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1 offeror and its subsidiaries, a description of pending legal proceedings
2 other than routine litigation to which the offeror or any of its sub-
3 sidiaries is a party or of which any of their property is the subject, a
4 brief description of the business done and projected by the offeror and
5 its subsidiaries and the general development of that business over the
6 past five years, the names of all directors and executive officers
7 together with biographical summaries of each for the preceding five
8 years to date, the approximate amount of any material interest, direct
9 or indirect, of any of the directors or officers in a material trans-
10 action during the past three years or in a proposed material transaction
11 to which the offeror or any of its subsidiaries was or is to be a party,
12 and complete information concerning all inducements to officers and
13 directors of the offeree company which are not made available to all
14 security holders.

15 (d) The department may within 10 days of the filing order a hear-
16 ing to determine whether fair, full and effective disclosure is pro-
17 posed, if in the opinion of the department cause for a hearing exists.
18 The offeree company may within 10 days of the filing request a hearing
19 and the department shall upon receipt of the request order a hearing.

20 (e) All written soliciting material used by the offeror in con-
21 nection with the takeover bid shall be filed with the department and the
22 registered agent of the offeree company not later than three days before
23 the time copies of the material are first published or sent or given to
24 offerees.

25 (f) If, under an arrangement or understanding with the offeror,
26 any persons are to be elected or designated as directors of the offeree
27 company, otherwise than at a meeting of security holders, and the
28 persons so elected or designated will constitute a majority of the
29 directors of the offeree company, then, before the time that person

1 takes office as a director, the offeror shall file with the department,
2 and transmit to all holders of record of securities of the offeree
3 company who would be entitled to vote at a meeting for election of
4 directors, information substantially equivalent to the information which
5 would be required by sec. 14(a) or 14(c) of the Securities Exchange Act
6 of 1934 to be transmitted if the person was a nominee for election as a
7 director at a meeting of the security holders.

8 Sec. 45.57.030. RECOMMENDATIONS TO ACCEPT OR REJECT. A written
9 solicitation or recommendation to offerees, other than by the offeror,
10 to accept or reject a takeover bid shall be filed with the department
11 not later than the time copies of the solicitation or recommendation are
12 first published or sent or given to offerees.

13 *
14 Sec. 45.57.040. DECEPTIVE PRACTICES. It is unlawful for a person
15 to make an untrue statement of a material fact or omit to state a
16 material fact necessary in order to make the statements made, in the
17 light of the circumstances under which they are made, not misleading, or
18 to engage in a fraudulent, deceptive, or manipulative act or practice,
19 in connection with a takeover bid, or a solicitation of offerees in
20 opposition to or in favor of a takeover bid.

21 Sec. 45.57.050. INVESTIGATIONS AND SUBPOENAS. (a) The department
22 in its discretion may

23 (1) make public or private investigations inside or outside
24 this state as it considers necessary to determine whether a person has
25 violated or is about to violate a provision of this chapter or an order
26 under this chapter, or to aid in the enforcement of this chapter or in
27 the prescribing of forms under this chapter;

28 (2) require or permit a person to file a statement in writing
29 under oath or otherwise as the department determines, as to all the
facts and circumstances concerning the matter to be investigated; and

changed
wording

1 (3) publish information concerning a violation of this
2 chapter or an order under this chapter.

3 (b) For the purpose of an investigation or proceeding under this
4 chapter, the department or an officer designated by it may administer
5 oaths and affirmations, subpoena witnesses, compel their attendance,
6 take evidence, and require the production of books, papers, correspon-
7 dence, memoranda, agreements, or other documents or records which the
8 department considers relevant or material to the inquiry.

9 * [(c) In case of contumacy by, or refusal to obey a subpoena issued
10 to a person, the superior court, upon application by the department, may
11 issue to the person an order requiring him to appear before the depart-
12 ment, or the officer designated by it, to produce documentary evidence
13 if so ordered or to give evidence touching the matter under investiga-
14 tion or in question. Failure to obey the order of the court may be
15 punished by the court as a contempt of court.]

