
19 public.

21 *Uniform Act causes ambiguities with different specific
22 legal prohibitions in certain pages*

23
24
25
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27
28
29 *needed for # 345*

S B

354

COMMITTEE REPORT

4/25/76

HOUSE

Mr. Speaker:

Date May 22, 1976

The Committee on TERRITORIAL has had SSSB 954 BM

under consideration. A Majority of the members of the Committee

- () recommends it DO PASS
- () recommends it DO NOT PASS
- () recommends it DO PASS WITH ATTACHED AMENDMENT(S)
- recommends it BE REPLACED WITH CS FOR _____ AND THAT
CS FOR _____ DO PASS
- () "and" recommends it BE REFERRED TO THE _____
COMMITTEE
- () report it back WITHOUT RECOMMENDATION
- () "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends: NO REC

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends: T. W. ... Chairman

Letter of Intent CSSB #354am

The House Judiciary Committee has had committee substitute for Senate Bill # 354am(Limited Liability Companies) under consideration and has held public hearings concerning the bill.

Questions have been raised before the committee similar to those raised before the Senate Judiciary Committee, in particular in regard to what body of law would govern when questions arose as to undercapitalization and using a limited liability company to perpetrate a fraud on the public.

~~The bill is silent in this respect. The Committee is concerned with this silence.~~ Legal research has indicated that there is little history in this respect. The Committee, therefore, feels it important to expressly state the legislative intent to those situations in which the established body of law concerning corporations and "piercing the corporate veil" would apply to limited liability companies.

The Judiciary committee recognizes that in certain circumstances the veil by which the limited liability company protects its members from personal liability for the debts of the company ought to be pierced, holding the members personally liable. The committee feels that circumstances giving rise to personal liability of members ought to be closely akin to the kinds of circumstances which permit a court or administrative agency to set aside the "corporate veil" for the purpose of holding corporate shareholders personally liable for the debts of the corporation. Thus, in situations where the court would set aside the corporate entity to hold shareholders liable when the corporation is acting as the alter ego of the

shareholders, or is undercapitalized, or where a corporate fiction is used as a means of evading legal obligations, circumventing statutes, perpetrating fraud, achieving or perpetrating monopoly, or for protection of crime and justification of wrong, or any other circumstances which might give rise to the disregard of the corporate veil, the committee expects the courts to treat the limited liability company in the same manner.

In other words, the limited liability company act should not be utilized as a device by which the organizers could avoid penalties for fraudulent or non-legal propositions any more than they could if they were incorporators of a regular corporation.

Respectfully submitted,

Representative Terry Gardiner
Chairman
House Judiciary Committee

As per request by Representative Brown

Amendment to CSSB #354 (Limited Liability Companies)

Add new Subparagraph....

AS 10.50.120(c)

In those instances in which the validity of the limited liability company is brought into question by use of under capitalization, use of the limited liability company to perpetrate a fraud on creditors of the company or use of the limited company to violate public policy, the protection of the limited liability company may be disregarded and personal liability imposed on the contributing members of the company,

① *to the same extent or in same manner*

SENATE JOURNAL

ALASKA STATE LEGISLATURE

NINTH LEGISLATURE - SECOND SESSION

JUNEAU, ALASKA

Friday

February 20, 1976

Fortieth Day

Pursuant to adjournment, the Senate was called to order by President Croft at 10:16 a.m.

The roll call showed all members present.

The prayer was offered by the Chaplain, Father Dale Sarles.

Senator Kerttula moved and asked unanimous consent that the journal for the thirty-ninth legislative day be approved as certified. Without objection, it was so ordered.

MESSAGES FROM THE GOVERNOR

February 19, 1976

The Honorable Chancy Croft
President of the Senate
Alaska State Legislature
Juneau, Alaska 99811

CS
HB
550
am
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Dear Mr. President:

I have this day vetoed Committee Substitute for House Bill no. 550 amended Senate. The portion of the bill which required the veto is that which attempts to give to the Legislative Affairs Agency the power to allocate office space in the capitol building except for that occupied by the Governor's Office. Since all floors of the capitol building but the third and fourth are already occupied by the legislature, the reason for the bill appears to be to give the Legislative Affairs Agency control over the fourth floor.

Initially this bill would have given the Legislative Council administrative control over space assigned to the legislature. In the Senate the bill was amended to grant the Legislative Affairs Agency control over the physical space in the capitol building regardless of

CS

HB
550
am
S

which branch of government occupied that space. In doing that, the legislature went beyond a specific contractual agreement reached with the executive branch for the allocation of office space prior to the beginning of the session. More significantly, the legislature has attempted to establish a scheme whereby it may now engage in the administrative function of allocating office space. I am advised by the Department of Law that insofar as the bill attempts to do that, it apparently violates the doctrine of separation of powers.

Rather than engage in any extended legal discussion in this message, I am making available the opinion I received from the Department of Law on the subject. You will note that the Department finds two basic legal defects with the bill. First the Department feels that the amendment on the floor of the Senate changed the subject of the bill, which resulted in the original title of the bill not adequately expressing its subject matter. The Department also raises the strong possibility that the bill violates the separation-of-powers principle.

I sincerely hope that my veto does not result in another legal confrontation between the legislative and the executive branches of government. During the last three years, two suits have already been brought by the legislature against the administration in an effort to expand legislative powers. The legislature has lost both of those suits. In Egan v. Pipeline Impact Committee, C. A. No. 74-236, Super. Ct., 1st Jud. Dist. (Alaska 1974), appeal dismissed, Sup. Ct. No. 2424, Order of Nov. 7, 1975, the Superior Court held that while the legislature might impose conditions for allocation on impact funds, it could not administer the allocation of those funds. In Bradner v. Hammond, C. A. No. 75-383 (1st Jud. Dist. (Alaska 1976)), the Superior Court in Ketchikan recently held that the legislature could not expand its confirmation powers beyond that permitted in the Constitution. That latter decision, of course, has brought into question a whole host of confirmations which, until now, have been submitted to the legislature out of comity rather than necessarily legal obligation.

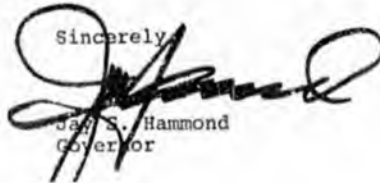
The administration has already tried hard to accommodate the legislature's need for space. During the period of one year the legislature has increased its total office space from 47,907 square feet to 67,900 square feet. Its space in the capitol building has been increased from 29,600 square feet to 40,800 square feet. After an initially confused situation over whether executive offices would move from the capitol, extensive good faith negotiations were held with the legislature to reach an amicable resolution. We thought we had achieved that resolution. We also thought that we had set the tone for additional negotiations in the future to provide adequate working space for the legislature. This bill removes the discussion from one of cooperation to a point of confrontation.

There are a great many problems facing this state. I know that legislators want to deal with those problems just as the administration wants to deal with them. I think it is disheartening for the general public to see public time and money being spent on this type of business. Surely the legislative branch and the executive branch have better things to do than to confront each other in court over whether or not particular legislators are entitled to a particular office on a particular floor of a state building.

CS
HB
550
am
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I have advised individual legislators and I advise the legislature as a whole that the administration stands prepared to try to reach long-range solutions to the space problem and to continue our dealings in good faith with the legislature to do so. I have no intention, however, of accepting another effort by the legislature to extend its constitutional powers by usurping authority of the executive branch. I think this bill would be destructive even if it were constitutional, for it makes it more difficult to reason together. The problem is simply compounded by the bill's legal defects.

Sincerely,



Jay S. Hammond
Governor

MESSAGES FROM THE HOUSE

Message of February 19 was read, stating the House has passed SENATE BILL NO. 607 (budget information available to the legislature) with the following amendment:

SB
607
am
H

Page 1, line 12: After "year" change the period to a comma and add:

"except that following a gubernatorial election year the advance copy shall be provided by the second Monday in January."

and transmitting SENATE BILL NO. 607 amended by the House for consideration.

Senator Ray moved and asked unanimous consent that the Senate concur in the House amendment to SENATE BILL NO. 607. Without objection the Senate concurred and SENATE BILL NO. 607 amended by the House was referred to the Secretary for enrollment.

CS Message of February 19 was read, stating the House has
 HB passed COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 606 amended
 606 and transmitting same for consideration.
 am

FIRST READING AND REFERENCE OF HOUSE BILLS

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 606 amended, en-
 titled:

"An Act relating to appointments to vacancies in the
 office of United States senator."

was read the first time and referred to the State Affairs
 Committee.

STANDING COMMITTEE REPORTS

SB The Judiciary Committee has had SENATE BILL NO. 670 (num-
 670 ber of superior court judges) under consideration and a
 majority of the committee recommends it do pass. The
 report was signed by Senator Ziegler, Chairman, and con-
 curred in by Senators Miller, Meland and Poland. Senator
 Tillion signed: "No recommendation."