16 *deleted*
17 [(d) No person is excused from attending and testifying or from
18 producing a document or record before the department, or in obedience to
19 the subpoena of the department or officer designated by it, or in a
20 proceeding instituted by the department, on the ground that the testi-
21 mony or evidence required of him may tend to incriminate him or subject
22 him to a penalty or forfeiture. However, no individual may be prose-
23 cuted or subjected to a penalty or forfeiture for or on account of a
24 transaction, matter, or thing concerning which he is compelled, after
25 claiming his privilege against self-incrimination, to testify or produce
26 evidence, documentary or otherwise, except that the individual testi-
27 fying is not exempt from prosecution and punishment for perjury or
28 contempt committed in testifying.]

29 Sec. 45.57.060. INJUNCTIONS. When it appears to the department
that a person has engaged or is about to engage in an act or practice in

1 violation of a provision of this chapter or an order under this chapter,
2 it may bring an action in the superior court to enjoin the acts or
3 practices and to enforce compliance with this chapter or order under
4 this chapter. (Upon a proper showing, the appropriate remedy shall be
5 granted.) The court may not require the department to post a bond.

6 * Sec. 45.57.070. CRIMINAL PENALTIES. A person who wilfully vio-
7 lates a provision of this chapter, upon conviction, is punishable by a
8 fine of not less than \$100 nor more than \$5,000, or by imprisonment for
9 not less than 30 days nor more than three years, or by both. However,
10 no person may be imprisoned for the violation of an order if he proves
11 that he had no knowledge of the order. No indictment or information may
12 be returned under this chapter more than 5 years after the alleged
13 violation.

14 * Sec. 45.57.080. CIVIL LIABILITIES. (a) An offeror who (1) makes
15 a takeover bid which does not comply with the provisions of this chapter
16 or (2) makes a takeover bid by means of an untrue statement of a mate-
17 rial fact or an omission to state a material fact necessary in order to
18 make the statement made, in the light of the circumstances under which
19 it was made, not misleading (the offeree not knowing of the untruth or
20 omission), and who does not sustain the burden of proof that he did not
21 know, and in the exercise of reasonable care could not have known, of
22 the untruth or omission, is liable to any offeree whose shares are taken
23 up under the takeover bid who may bring civil action (A) to recover the
24 shares, together with all dividends received, costs and reasonable
25 attorney fees, upon the tender of the consideration received from the
26 offeror, or (B) for the substantial equivalent in damages if the offeror
27 no longer owns the shares.

28 (b) Every person who materially participates or aids in a takeover
29 bid made by an offeror liable under (a) of this section, or who

1 directly or indirectly controls an offeror who is liable, is also liable
2 jointly and severally with and to the same extent as the offeror unless
3 the person who so participates, aids or controls, sustains the burden of
4 proof that he did not know, and in the exercise of reasonable care could
5 not have known, of the existence of the facts by reason of which the
6 liability is alleged to exist. There shall be contribution as in cases
7 of contract among the several persons liable.

8 (c) A tender specified in this section may be made at any time
9 before entry of judgment.

10 (d) No person may bring action under this section unless brought
11 within two years after the transaction upon which it is based. If a
12 person liable under this section makes a written offer, before suit is
13 brought, to return the shares taken up under the takeover bid together
14 with all dividends received, upon the tender of the consideration
15 received from the offeror, or to pay damages if the offeror no longer
16 owns the shares, no person may maintain a suit under this section unless
17 he rejected the offer in writing within 30 days of its receipt.

18 (e) Any condition, stipulation or provision binding an offeree to
19 waive compliance with a provision of this chapter or a regulation issued
20 under it is void.

21 (f) The rights and remedies provided by this chapter shall be in
22 addition to any and all other rights and remedies that may exist at law
23 or in equity.