Senator Ziegler moved and asked unanimous consent that the
 letter of legislative intent be spread in the Journal.
 Without objection, the letter follows:

"LETTER OF LEGISLATIVE INTENT

Re: Senate Bill 670 - relating to the number of superior
 court judges.

The captioned bill would increase the number of superior
 court judges in our state from 17 to 18. Four of those
 judges, rather than 3, will be assigned to the First Judi-
 cial District.

We are advised by the Supreme Court that if the legislation
 becomes law, the new superior court judge will be stationed
 permanently in Sitka. We have been assured that no new
 judge will be appointed to the district court bench in
 that city, although a vacancy now exists which is being
 filled as of this date on a temporary basis.

In other words, the district court judgeship will become
 vacant, and the superior court judge will handle the case-
 load of both courts.

Respectfully submitted,

Senator Robert H. Ziegler, Sr.
 Chairman, Senate Judiciary Committee"

SENATE BILL NO. 670 was referred to the Finance Committee.

The Finance Committee has had SENATE BILL NO. 640 (special appropriation to ACTION for the Foster Grandparent Program) under consideration and a majority of the committee recommends that it do pass. The report was signed by Senator Ray, Chairman, and concurred in by Senators Rader, Chance, Poland, Sackett and Ferguson. Senator Butrovich signed: "No recommendation." SB 640

SENATE BILL NO. 640 was referred to the Rules Committee.

The Finance Committee has had SENATE BILL NO. 664 (making of reparations to the taxpayer for late payment of tax refunds) under consideration and a majority of the committee recommends it do pass. The report was signed by Senator Ray, Chairman, and concurred in by Senators Rader, Chance, Poland, Sackett and Ferguson. Senator Butrovich signed: "No recommendation." SB 664

SENATE BILL NO. 664 was referred to the Rules Committee.

The Judiciary Committee has had SENATE BILL NO. 671 (appointment and qualifications of acting magistrates) under consideration and the committee recommends it do pass. The report was signed by Senator Ziegler, Chairman, and concurred in by Senators Miller, Meland and Tillion. SB 671

SENATE BILL NO. 671 was referred to the Rules Committee.

The Judiciary Committee has had SENATE BILL NO. 672 (small claims and magistrate jurisdiction) under consideration and the committee recommends it do pass. The report was signed by Senator Ziegler, Chairman, and concurred in by Senators Miller, Meland and Tillion. SB 672

SENATE BILL NO. 672 was referred to the Rules Committee.

The Judiciary Committee has had SENATE BILL NO. 673 (judicial appointments) under consideration and a majority of the committee recommends it do pass. The report was signed by Senator Ziegler, Chairman, and concurred in by Senators Miller and Meland. Senator Tillion signed: "No recommendation." SB 673

SENATE BILL NO. 673 was referred to the Rules Committee.

INTRODUCTION AND REFERENCE OF SENATE RESOLUTIONS

SENATE CONCURRENT RESOLUTION NO. 83 by the Judiciary Committee by request SB 83

Supporting the Governor's position for a delay in offshore lease sales for the Gulf of Alaska.

was read the first time and referred to the Resources Committee.

INTRODUCTION AND REFERENCE OF SENATE BILLS

SB 678 SENATE BILL NO. 678 by the Health, Education and Social Services Committee, entitled:

"An Act relating to the public school foundation program; and providing for an effective date."

was read the first time and referred to the Health, Education and Social Services Committee and the Finance Committee.

SB 679 SENATE BILL NO. 679 by the Health, Education and Social Services Committee, entitled:

"An Act relating to the public school foundation program; and providing for an effective date."

was read the first time and referred to the Health, Education and Social Services Committee and the Finance Committee.

Senator Kerttula moved and asked unanimous consent that the Senate recess to a call of the Chair for the purpose of Democratic and Republican party caucuses. Without objection, the Senate recessed at 10:29 a.m.

APTEE RECESS

The Senate reconvened at 11:02 a.m.

Senator Kerttula moved and asked unanimous consent that the Senate revert to Communications. Without objection, it was so ordered.

COMMUNICATIONS

Memorandum of February 20 was received from J. H. Hogan, Director of the Legislative Finance Division. This memorandum appears as Senate and House Supplement No. 3 to today's journal.

Senator Ziegler moved and asked unanimous consent the Senate revert to Standing Committee Reports. Without objection the Senate reverted to:

STANDING COMMITTEE REPORTS

SB 354 The Judiciary Committee has had SENATE BILL NO. 354 (limited liability companies) under consideration and the

committee reports it back as follows: Senator Ziegler, SB
 Chairman, recommends it be replaced with COMMITTEE SUBSTI- 354
 TUTE FOR SENATE BILL NO. 354 and that the committee substi-
 tute do pass with the following amendment:

Page 17, line 17:

After "\$100" delete the period and insert: "for
 each year or part thereof the company is delinquent
 in filing."

Senators Miller, Meland, Poland and Tillion signed: "No
 recommendation."

Senator Ziegler moved and asked unanimous consent that the
 letter of legislative intent accompanying the report be
 spread in the Journal. Without objection, the letter
 follows:

LETTER OF LEGISLATIVE INTENT

Re: CSSB 354--limited liability companies

The Senate Judiciary committee has had the captioned bill under
 consideration since late in the 1975 session. It was sent us by
 the Senate Commerce committee for our review and for possible
 amendments.

We have considered the bill, taken public testimony, and the
 Committee Substitute for Senate Bill 354 represents the final
 work product of all people who have shown an interest in the legis-
 lation. The bill authorizes the creation of limited liability com-
 panies. The limited liability company is neither a corporation,
 a partnership, a limited partnership nor a joint venture. Rather,
 it is an organization which would enable the organizers of the
 company to have limited liability as is the case with corporate
 officials but which would enable the company to be taxed as a
 partnership, thereby enabling the organizers to live in the best
 of both possible worlds.

If certain criteria are met, it is likely, we feel, that the In-
 ternal Revenue Service will furnish us with a favorable ruling as
 to the mode of taxation to be applied to the company.

The Director of the Division of Banking, Securities, Small Loans
 and Corporations, Miles S. Schlossberg, is on record before our
 committee as being in favor of the act. He has devoted a great deal
 of time, research and analysis to the bill and feels that, if en-
 acted into law, it might do for the state of Alaska what corpora-
 tions have done for the state of Delaware in terms of income to
 our state.

When we began, Mr. Schlossberg's five areas of concern were:

1. Applicability of federal and state securities laws
 to a limited liability company;
2. Alien ownership disclosure;
3. Limited liability company name;
4. Piercing the corporate veil; and,
5. Miscellaneous drafting changes.

SB
354

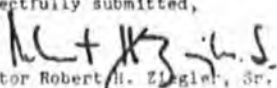
As to the items 1, 2, 3, and 5, there are no problems in the committee substitute, in his opinion. We concur. As to item 4, the Judiciary committee recognizes that in certain circumstances the veil by which the limited liability company protects its members

from personal liability for the debts of the company ought to be pierced, holding the members personally liable. The committee feels that circumstances giving rise to personal liability of members ought to be closely akin to the kinds of circumstances which permit a court or administrative agency to set aside the "corporate veil" for the purpose of holding corporate shareholders personally liable for the debts of the corporation. Thus, in situations where the court would set aside the corporate entity to hold shareholders liable when the corporation is acting as the alter ego of the shareholders, or is undercapitalized, or where a corporate fiction is used as a means of evading legal obligations, circumventing statutes, perpetrating fraud, achieving or perpetrating monopoly, or for protection of crime and justification of wrong, or any other circumstances which might give rise to the disregard of the corporate veil, the committee expects the courts to treat the limited liability company in the same manner.

(The preceding paragraph was furnished the committee by Mr. Schlosberg.)

In other words, the limited liability company act should not be utilized as a device by which the organizers could avoid penalties for fraudulent or non-legal propositions any more than they could if they were incorporators of a regular corporation.

Respectfully submitted,


Senator Robert H. Ziegler, Sr.
Chairman
Senate Judiciary Committee

SENATE BILL NO. 354 was referred to the Rules Committee.

CONSIDERATION OF THE CALENDAR

SECOND READING OF SENATE RESOLUTIONS

SJR
47

SENATE JOINT RESOLUTION NO. 47 (Congressional action on H.R. 200) was read the second time.

Senator Kerttula moved and asked unanimous consent that SENATE JOINT RESOLUTION NO. 47 be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

SENATE JOINT RESOLUTION NO. 47 was read the third time.

The question being: "Shall SENATE JOINT RESOLUTION NO. 47 (Congressional action on H.R. 200) pass the Senate?" The roll was taken with the following result:

Yeas:	20	Bradley, Butrovich, Chance, Colletta, Croft, Ferguson, Hohman, Huber, Kerttula, Meland, Miller, Orsini, Poland, Rader, Ray, Rodry, Sackett, Tillion, Willis, Ziegler	SJR 47
Nays:	0		

And so, SENATE JOINT RESOLUTION NO. 47 passed the Senate and was referred to the Secretary for engrossment.

SECOND READING OF SENATE BILLS

Senator Rader moved and asked unanimous consent that SENATE BILL NO. 491 (state aid to school districts affected by state activities) be returned to the Rules Committee. Without objection, it was so ordered.	SB 491
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SECOND READING OF HOUSE BILLS

HOUSE BILL NO. 120 (eye examinations for needy persons) was read the second time.	HB 120
---	-----------

Senator Ray moved and asked unanimous consent for adoption of the Finance Committee report, thus adopting the Senate committee substitute offered by that committee, page 335. Senator Kerttula objected, then withdrew his objection. Without further objection, SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 120 was adopted.

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 120 was read the second time.	SCS HB 120
--	------------------

Senator Kerttula moved and asked unanimous consent that SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 120 be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 120 was read the third time.

The question being: "Shall SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 120 (eye examinations for needy persons) pass the Senate?" The roll was taken with the following result:

SCS Yeas: 20 Bradley, Butrovich, Chance,
 HB Colletta, Croft, Ferguson, Hohman,
 120 Huber, Kerttula, Meland, Miller,
 Orsini, Poland, Rader, Ray, Rodey,
 Sackett, Tillion, Willis, Ziegler

Nays: 0

And so, SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 120 passed the Senate.

Senator Kerttula moved and asked unanimous consent that the roll call on the passage of SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 120 be considered the roll call on the effective date clause. Without objection, it was so ordered.

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 120 was referred to the Secretary for engrossment.

HB HOUSE BILL NO. 424 (membership of the advisory board on
 424 alcoholism) was read the second time.

Senator Chance moved and asked unanimous consent for adoption of the Health, Education and Social Services Committee report, thus adopting the Senate committee substitute offered by that committee, page 324. Without objection, SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 424 was adopted.

SCS SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 424 was
 HB read the second time.
 424

Senator Kerttula moved and asked unanimous consent that SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 424 be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 424 was read the third time.

The question being: "Shall SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 424 (membership of the advisory board on alcoholism) pass the Senate?" The roll was taken with the following result:

Yeas:	20	Bradley, Butrovich, Chance, Colletta, Croft, Ferguson, Hohman, Huber, Kerttula, Meland, Miller, Orsini, Poland, Rader, Ray, Rodey, Sackett, Tillion, Willis, Ziegler	SCS NB 424
Nays:	0		

And so, SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 424 passed the Senate and was referred to the Secretary for engrossment.

UNFINISHED BUSINESS

The reconsideration of HOUSE BILL NO. 551 (supplemental appropriation to Legislative Affairs Agency) was not taken up this legislative day. HOUSE BILL NO. 551 was signed by the President and Secretary and returned to the House. HB
551

SPECIAL ORDERS

Senator Ferguson moved and asked unanimous consent that he be excused from a call of the Senate February 23. Without objection, Senator Ferguson was excused.

ENGROSSMENT AND ENROLLMENT

The following have been engrossed, signed by the President and Secretary and transmitted to the House for its consideration:

SENATE JOINT RESOLUTION NO. 47

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 120

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 424

SENATE CONCURRENT RESOLUTION NO. 78 has been enrolled, signed by the President and Secretary, Speaker and Chief Clerk, and the engrossed and enrolled copies were transmitted to the office of the Governor at 3:15 p.m. February 19, 1976.

SCR
78

ANNOUNCEMENTS

Joint Gas Pipeline Impact Committee w/Resources and State Affairs	Court Bldg.	Feb 20 1:00 p.m.
Judiciary	Room 5 Capitol	Feb 22 1:30 p.m.
Commerce	Room 6 Capitol	Feb 23 3:00 p.m.
Finance	4th Floor Capitol	Feb 24 2:00 p.m.

ADJOURNMENT

Senator Kerttula moved and asked unanimous consent that the Senate adjourn until 2:00 p.m. February 23, 1976. Without objection, the Senate adjourned at 11:35 a.m.

Beverly Keithahn
Secretary of the Senate

February 1976

CORPORATION V. PARTNERSHIP V. LIMITED LIABILITY COMPANY

A. NON-TAX CONSIDERATIONS

	<u>CORPORATION</u>	<u>PARTNERSHIP</u>	<u>LIMITED LIABILITY COMPANY</u>
LIFE	Perpetual in most cases.	Agreed term, or life of any partner.	Agreed. Not to exceed 30 years.
ENTITY	Separate legal person.	Not a separate entity from individual partner.	Separate legal entity.
LIABILITY	No individual liability.	General partner individually liable for all obligations. Limited partner usually liable to the amount of capital contributed.	No individual liability.
TRANSFER OF INTEREST	In absence of restrictions interest may be sold to strangers.	New partnership agreement usually required.	<p><i>MEANS THEY CAN WRITE ONE - ALL LOS IF ANY</i></p> <p><i>Majority (numerical minority) controls</i></p> <p>May be transferred; however, if all other members do not approve of the proposed transfer by unanimous written consent, the transferee has no right to participate in the management and affairs of the company or to become a member, but is entitled only to receive his share of the profit or return of contributions.</p>
CAPITAL	Capital may be enlisted by sale of stock.	New capital secured only by loans, increase in membership or new contributions by existing partners.	Capital is contributed in money or property at inception or during the course of operation as set out in the Articles of Organization.
BUSINESS ACTION	Action authorized by specified percentage of directors and/or stockholders.	Unanimity of partners usually required.	Action authorized by <u>majority in interest</u> of the members.

CORPORATION

PARTNERSHIP

LIMITED LIABILITY COMPANY

CREDIT CONSIDERATIONS

The corporation possesses credit ability apart from stock membership. Certificates of stock may be used as collateral.

Credit is coincidental with membership and partners assume joint and several responsibility. Interests in partnerships are not ordinarily accepted as basis for loan or credit.

Credit will be extended to the company on the strength of its contributed or to-be-contributed capital.

MANAGEMENT

Shareholders may invest without participation in management.

All general partners involved in management responsibility

Management of the company is in the members unless management by a manager or managers to be elected by the members is provided in the Articles of Organization.

FLEXIBILITY

A corporation operates within its corporate franchise granted by the state or states in which it is authorized to do business.

A partnership is a contractual relationship which may be altered by unanimous agreement of the partners.

Flexibility is perhaps the Limited Liability Company's strongest point. The Articles of Organization will contain a minimum of restrictions and the working rules of the company may be drafted in the form of an operating agreement.

B. TAX FACTORS

TAX BURDEN

As a separate legal personality a corporation is subject to taxation, in addition to the taxation of the income received as dividends by its members.

Each partner is taxed on his proportionate share of income whether distributed or not.

Private revenue ruling will be requested of the Internal Revenue Service requesting that the company be classified as a partnership for federal tax purposes. As drafted the Limited Liability Company will lack at least two and perhaps three of the characteristics of a corporation; the third, centralization of management, will be lacking if management is reserved to the members.

Electing "Small Business Corporation". (1) Each shareholder's proportionate share of the corporation's undistributed taxable income is included in the gross income of the shareholder. The corporation pays no tax thereon. This substantially parallels the taxation of a partner's income from the partnership.

TAX CONCERN

CORPORATION

In close corporations, gross corporate income is reduced by reasonable salaries paid to officer-stockholders. Accumulation of profits may be made up to at least \$150,000 or to such larger extent as not to constitute avoidance of surtax by the stockholders and an unreasonable accumulation in terms of the requirements of business. Corporation taxes, plus individual taxes on the compensation for services or dividends, represent the tax burden of the corporate investment, as against the individual tax paid by partners.

Electing "Small Business Corporation." Undistributed taxable income of an electing corporation is taxable proportionately to each shareholder. Subsequent distributions out of this income to the shareholders are tax free. This substantially parallels the taxation of a partner's income from the partnership.

PENSION TRUST

Corporate contributions to a pension trust, within the amount allowed by law are deductible by the corporation. Stockholder-employees may be covered to same extent as other

PARTNERSHIP

All earnings and profits are taxable to the individual partner, unaffected by accumulations of earnings. However, once so taxed, there- after any distributions of these earnings are tax exempt to the individual partner.

Members of a partnership are not employees and are not proper beneficiaries under an exempt Pension Trust. However, under the Self-Employed Individuals Tax Retirement Act of 1962,

LIMITED LIABILITY COMPANY

All earnings and taxes are taxable to the members whether distributed or not. It is contemplated that the distribution rules and basis rules now applicable to the partnership interest will also be applicable to a limited liability company.

AS ARE LOSSES!

Unknown but it is suggested that the rules now applicable to a Subchapter S corporation which impose the limits of the Keogh Plan will also be applicable.

CORPORATION

employees, so long as there is no discrimination in favor of such stockholders.

Electing "Small Business Corporation". An electing corporation's contributions to a pension trust, within the amount allowed by law, are deductible by the corporation from its taxable income.

SOCIAL SECURITY TAX

Compensation paid to stockholding officers and employees is subject to Social Security Taxes.