24 Sec. 45.57.090. CONSENT TO SERVICE OF PROCESS. A nonresident
25 offeror, except a foreign corporation which has complied with AS 10.05.-
26 597 - 10.05.696, who makes a takeover bid is considered to have ap-
27 pointed the commissioner of commerce and economic development as his
28 agent upon whom may be served, in any matter arising under this chapter,
29 any process, notice, order or demand except one issued by the depart-

1 ment. Service may be made on the commissioner or any of his staff at
2 his office. He shall send it by registered or certified mail addressed
3 to the offeror at his latest address on file and keep a record of it. A
4 process, notice, order or demand issued by the department shall be
5 served by being mailed by the commissioner or any of his staff by
6 registered or certified mail addressed to the offeror at his latest
7 address on file.

8 Sec. 45.57.100. REGULATIONS. The department may make and adopt
9 regulations, and adopt forms, that are necessary or desirable to carry
10 out the provisions of this chapter.

11 Sec. 45.57.110. DEFINITIONS. As used in this chapter, unless the
12 context requires otherwise,

13 (1) "department" means the Department of Commerce and
14 Economic Development;

15 (2) "exempt offer" means, with respect to any class of equity
16 securities of the offeree company,

17 (A) an isolated offer to purchase equity securities from
18 individual shareholders and not made to shareholders generally;

19 (B) an offer made by an issuer to purchase its own
20 equity securities or equity securities of a subsidiary at least
21 two-thirds of the voting stock of which is owned beneficially by
22 the issuer;

23 (C) an offer to purchase equity securities to be ef-
24 fected by a registered broker-dealer on a stock exchange or in the
25 over-the-counter market if the broker performs only the customary
26 broker's function, and receives no more than the customary broker's
27 commissions, and neither the principal nor the broker solicits or
28 arranges for the solicitation of orders to sell equity securities
29 of the offeree company;

1 (D) an offer to purchase equity securities made to all
2 holders of the securities if the number of such holders does not
3 exceed 100 at the time of the offer;

4 (E) an offer which the board of directors of the offeree
5 company recommends to the security holders of the company if the
6 terms of the offer, including any inducements to officers or
7 directors which are not available to all security holders, have
8 been furnished to security holders;

9 (3) "offeree" means a person, whether a security holder of
10 record or a beneficial owner, to whom a takeover bid is made;

11 (4) "offeree company" means a corporation incorporated under
12 the laws of Alaska or a corporation which has its principal office and
13 substantial assets located in Alaska, whose equity securities are the
14 subject of a takeover bid;

15 (5) "offeror" means a person who makes a takeover bid, and
16 includes two or more persons

17 (A) whose takeover bids are made jointly or in concert,
18 or

19 (B) who intend to exercise jointly or in concert any
20 voting rights attaching to the equity securities for which a
21 takeover bid is made;

22 (6) "offeror's presently owned equity securities" means, with
23 respect to any class of securities of an offeree company, the aggregate
24 number of shares or other units which, on the date of a takeover bid,
25 are beneficially owned or subject to a right of acquisition directly or
26 indirectly by the offeror or an associate of the offeror;

27 (7) "associate of the offeror" means

28 (A) a corporation or other organization of which the
29 offeror is an officer, director or partner, or is, directly or

1 indirectly, the beneficial owner of 10 per cent or more of any
2 class of equity securities;

3 (B) a person who is, directly or indirectly, the bene-
4 ficial owner of 10 per cent or more of any class of equity securi-
5 ties of the offeror;

6 (C) a trust or other estate in which the offeror has a
7 substantial beneficial interest or as to which the offeror serves
8 as trustee or in a similar fiduciary capacity;

9 (D) a relative or spouse of the offeror or a relative of
10 the spouse, who has the same home as the offeror;

11 (E) a person directly or indirectly controlling, con-
12 trolled by, or under common control with, the offeror;

13 (8) "takeover bid" means an offer, other than an exempt
14 offer;

15 (9) "offer" means an offer made by any person directly or
16 through an agent by advertisement or any other written or oral com-
17 munication to offerees to purchase the number of shares or other units
18 of any class of equity security of the offeree company that, together
19 with the offeror's presently owned shares, will in the aggregate exceed
20 five per cent of the outstanding shares of that class;

21 (10) "Securities Exchange Act of 1934" means the federal
22 statutes of that name as in effect or subsequently amended.