Electing "Small Business Corporation". Compensation paid to stockholding Officers and employees is subject to Social Security Taxes.

ASSIGNABILITY OF INTEREST OR INCOME

An unqualified transfer of stock ordinarily requiring no other person's consent, will entitle transferee to dividends or distributions

Electing "Small Business Corporation". Transferee is entitled to dividends and distributions, but the stock must be transferred to an individual or estate and the transferee must consent to the continuation of the "tax option" status.

PARTNERSHIP

partners who own more than 10% of the capital or profit interest in the partnership may, deduct the full amount of their contribution to a pension plan up to \$7,500.

Partners do not pay Social Security Taxes upon their salaries from the partnership. However, they are required to pay the tax on self-employment income.

Any assignment of interest requires consent of the other partners and may create a new partnership.

LIMITED LIABILITY COMPANY

Compensation for services paid to employee, whether member or not, subject to social security tax. Distribution of profits to members would not be.

A member's interest in a Limited Liability Company may be transferred (see page 1). Income from date of transfer taxed to transferee. May be capital gain to transferor on transfer of his interest.

	<u>CORPORATION</u>	<u>PARTNERSHIP</u>	<u>LIMITED LIABILITY COMPANY</u>
COMMUNITY PROPERTY STATES	<p>Dividends from investments made from community property become community property.</p> <p><u>Electing "Small Business Corporation"</u>. Dividends from investments made from community property become community property.</p>	<p>Whether income is community or separate income depends upon the law of the state of domicile.</p>	<p>Same as partnership, with the results depending on the community property laws in the several states. Alaska does not have community property.</p>
DUAL MEMBERSHIPS	<p>Because it would be extending its credit, liability and the powers of the Board of Directors beyond legal scope, a corporation cannot be a direct member of a partnership in some states. Can in Alaska.</p> <p><u>Electing "Small Business Corporation"</u>. Stock may not be held by either a partnership or another corporation.</p>	<p>A partnership may own some or all of the stock of a corporation and so function in two capacities.</p>	<p>A Limited Liability Company enjoys flexibility in this area and may be owned by other entities or individuals and participate in other entities and business enterprises.</p>

(1) An electing "small business corporation" is a domestic corporation which does not have more than 10 shareholders and which otherwise comes within the requirements of Subchapter "S" of the Internal Revenue Code, and whose shareholders elect to include in their personal income the current taxable income of the corporation.

STATE OF ALASKA

DEPARTMENT OF REVENUE

STATE OFFICE BUILDING

POUCH SA - JUNEAU 99811

8354
JAY S. HAMMOND, GOVERNOR

May 19, 1976

The Honorable Terry Gardiner
Pouch V
Juneau, AK 99811

Dear Terry:

In response to your letter of May 18, please be advised that we have no statistical for estimating the impact of the limited liability companies. The proponents of this legislation have estimated that, based on their research, there may be up to 5,000 companies organizing in the State of Alaska. We have no basis on which to confirm or refute their estimate.

The exact effect of the enactment of this legislation is difficult to ascertain at this point. The law was drafted with the intent that those companies are to be treated as limited partnerships for tax purposes. Our review of the law would indicate that this is probably correct. Actually, the final decision will be made by the Internal Revenue Service after the law is enacted. To the best of our knowledge, there is no reason to believe that the State of Alaska will lose any revenue as a result of this legislation, since it would appear that the majority of organizations taking advantage of this law would have organized as partnerships anyhow.

Our fiscal note anticipated revenue being generated through our normal audit of returns filed and did not take into consideration the additional estimated \$1,000,000 which will be generated in the form of filing fees from the 5,000 companies which may organize under this statute.

In summary, based on our research, it does not appear that the State of Alaska will incur any loss of tax revenues from the enactment of this legislation. In fact, the State should receive additional revenue in the form of filing fees which it would not normally receive.

If you have any further questions regarding this law, please feel free to contact me.

Sincerely,



Sterling Callagher
Commissioner

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

Pouch K, Capitol Bldg.
Juneau, Alaska 99811

May 20, 1976

The Honorable Terry Gardiner
Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: SB 354 - Limited Liability Companies

Dear Representative Gardiner:

You have requested this office for an opinion for the Judiciary Committee regarding the method of taxation which would be imposed on a limited liability company. Because, as you state in your letter, the time before adjournment is short, and because of the unique character of the limited liability company, I will be unable to give you a definitive answer to your opinion request. Accordingly, I will instead indicate to you our best judgment on this matter, realizing that the Internal Revenue Service will make their own determination on the question with regard to federal income taxes.

For purposes of state income taxes levied under AS 43.20, a limited liability company will be treated as specified by the Internal Revenue Code and the regulations and rules adopted by the Internal Revenue Service (IRS). Since limited liability companies do not exist in any other state, and the Internal Revenue Service will not issue a ruling with regard to their tax status until SB 354 becomes law, no one can say with certainty how they will be treated. A fair judgment, however, can be made by testing the elements of a limited liability company under SB 354 against the requirements of Sec. 7701 of the Internal Revenue Code and the regulations promulgated thereunder. In viewing SB 354 in the light of Sec. 7701 of the Internal Revenue Code and Reg. 301.7701-2, it is our best judgment that they will be taxed as partnerships. That is not to say, however, that the IRS would not determine otherwise, since obviously they might. No one can say with certainty, but it is our belief under present rules that it would be taxed as a partnership for state income tax purposes.



"1776-A TRIBUTE FROM OUR STATE TO OUR NATION-1976"




The Honorable Terry Gardiner
May 20, 1976
Page 2

For other taxes imposed by the state, such as business license taxes and excise taxes, the method of taxation does not vary with the type of taxpayer. Accordingly, SB 354 should not change the method of taxation for other taxes, and a limited liability company would be subject to tax as any other person whether individual, corporation or partnership.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By:


John R. Messenger
Assistant Attorney General

JRM:chp



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CHARLES N. DRENNAN
PATRICK E. MURPHY
TOM BATCHELOR

TEL 586-2210
AREA CODE 907

May 4, 1976

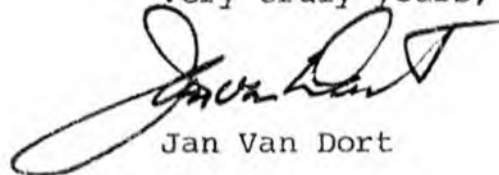
The Honorable Terry Gardiner
Chairman, House Judiciary Committee
State of Alaska
Pouch V
Juneau, Alaska 99811

Re: SB 354 -- Limited Liability Companies

Dear Chairman Gardiner:

Please be advised that Huna Totem Corporation, a village corporation organized under the provisions of the Alaska Native Claims Settlement Act, supports generally the limited liability company concept and supports specifically the version of SB 354 which is in your committee.

Very truly yours,



Jan Van Dort

JVD/amz

cc: Gerald Gray
Frank See, Sr.

Gerald Gray - Hoonah Totem Corp

Shareholder in Senco

Case 1 ~~#~~ SB 354

Pay less tax - Circulate funds to
tax one again

Bob Hoeschel Goldbelt Corp

have looked at joint venture / limited partnership

$$\begin{array}{r} 242 \\ 42 - \underline{160} \\ 24 \end{array} \quad 4$$



[Title 39] 39.05.060

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
 Second Session - Ninth Legislature

I. REQUEST

Bill No. CS SB 354 AM
 Title: "An Act related to Limited Liability Companies"
 Requested by: House Judiciary Committee Date: 05-17-1976
 Return Date Requested: 05-17-76
 Agency: Revenue Program: Audit

II. FISCAL DETAIL

Budget Request Unit(s) Affected: Audit

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100 PERSONAL SERVICES		39.4	39.4	63.1	63.1	86.8
200 TRAVEL		4.0	4.4	6.8	7.0	9.4
300 CONTRACTUAL		25.5	19.0	21.2	23.3	25.6
400 COMMODITIES		.4	.4	.6	.6	
500 EQUIPMENT		1.2	-	.6	-	6
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	70.5	63.2	92.3	94.0	123.2

B. FUNDING: (Thousands of dollars)

GENERAL FUND	-0-	70.5	63.2	92.3	94.0	123.2
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	0 / 0	2 / 0	2 / 0	3 / 0	3 / 0	4 / 0
MAN MONTHS (P./T.)	/	24 / 0	24 / 0	36 / 0	36 / 0	48 / 0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This is a new type of organization for Alaska as well as the rest of the United States. The sponsors anticipate up to 5,000 companies will organize under this statute in the first year. It is imperative that there be sufficient staffing to deal with the many problems which will arise in how to file in Alaska as well as how to determine what portion of their income is taxable in Alaska. The positions requested are one (1) office auditor and one (1) tax examiner. It is anticipated that these positions will generate \$200,000 in additional revenue in the first year.

IV. ATTACHMENTS

Vr. DATE: 0 - 17 - 76 PREPARED BY: _____

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

MEMORANDUM

file 354

May 26, 1976

TO: Steve Cowper and Terry Gardiner

RE: Senate Bill 354 AM

As you are both probably aware the most important aspect of any business operation is the distribution of any income or loss.

In general, income and loss to a corporation appear as an increase in the value of the company's stock or in the form of dividends. In the case of loss, lower values of stock and no dividends. Of course many tax applications exist with regard to income or loss for example, tax loss carry forwards and deferred taxes. The loss as income is distributable to the shares.

In the case of a sole proprietorship the proprietor must (obviously) bear directly the burden or benefit; though there are some tax benefits to the proprietor, they have little value.

Partnerships generally attribute distribution per agreement of the parties normally, along the lines of their financial interests. Partners are generally individually liable for all obligations. Limited partnership partners are liable to the extent of capital contributed.

Limited liability companies who get letters of intent to contribute capital or provisional letters of credit, or who have the strength and connections to have long lines of bank credit, gain a distinct tax advantage through the LLC.

EXAMPLE: Two "heavys" contribute \$ 55 K each = 110 K
Ten others contribute \$ 10 K each = 100 K

12 Individuals = 210 K

The LLC takes the 210 K plus its "line" of credit, \$700 K, and begins operations--drills a wildcat well for example. "Losses" are incurred for three years = each member of the LLC has his proportionate share of loss "distributed" to him. He may reduce, in proper circumstances,

TO: Steve Cowper and Terry Gardiner
May 26, 1976
Page 2

his taxable income in other ventures by the amount of this loss. This loss, like his gain, is assessed in the amount of his interest. If the capital and the borrowed funds (credit line) are high (\$910,000) and if all of the operation showed a loss then the partners (1-2) would have a "loss" they could use, in this example, 27 1/2% of 910,000 or \$250,250. The amount of investment was \$55 K so the limited liability allows a loss five times greater than the amount of investment.

The other partners, 3-12, have just shy of 1/2 interest (5% of total invest each) their loss benefit would be only 5% of 409,500 (20,475). For the small partner, he gets a tax benefit two times his investment. If this were to continue several years the benefit would be substantial when profits were finally made and distributed. Partners could carry tax losses forward to apply against future distribution of income. (Numberless tax "advantages" exist along side this one example of loss--carry forward.) Income could be distributed for up to five years with no tax liability. If previous losses were incurred as part of a plan. Of course in oil if you hit a big one tax liabilities are irrelevant.

In my view there would be a definite tax advantage for members of LLC's in Alaska if SB 354 becomes law. There would, concurrently, be a tax disadvantage to the state since we use the Federal Revenue Code which contains all the loopholes. The State could lose far more than it gained in filing fees. Likely as not most of these Corps would not be "Alaskan" Corps. Further, the application of this to multinational corporations should be thoroughly and carefully researched and investigated.

See Attached

Subchapter S corp

Bob Hartig - Bernard Doherty - Hamilton Brothers
Oil Co.

Corp - limited partnership - Cross

Corp - limits liability to stock can't go
through to stockholder to sue

Partnership - one layer of taxation

IRS letter

Generate \$1 million in filing fees etc
outside companies would incorporate in Alaska

Follows Corporation Act in drafting

None in any other states - same before 1900's

Corporation pays taxes on two levels
Corp

1. Centralization Under this bill - choice over centralized management not
2. No Transference " " " Sec 1376 limited restriction on transferring stock
3. Continuity to go how perpetual life

Joint Ventures + Partnerships will shift to this
they would switch because of advantage of
limited liability

Small Corporations might switch over
Potential loss of tax dollars to state ?

COLE, HARTIG, RHODES, NORMAN, MAHONEY, & GOLTZ

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

SUITE 201

717 K STREET

ANCHORAGE, ALASKA 99501

(907) 274-3576

HOYT M. COLE
ROBERT L. HARTIG
JAMES D. RHODES
JOHN K. NORMAN
ROBERT J. MAHONEY
KEITH A. GOLTZ
BERNARD J. DOUGHERTY

G. RODNEY KLEEDEHN

February 24, 1976

MEMORANDUM

RE: CS Senate Bill #354, Limited Liability Company Act

Senate Bill 354 was introduced by Senator Colletta in the first session of the ninth legislature and hearings on the bill have been held in the Senate Commerce and Judiciary Committees.

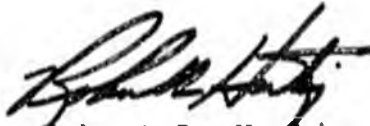
The bill should provide additional revenues to the State of Alaska in excess of one million dollars per year. This revenue will be derived from filing fees and annual fees for the registration of the limited liability company.

The Act is designed to provide a business entity to be used by persons desiring to invest both in Alaska and outside Alaska. Through its use as an investment entity outside Alaska, the Act would provide revenue to the state without corresponding liability of any kind.

Use of the limited liability company will not in any way reduce income taxes payable to the state as it will be used mainly by investors currently using a partnership or limited partnership form.

Miles Schlosberg, Director of the Division of Banking, Securities, Small Loans & Corporations, has testified before the Senate Judiciary Committee on two occasions and the administration has taken a position of "in favor" in their letter to Senator Jalmar M. Kerttula of May 5, 1975.

Enclosed are explanatory materials to assist you with regard to the proposed legislation.


Robert L. Hartig

MEMORANDUM

LIMITED LIABILITY COMPANY

The limited liability company has predecessors in New Jersey, Pennsylvania, Michigan and Ohio. In New Jersey and Ohio it was known as a "limited partnership association" and in Pennsylvania and Michigan as a "partnership association".

The business entity which we will now call the limited liability company had its origins in the third quarter of the 19th century. It was adopted in Pennsylvania in 1874, in Michigan in 1877, in New Jersey in 1880, and in Ohio in 1881. No other states have used this form of business entity.

The reason for its creation seems to be the particularly restrictive corporation statutes common in the late part of the 19th century. At that time in the development of the corporate entity, the restrictions in some states included the limitation of business to one state, the limitation of the corporation's business to a sole purpose stated in the Articles of Incorporation and various similar confining requirements. In the early days of the development of the corporation, the case law also was extremely restrictive on what a corporation could do and how it could do it, because of the roots in the English system that a corporation, being chartered by the Crown, was authorized to do only what the Crown specifically authorized it to do.

In the early 20th century, these restrictions on corporate activity were greatly reduced and have continued to be reduced through the introduction of the Delaware corporate statute and the Model Business Corporation Act, upon which many states have based their corporation statutes. These statutes gave much greater freedom to the shareholders and the board of directors to structure the activities of the corporation to meet their particular needs. This has especially been true in the case of closely held corporation which most often is a family corporation. Indeed, some states have adopted statutes which govern the activity of such close corporations and give them wide latitude in arranging their affairs. As these new corporate statutes were adopted by the various states and the case law governing the activities of corporations began to be less restrictive, the vehicle of the limited partnership association or partnership association fell in to disuse.

In introducing the Limited Liability Company Act in the State of Alaska, it is our desire to provide to investors, and particularly real estate investors, the opportunity to utilize this new form of business entity to conduct their business affairs with less expense and fewer restrictions.

The Ohio statute proves to be not usable for these objectives because of its preclusion of dealing in real estate

from the uses of the Ohio Limited Partnership Association, (Ohio Rev. Stats. §1783.01).

Also, the statutes in the other states are substantially more restrictive than the Alaska legislation being introduced and thus provide a less useful vehicle for conduct of a business. For example, the New Jersey statute (NJ Stats. Ann. §42.3-1) requires that the principal place of business of a New Jersey limited partnership association must be established and maintained within the State of New Jersey. The Ohio and Michigan statutes, though a little less restrictive, still require that that organization shall have its principal office or principal place of business within the state. The Pennsylvania statute was repealed in 1966, except as to professions which are not permitted to incorporate in the state.

The Alaska proposed legislation does away with this requirement as to the principal office or principal place of business. The reason for this is the desire to draw to the state investors interested in organizing under the Alaska Limited Liability Company Act for business or investment in other states as well as the State of Alaska. The legislation requires a registered agent in the state which would always insure a resident on whom process can be served in suit against the limited liability company.

The legislation proposed would provide a good amount of revenue each year to the state as there are provisions in the proposed legislation for the following fees:

1. A filing fee upon formation of the Limited Liability Company, which is based on capital invested upon a sliding scale to a maximum of \$1,000;
2. An annual fee of \$100;
3. A filing fee for amendment to the Certificate of Organization of \$25.00; and
4. A filing fee of \$25.00 upon dissolution.

It is suggested that this form of business entity will draw a substantial number of investors from other states who, up to this time, have used the limited partnership, corporation or joint venture vehicle for their investments.

In the first ten months of 1974, approximately 1,300 limited partnerships were filed in the State of Texas, which requires a filing of the limited partnership within the state. In Texas this is used as a revenue measure and there is a requirement of a filing fee which rapidly reaches the maximum fee of \$2,500 at capital contributed of \$500,000. This figure would not at all be uncommon in the real estate market of today.