23 Sec. 45.57.120. SHORT TITLE. This chapter may be cited as the
24 Takeover Bid Disclosure Act.
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HCS CSSB 443 IS A BILL DESIGNED FOR THE PROTECTION AND BENEFIT OF STOCKHOLDERS OF ALASKAN CORPORATIONS OR CORPORATIONS WHICH HAVE THEIR PRINCIPAL OFFICE AND SUBSTANTIAL ASSETS IN ALASKA. AS LONG AS MOST STOCKS SELL BELOW THEIR BOOK VALUE AND AT LOW EARNINGS MULTIPLES, RAIDING COMPANIES WILL CONTINUE TO MAKE TAKE-OVER BIDS FOR OTHER COMPANIES.

THIS BILL PROVIDES THAT NO PERSON CAN MAKE AN OFFER TO GAIN CONTROL OF AN ALASKAN CORPORATION BY PURCHASING ITS STOCK WITHOUT COMPLIANCE WITH THE TERMS FOR THE STATUTE. THE RAIDING COMPANY WILL BE REQUIRED TO FILE A DISCLOSURE STATEMENT WITH THE DEPARTMENT OF COMMERCE, THE TARGET COMPANY AND THE STOCKHOLDERS. INFORMATION REQUIRED TO BE DISCLOSED IS SET FORTH HEREIN BEGINNING ON PAGE 2, LINE 22 WITH THE DEPARTMENT OF COMMERCE AUTHORIZED TO REQUIRE FURTHER INFORMATION IF IT DEEMS NECESSARY FOR PROTECTION OF THE STOCKHOLDERS. THE BILL ESTABLISHES A MINIMUM TIME PERIOD OF 21 DAYS WHICH THE OFFER MUST REMAIN OPEN TO STOCKHOLDERS.

THE EFFECT OF THIS BILL IS TO MAKE IT MORE DIFFICULT FOR A RAIDER TO GAIN CONTROL OF AN ALASKAN CORPORATION IN WAYS WHICH WOULD BE UNFAIR TO STOCKHOLDERS. IRRESPECTIVE OF WHETHER A STOCKHOLDER CHOOSES TO SELL TO THE RAIDER AT A PREMIUM PRICE OR HOLD HIS STOCK, HE WILL ACQUIRE THE NECESSARY INFORMATION, UNDER THE PROVISIONS OF THIS BILL, WHICH WILL ENABLE HIM TO MAKE HIS OWN DECISION WITHOUT BEING STAMPEDED BY THE RAIDING COMPANY.

SIMILAR STATUTES HAVE BEEN ENACTED BY THE STATES OF COLORADO, HAWAII, IDAHO, INDIANA, KANSAS, MINNESOTA, NEVADA, OHIO, PENNSYLVANIA, SOUTH DAKOTA, ~~AND~~ VIRGINIA and earlier this month, Delaware.

CONNECTICUT, ~~DELAWARE~~, MARYLAND, MASSACHUSETTS, MICHIGAN, NEW JERSEY, AND TENNESSEE ARE PRESENTLY CONSIDERING THIS LEGISLATION.