It is estimated that in excess of half of these limited partnerships would be drawn to use the Limited Liability Company authorized by the proposed legislation in the

State of Alaska to conduct their business or to direct their investments, thus providing this increased revenue for the State. This figure is only for the State of Texas and it is suggested that this legislation would be attractive to investors of all states and may substantially contribute to the revenue of our state.

In addition, it is hoped that in drawing investors to the state for the purpose of utilizing our Limited Liability Company Act as a vehicle for investment in other states, such investors will also use the device as an investment entity in our state, thus providing increased work for real estate personnel, title companies, and all those persons who assist in transactions concerning real estate. In addition, it will be necessary for each limited liability company to establish and maintain a registered agent in the state and it will be necessary for the state to employ a number of additional persons to file and administer the limited liability companies.

The provisions of the act enable the persons forming a limited liability company to provide for management of the limited liability company either by the members or by a manager or managers elected by the members of the limited liability company. The voting power of the members is to be in proportion to their investment in the capital of the company. As with a corporation, the liability of the limited liability

company is to be limited to assets of the company. A member would have a liability not to exceed his contribution to the company or any amount which he is committed to contribute but has not as yet contributed. Why would this vehicle be used rather than a limited partnership? Because it combines the attractive characteristics of a corporation with the attractive characteristics of a partnership.

It is hoped that in submitting a request for a private ruling from the Internal Revenue Service of the United States Treasury Department, a limited liability company could obtain partnership classification for tax purposes.

There are four characteristics in distinguishing between partnership classification and classification and taxation as an association or corporation for purposes of the Internal Revenue Code. These are: (1) centralization of management; (2) continuity of life; (3) free transferability of interests; and (4) limited liability.

In order to be taxed as an association, an entity must have more corporate characteristics than partnership characteristics. A similar problem with regard to taxation is faced by the limited partnership vehicle which would often request advanced revenue rulings to make the limited partnership attractive to an investor.

As drafted, the limited liability company obviously would always have limited liability.

It is expected that the Internal Revenue Service would rule favorably on the continuity of life characteristic because of provision 10.50.180 which states that a limited liability company shall be dissolved upon the death, retirement, resignation, expulsion, bankruptcy, dissolution of a member or occurrence of any other event which terminates the continued membership of a member in the limited liability company, unless the business of the limited liability company is continued by the consent of all the remaining members thereof. Thus, without consent of all the remaining members, the limited liability company would be dissolved upon one of the stated events.

Free transferability of interests is treated in Section 10.50.170. This section provides that a member may always transfer his interest in the limited liability company, but unless unanimous approval is obtained from the other members, the member transferring an interest, can transfer merely the profit and loss interest and not a right to share in the management of the limited liability company.

As to the characteristic of centralization of management, the provisions of the proposed legislation enable the members of the limited liability company to choose whether the limited liability company will be governed by themselves as members or by a manager or management elected by them. If the

members choose to retain management, the limited liability company would also lack the corporate characteristic of centralization of management.

Thus, it can be seen that at least two and possibly three of the corporate characteristics may be lacking in the classification of the limited liability company as a partnership or as an association for the purposes of the Internal Revenue Code.

In conclusion, a limited liability company offers the investor a business entity which combines the attractive elements of both a partnership and a corporation. It combines the limited liability offered to shareholders of a corporation with the tax treatment of a partnership.

The possibilities of increased revenue to the state have been set forth and it appears that increased revenues in excess of one million dollars may be obtained with very little increased expense incurred.

§ 301.7641 PROCEDURE AND ADMINISTRATION

SUPERVISION OF OPERATIONS OF CERTAIN MANUFACTURERS

- § 301.7641 [Comprises Code section 7641, see 26 U.S.C.A. (I.R.C. 1954) § 7641] F, G, and H of Part 45 of this chapter (Miscellaneous Stamp Tax Regulations). For regulations relating to the manufacture of opium suitable for smoking purposes, see 26 CFR (1939) 150 (Narcotics Regulations 3, 3 F.R. 1402) as made applicable to section 7641 of the 1954 Code by Treasury Decision 6091, approved August 16, 1964 (19 F.R. 5167).
§ 301.7641-1 Supervision of operations of certain manufacturers For regulations under section 7641, except the provisions thereof relating to the manufacture of opium suitable for smoking purposes, see Subparts E, Added Nov. 3, 1967, 32 F.R. 15241.

POSSESSIONS

- § 301.7651 [Comprises Code section 7651, see 26 U.S.C.A. (I.R.C. 1954) § 7651] § 301.7654 [Comprises Code section 7654, see 26 U.S.C.A. (I.R.C. 1954) § 7654]
§ 301.7652 [Comprises Code section 7652, see 26 U.S.C.A. (I.R.C. 1954) § 7652] § 301.7655 [Comprises Code section 7655, see 26 U.S.C.A. (I.R.C. 1954) § 7655]
§ 301.7653 [Comprises Code section 7653, see 26 U.S.C.A. (I.R.C. 1954) § 7653]

DEFINITIONS

- § 301.7701 [Comprises Code section 7701, see 26 U.S.C.A. (I.R.C. 1954) § 7701] tions fall for purposes of taxation. These categories, or classes, include associations (which are taxable as corporations), partnerships, and trusts. The tests, or standards, which are to be applied in determining the classification in which an organization belongs (whether it is an association, a partnership, a trust, or other taxable entity) are determined under the Internal Revenue Code. Sections 301.7701-2 to 301.7701-4 set forth these tests, or standards, which are to be applied in determining whether an organization is (1) an association (see § 301.7701-2), (2) a partnership (see § 301.7701-3), or (3) a trust (see § 301.7701-4).
§ 301.7701-1 Classification of organizations for tax purposes
(a) Person. The term "person" includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization or group. Such term also includes a guardian, committee, trustee, executor, administrator, trustee in bankruptcy, receiver, assignee for the benefit of creditors, conservator, or any person acting in a fiduciary capacity.
(b) Standards. The Internal Revenue Code prescribes certain categories, or classes, into which various organiza- (c) Effect of local law. As indicated in paragraph (b) of this section, the classes into which organizations are to be placed for purposes of taxation are determined under the Internal Revenue Code. Thus, a particular organization might be classified as a trust under the

DEFINITIONS

§ 301.7701-2

law of one State and a corporation under the law of another State. However, for purposes of the Internal Revenue Code, this organization would be uniformly classed as a trust, an association (and, therefore, taxable as a corporation), or some other entity, depending upon its nature under the classification standards of the Internal Revenue Code. Similarly, the term "partnership" is not limited to the common-law meaning of partnership, but is broader in its scope and includes groups not commonly called partnerships. See § 1.761-1 of this chapter (Income Tax Regulations) and § 301.7701-3. The term "corporation" is not limited to the artificial entity usually known as a corporation, but includes also an association, a trust classed as an association because of its nature or its activities, a joint-stock company, and an insurance company. Although it is the Internal Revenue Code rather than local law which establishes the tests or standards which will be applied in determining the classification in which an organization belongs, local law governs in determining whether the legal relationships which have been established in the formation of an organization are such that the standards are met. Thus, it is local law which must be applied in determining such matters as the legal relationships of the members of the organization among themselves and with the public at large, and the interests of the members of the organization in its assets. Nevertheless, the labels applied by local law to organizations, which may now or hereafter be authorized by local law, are in and of themselves of no importance in the classification of such organizations for the purposes of taxation under the Internal Revenue Code. Thus, a professional service organization, formed under the law of a State authorizing the formation by one or more persons of a so-called professional service corporation, would not be classified for purposes of taxation as a "corporation", merely because the organization was so labeled under local law. See *Morrissey et al. v. Commissioner*, 296 U.S. 344 (1935). The classification in which a professional service organization belongs is determined under the tests and standards set forth in §§ 301.7701-2, 301.7701-3, and 301.7701-4.

Added Nov. 3, 1967, 32 F.R. 15241.

§ 301.7701-2 Associations, including organizations labeled "corporations"

(a) Characteristics of corporations.

(1) The term "association" refers to an organization whose characteristics require it to be classified for purposes of taxation as a corporation rather than as another type of organization such as a partnership or a trust. There are a number of major characteristics ordinarily found in a pure corporation which, taken together, distinguish it from other organizations. These are: (i) Associates, (ii) an objective to carry on business and divide the gains therefrom, (iii) continuity of life, (iv) centralization of management, (v) liability for corporate debts limited to corporate property, and (vi) free transferability of interests. Whether a particular organization is to be classified as an association must be determined by taking into account the presence or absence of each of these corporate characteristics. The presence or absence of these characteristics will depend upon the facts in each individual case. In addition to the major characteristics set forth in this subparagraph, other factors may be found in some cases which may be significant in classifying an organization as an association, a partnership, or a trust. An organization will be treated as an association if the corporate characteristics are such that the organization more nearly resembles a corporation than a partnership or trust. See *Morrissey et al. v. Commissioner* (1935) 296 U.S. 344.

(2) Since associates and an objective to carry on business for joint profit are essential characteristics of all organizations engaged in business for profit (other than the so-called one-man corporation and the sole proprietorship), the absence of either of these essential characteristics will cause an arrangement among co-owners of property for the development of such property for the separate profit of each not to be classified as an association. Some of the major characteristics of a corporation are common to trusts and corporations, and others are common to partnerships and corporations. Characteristics common to trusts and corporations are not material in attempting to distinguish between a trust and an association, and characteristics common to partnerships and corporations

are not material in attempting to distinguish between an association and a partnership. For example, since centralization of management, continuity of life, free transferability of interests, and limited liability are generally common to trusts and corporations, the determination of whether a trust which has such characteristics is to be treated for tax purposes as a trust or as an association depends on whether there are associates and an objective to carry on business and divide the gains therefrom. On the other hand, since associates and an objective to carry on business and divide the gains therefrom are generally common to both corporations and partnerships, the determination of whether an organization which has such characteristics is to be treated for tax purposes as a partnership or as an association depends on whether there exists centralization of management, continuity of life, free transferability of interests, and limited liability.

(3) An unincorporated organization shall not be classified as an association unless such organization has more corporate characteristics than noncorporate characteristics. In determining whether an organization has more corporate characteristics than noncorporate characteristics, all characteristics common to both types of organizations shall not be considered. For example, if a limited partnership has centralized management and free transferability of interests but lacks continuity of life and limited liability, and if the limited partnership has no other characteristics which are significant in determining its classification, such limited partnership is not classified as an association. Although the limited partnership also has associates and an objective to carry on business and divide the gains therefrom, these characteristics are not considered because they are common to both corporations and partnerships.

(4) The rules of this section and §§ 301.7701-3 and 301.7701-4 are applicable only to taxable years beginning after December 31, 1960. However, for any taxable year beginning after December 31, 1960, but before October 1, 1961, any amendment of the agreement establishing the organization will, in the case of an organization in existence on November 17, 1960, be treated for purposes of determining the classifica-

tion of the organization as being in effect as of the beginning of such taxable year (i) if the amendment of the agreement is made before October 1, 1961, and (ii) if the amendment results in the classification of the organization under the rules of this section and §§ 301.7701-1, 301.7701-3, and 301.7701-4 in the same manner as the organization was classified for tax purposes on November 17, 1960.

(5) The rules of paragraph (h) of this section are applicable only to taxable years beginning after December 31, 1960. However, in the case of an organization formed as a partnership association, a business trust, an ordinary business corporation, or a professional service organization formed under a local law or regulatory rule specifically authorizing the formation of such organizations, the rules of paragraph (h) of this section shall not apply to any taxable year ending on or before December 31, 1964, if such organization made its return for any such taxable year, filed at or prior to the time (including extensions thereof) that the return for such taxable year was required to be filed, as if its income were subject to the tax imposed by section 11 of the Code (relating to tax imposed on corporations).

(b) *Continuity of life.* (1) An organization has continuity of life if the death, insanity, bankruptcy, retirement, resignation, or expulsion of any member will not cause a dissolution of the organization. On the other hand, if the death, insanity, bankruptcy, retirement, resignation, or expulsion of any member will cause a dissolution of the organization, continuity of life does not exist. If the retirement, death, or insanity of a general partner of a limited partnership causes a dissolution of the partnership, unless the remaining general partners agree to continue the partnership or unless all remaining members agree to continue the partnership, continuity of life does not exist. See *Glensder Textile Company* (1942) 46 B.T.A. 176 (A., C.B. 1942-1, 8).

(2) For purposes of this paragraph, dissolution of an organization means an alteration of the identity of an organization by reason of a change in the relationship between its members as determined under local law. For example, since the resignation of a partner from a general partnership destroys the mutual agency which exists between

ship Act, such a general partnership cannot achieve effective concentration of management powers and, therefore, centralized management. Usually, the act of any partner within the scope of the partnership business binds all the partners; and even if the partners agree among themselves that the powers of management shall be exclusively in a selected few, this agreement will be ineffective as against an outsider who had no notice of it. In addition, limited partnerships subject to a statute corresponding to the Uniform Limited Partnership Act, generally do not have centralized management, but centralized management ordinarily does exist in such a limited partnership if substantially all the interests in the partnership are owned by the limited partners.

(d) **Limited liability.** (1) An organization has the corporate characteristic of limited liability if under local law there is no member who is personally liable for the debts of or claims against the organization. Personal liability means that a creditor of an organization may seek personal satisfaction from a member of the organization to the extent that the assets of such organization are insufficient to satisfy the creditor's claim. A member of the organization who is personally liable for the obligations of the organization may make an agreement under which another person, whether or not a member of the organization, assumes such liability or agrees to indemnify such member for any such liability. However, if under local law the member remains liable to such creditors notwithstanding such agreement, there exists personal liability with respect to such member. In the case of a general partnership subject to a statute corresponding to the Uniform Partnership Act, personal liability exists with respect to each general partner. Similarly, in the case of a limited partnership subject to a statute corresponding to the Uniform Limited Partnership Act, personal liability exists with respect to each general partner, except as provided in subparagraph (2) of this paragraph.

(2) In the case of an organization formed as a limited partnership, personal liability does not exist, for purposes of this paragraph, with respect to a general partner when he has no substantial assets (other than his inter-

est in the partnership) which could be reached by a creditor of the organization and when he is merely a "dummy" acting as the agent of the limited partners. Notwithstanding the formation of the organization as a limited partnership, when the limited partners act as the principals of such general partner, personal liability will exist with respect to such limited partners. Also, if a corporation is a general partner, personal liability exists with respect to such general partner when the corporation has substantial assets (other than its interest in the partnership) which could be reached by a creditor of the limited partnership. A general partner may contribute his services, but no capital, to the organization, but if such general partner has substantial assets (other than his interest in the partnership), there exists personal liability. Furthermore, if the organization is engaged in financial transactions which involve large sums of money, and if the general partners have substantial assets (other than their interests in the partnership), there exists personal liability although the assets of such general partners would be insufficient to satisfy any substantial portion of the obligations of the organization. In addition, although the general partner has no substantial assets (other than his interest in the partnership), personal liability exists with respect to such general partner when he is not merely a "dummy" acting as the agent of the limited partners.

(e) **Free transferability of interests.** (1) An organization has the corporate characteristic of free transferability of interests if each of its members or those members owning substantially all of the interests in the organization have the power, without the consent of other members, to substitute for themselves in the same organization a person who is not a member of the organization. In order for this power of substitution to exist in the corporate sense, the member must be able, without the consent of other members, to confer upon his substitute all the attributes of his interest in the organization. Thus, the characteristic of free transferability of interests does not exist in a case in which each member can, without the consent of other members, assign only his right to share in profits but cannot so assign his rights to participate in the management of the organization. Furthermore, although the agreement

provides for the transfer of a member's interest, there is no power of substitution and no free transferability of interest if under local law a transfer of a member's interest results in the dissolution of the old organization and the formation of a new organization.

(2) If each member of an organization can transfer his interest to a person who is not a member of the organization only after having offered such interest to the other members at its fair market value, it will be recognized that a modified form of free transferability of interests exists. In determining the classification of an organization, the presence of this modified corporate characteristic will be accorded less significance than if such characteristic were present in an unmodified form.

(f) **Cross reference.** See paragraph (b) of § 301.7701-3 for the application to limited partnerships of the rules relating to corporate characteristics.

(g) **Examples.** The application of the rules described in this section may be illustrated by the following examples:

Example (1). (Deleted)

Example (2). A group of seven doctors forms a clinic for the purpose of furnishing, for profit, medical and surgical services to the public. They each transfer assets to the clinic, and their agreement provides that except upon complete liquidation of the organization on the vote of three-fourths of its members, no member has any individual interest in its assets. Their agreement also provides that neither the death, insanity, bankruptcy, retirement, resignation, nor expulsion of a member shall cause the dissolution of the organization. However, under the applicable local law, a member who withdraws does have the power to dissolve the organization. While the agreement provides that the management of the clinic is to be vested exclusively in an executive committee of four members elected by all the members, this provision is ineffective as against outsiders who had no notice of it; and therefore, the act of any member within the scope of the organization's business binds the organization insofar as such outsiders are concerned. While the agreement declares that each individual doctor alone is liable for acts of malpractice, members of the clinic are, nevertheless, personally liable for all debts of the clinic including claims based on malpractice. No member has the right, without the consent of all the other members, to transfer his interest to a doctor who is not a member of the clinic. The organization has associates and an objective to carry on business and divide the gains therefrom. However, it does not have the corporate characteristics of continuity of life, centralized management, limited liability, and free transferability of interests. The organization will be classified as a partnership for all purposes of the Internal Revenue Code.

Example (3). A group of twenty-five lawyers forms an organization for the purpose of furnishing, for profit, legal services to the public.