PERHAPS THE CONCLUDING PARAGRAPH OF A RECENT ARTICLE IN FORBES MAGAZINE ENTITLED "RUTHLESSNESS BY THE RULES" BEST SUMS UP THE NEED FOR THIS BILL AND I QUOTE:

" THE IMPORTANT THING IS TO TIGHTEN THE RULES -- AND EXTEND THE BIDDING PERIOD SO THAT STOCKHOLDERS WON'T BE PANICKED INTO SELLING OUT TO ARBITRAGEURS AT THE FIRST OFFER. IF THE STOCKHOLDERS STAY COOL AND ARE ABLE TO WAIT, THERE ARE ALMOST CERTAIN TO BE HIGHER BIDS."

I URGE THE PASSAGE OF THIS BILL.

Williams Act SEC

what Co. does this apply to - what portion in state
what level of Co by Williams Act

Why stockholders railroaded

what prompted the bill

Why 100 share holder cutoff

TELEGRAM

ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

02 1:9 NL ANCHORAGE ALASKA 96 04-12 457P AST

PMS TERRY GARDINER

2234

CHAIRMAN HOUSE JUDICIAL COMMITTEE

STATE OF ALASKA JUN

UNDERSTAND YOUR COMMITTEE CONSIDERING SB 443 SOMETIMES
REFERRED TO AS A CORPORATE TAKE-OVER BILL. IN VIEW OF THE STATES
APPARENT BAD REPUTATION WITH THE FINANCIAL WORLD AT THE MOMENT
WIEN FINDS ITSELF IN THE POSITION OF ITS STOCK SELLING AT
SUBSTANTIALLY LOWER THAN ITS BOOK VALUE AND CRITICALLY
BELOW ITS LIQUIDATION VALUE. IT APPEARS THAT SB 443 WOULD
BE ADVANTAGEOUS TO THE PEOPLE OF ALASKA WHOSE AIRLINE
COULD BE SUBJECTED TO FALLING INTO HANDS NOT COMPATIBLE
WITH THE BEST INTERESTS OF THE STATE OF ALASKA. MY COMPANY
SUPPORTS THIS BILL.