Their agreement provides that the organization will dissolve upon the death, insanity, bankruptcy, retirement, or expulsion of a member. While their agreement provides that the management of the organization is to be vested exclusively in an executive committee of five members elected by all the members, this provision is ineffective as against outsiders who had no notice of it; and, therefore, the act of any member within the scope of the organization's business binds the organization insofar as such outsiders are concerned. Members of the organization are personally liable for all debts, or claims against, the organization. No member has the right, without the consent of all the other members, to transfer his interest to a lawyer who is not a member of the organization. The organization has associates and an objective to carry on business and divide the gains therefrom. However, the four corporate characteristics of limited liability, centralized management, free transferability of interests, and continuity of life are absent in this case. The organization will be classified as a partnership for all purposes of the Internal Revenue Code.

Example (4). A group of twenty-five persons forms an organization for the purpose of engaging in real estate investment activities. Each member has the power to dissolve the organization at any time. The management of the organization is vested exclusively in an executive committee of five members elected by all the members, and under the applicable local law, no one acting without the authority of this committee has the power to bind the organization by his acts. Under the applicable local law, each member is personally liable for the obligations of the organization. Every member has the right to transfer his interest to a person who is not a member of the organization, but he must first advise the organization of the proposed transfer and give it the opportunity on a vote of the majority to purchase the interest at its fair market value. The organization has associates and an objective to carry on business and divide the gains therefrom. While the organization does have the characteristics of centralized management and a modified form of free transferability of interests, it does not have the corporate characteristics of continuity of life and limited liability. Under the circumstances presented, the organization will be classified as a partnership for all purposes of the Internal Revenue Code.

Example (5). A group of twenty-five persons forms an organization for the purpose of engaging in real estate investment activities. Under their agreement, the organization is to have a life of twenty years, and under the applicable local law, no member has the power to dissolve the organization prior to the expiration of that period. The management of the organization is vested exclusively in an executive committee of five members elected by all the members, and under the applicable local law no one acting without the authority of this committee has the power to bind the organization by his acts. Under the applicable local law, each member is personally liable for the obligations of the organization. Every member has the right to transfer his interest to a person who is not a member of the organization, but he must first advise the organization of the proposed transfer and give it the opportunity on a vote of the majority to purchase the interest at its fair market value. The organization has associates and an objective to carry on business and divide the gains therefrom. While the or-

Internal Revenue Code references are identical with 26 U.S.C.A. (I.R.C.1954) sections

ganization does not have the corporate characteristic of limited liability, it does have continuity of life, centralized management, and a modified form of free transferability of interests. The organization will be classified as an association for all purposes of the Internal Revenue Code.

Example (6). A group of twenty-five persons forms an organization for purposes of engaging in real estate investment activities. Each member has the power to dissolve the organization at any time. The management of the organization is vested exclusively in an executive committee of five members elected by all the members, and under the applicable local law, no one acting without the authority of this committee has the power to bind the organization by his acts. Under the applicable local law, the liability of each member for the obligations of the organization is limited to paid and subscribed capital. Every member has the right to transfer his interest to a person who is not a member of the organization, but he must first advise the organization of the proposed transfer and give it the opportunity on a vote of the majority to purchase the interest at its fair market value. The organization has associates and an objective to carry on business and divide the gains therefrom. While the organization does not have the characteristic of continuity of life, it does have limited liability, centralized management, and a modified form of free transferability of interests. The organization will be classified as an association for all purposes of the Internal Revenue Code.

Example (7). A group of twenty-five persons forms an organization for the purpose of investing in securities so as to educate the members in principles and techniques of investment practices and to share the income from such investments. While the agreement states that the organization will operate until terminated by a three-fourths vote of the total membership and will not terminate upon the withdrawal or death of any member, under the applicable local law, a member has the power to dissolve the organization at any time. The business of the organization is carried on by the members at regular monthly meetings and buy or sell action may be taken only when voted by a majority of the organization's membership present. Elected officers perform only ministerial functions such as presiding at meetings and carrying out the directions of the members. Members of the organization are personally liable for all debts of, or claims against, the organization. No member may transfer his membership. The organization has associates and an objective to carry on business and divide the gains therefrom. However, the organization does not have the corporate characteristics of limited liability, free transferability of interests, continuity of life, and centralized management. The organization will be treated as a partnership for all purposes of the Internal Revenue Code.

(h) Classification of professional service organizations. (1) (i) A professional service organization is treated as a corporation (or as an association and, therefore, taxable as a corporation) only if it has sufficient corporate characteristics to be classifiable as a corporation under paragraph (a) of this section, rather than as a partnership or proprietorship. For purposes of deter-

mining the classification of an organization under these regulations, the term "professional service organization," as used in this paragraph, means an organization formed by one or more persons to engage in a business involving the performance of professional services for profit which under local law, may not be organized and operated in the form of an ordinary business corporation having the usual characteristics of such a corporation. Thus, even if a professional service organization is organized as an ordinary business corporation, this paragraph applies if such corporation is subject to local regulatory rules which deprive such corporation of the usual characteristics of an ordinary business corporation. This paragraph applies irrespective of whether an organization is labeled under local law as a professional service corporation, a professional service association, a trust, or otherwise.

(ii) In determining whether a professional service organization has the major characteristics ordinarily found in a business corporation and whether any other significant factors are to be taken into account in classifying the organization, the special professional requirements of the profession engaged in by the members of the organization must be taken into consideration. Although such an organization may have associates and is engaged in business for profit, the relationships of the members of such an organization to each other as well as their relationships to employees, to clients, patients, or customers and to the public are inherently different from the relationships characteristic of an ordinary business corporation. In determining the nature of these relationships, consideration must be given to the law under which the organization is formed, the character, articles of association, bylaws, or other documents relating to the formation of the organization, and all other facts and rules governing or pertaining to such relationships in the usual course of the practice of the profession of the participants.

(2) A professional service organization does not have continuity of life within the meaning of paragraph (b) of this section if the death, insanity, bankruptcy, retirement, resignation, expulsion, professional disqualification, or election to inconsistent public office of any member will (determined without

regard to any agreement among the members) cause under local law the dissolution of the organization. A business corporation has a continuing identity as an entity which is not dependent upon a shareholder's active participation in any capacity in the production of the income of the corporation. Furthermore, the interest of a shareholder in an ordinary business corporation includes a right to share in the profits of the corporation, and such right is not legally dependent (determined without regard to any agreement among the shareholders) upon his participation in the production of the corporation's income. However, the interest of a member of a professional service organization generally is inextricably bound to the establishment and continuance of an employment relationship with the organization, and he cannot share in the profits of a professional service organization unless he also shares in the performance of the services rendered by the organization. For purposes of this paragraph, the term "employment relationship" is used to describe such active participation by the member and is not restricted to the common-law meaning of such term. If local law, applicable regulations, or professional ethics do not permit a member of a professional service organization to share in its profits unless an employment relationship exists between him and the organization, and if in such case, he or his estate is required to dispose of his interest in the organization if the employment relationship terminates, the continuing existence of the organization depends upon the willingness of its remaining members, if any, either to agree, by prior arrangement or at the time of such termination, to acquire his interest or to employ his proposed successor. The continued existence of such a professional service organization is similar to that of a partnership formed under the Uniform Partnership Act, whose business continues pursuant to an agreement providing that the business will be continued by the remaining members after the withdrawal or death of a partner (see paragraph (b) of this section), and is essentially different from the continuity of life possessed by an ordinary business corporation. Consequently, such a professional service organization lacks continuity of life.

(3) In applying the rules of paragraph (c) of this section, relating to

centralization of management, a professional service organization does not have centralization of management where the managers of a professional service organization under local law are not vested with the continuing exclusive authority to determine any one or more of the following matters: (i) The hiring and firing of professional members of the organization and its professional and lay employees, (ii) the compensation of the members and of such employees, (iii) the conditions of employment—such as working hours, vacation periods, and sick leave, (iv) the persons who will be accepted as clients or patients, (v) who will handle each individual case or matter, (vi) the professional policies and procedures to be followed in handling each individual case, (vii) the fees to be charged by the organization, (viii) the nature of the records to be kept, their use, and their disposition, and (ix) the times and amounts of distributions of the earnings of the organization to its members as such. Moreover, although a measure of central control may exist in a professional service organization, the managers of a professional service organization in which a member retains traditional professional responsibility cannot have the continuing exclusive authority to determine all of the matters described in the preceding sentence. Instead, such measure of central control is no more than that existing in an ordinary large professional partnership which has one or more so-called managing partners and in which a member retains the traditional professional autonomy with respect to professional decisions and the traditional responsibility of a professional person to the client or patient. Such measure of central control is essentially different from the centralization of management existing in an ordinary business corporation. Therefore, centralization of management does not exist in such a professional service organization.

(4) A professional service organization has the corporate characteristic of limited liability within the meaning of paragraph (d) of this section only if the personal liability of its members, in their capacity as members of the organization, is no greater in any aspect than that of shareholder-employees of an ordinary business corporation. If under local law and the rules pertaining to professional practice, a mutual

Internal Revenue Code references are identical with 26 U.S.C.A. (I.R.C.1954) sections