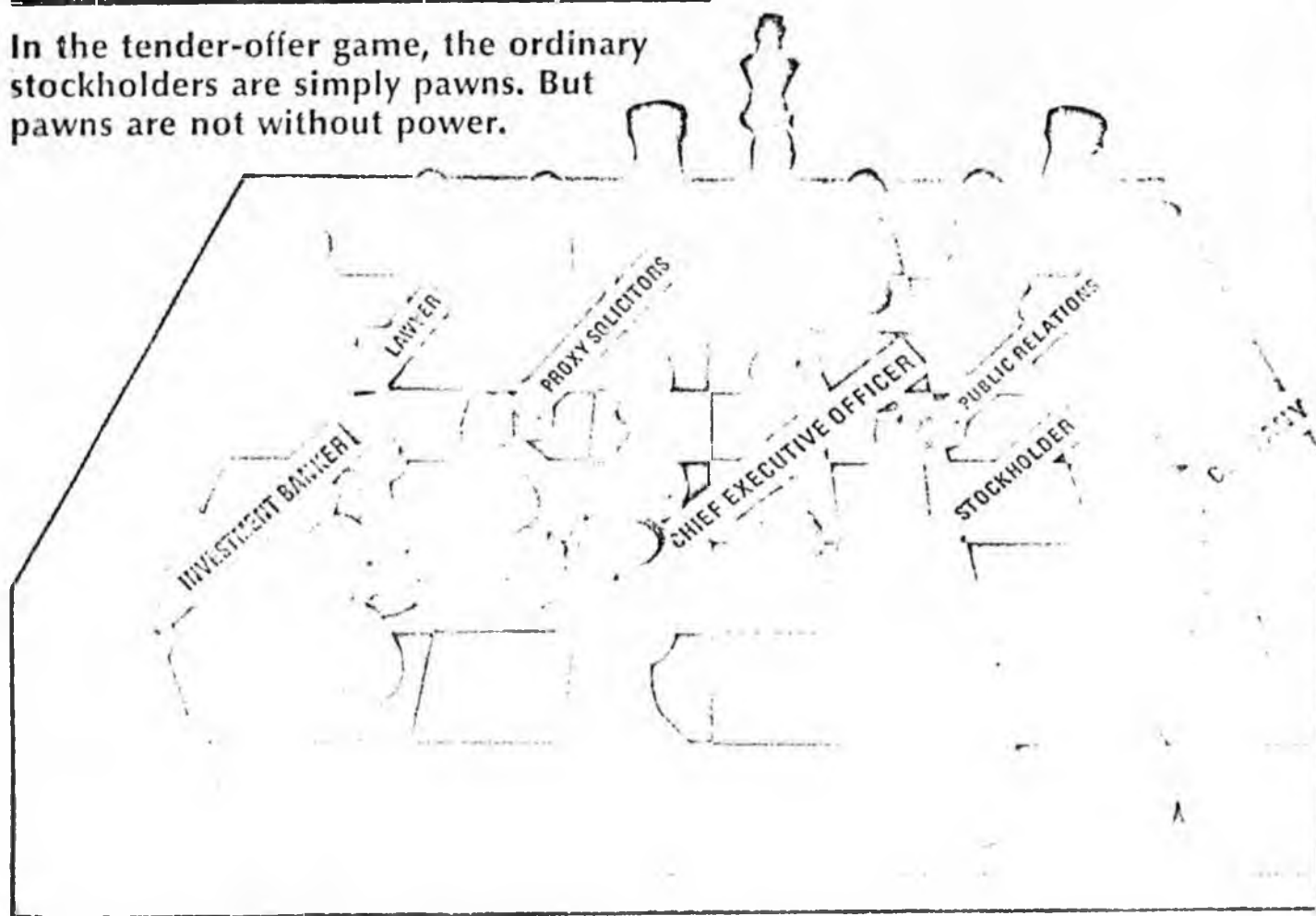
RAY PETERSEN CHAIRMAN OF THE BOARD AND PRESIDENT

WIEN AIR ALASKA INC

1976 APR 12 PM 8 53

Ruthlessness By The Rules

In the tender-offer game, the ordinary stockholders are simply pawns. But pawns are not without power.



CHECKMATE?

Or stalemate?

It looked like certain checkmate for Microdot Inc. when General Cable Corp. launched a powerful takeover gambit in December. General Cable was carefully masterminded by Morgan Stanley & Co. and legal-eagled by Joseph Flom, generally regarded as the smartest takeover lawyer in the country.

The offer looked irresistible. The stock market was doing nothing, and Microdot stock languished around 11. General Cable was offering \$17 a share in hard cash. In shrewdest Morgan Stanley fashion, the offer was designed to put Wall Street's professional arbitrageurs into the game on General Cable's side. (The arbitrageurs buy Microdot stock on the open market, hoping to tender to General Cable at a higher price as soon as possible.) And stockbrokers were to be a part of the strategy, too: They were to be offered 15 cents a share—three to four times the normal retail com-

mission—for every Microdot share they were able to persuade customers to part with.

To keep the arbitrageurs happy, Morgan Stanley specified that General Cable would accept every share offered—not just a certain number. In such a fight, the arbitrageurs play the key role: Once a big part of the stock is in their hands, the game is almost over. They are interested only in getting out at a profit, and getting out as soon as possible. Who can take them out quickly except the acquiring company?

Beautiful Ohio . . .

There was only one hitch—and it may prove to be a fatal hitch for General Cable's strategy. Microdot happens to have large assets in Ohio, which has one of the toughest anti-takeover laws in the Union. Under Ohio laws, the General Cable tender offer has not yet been approved by the State Securities Commissioner. So far, therefore, the tender has not

become effective—though some arbitrageurs have already gone into action as though it had.

Meanwhile, Microdot's chairman, Rudolph Eberstadt Jr., a nephew of the late Wall Street magnate Ferdinand Eberstadt, has been busy moving his own pieces about the board. He has used every gambit in the book and some not yet in the book. He has attacked General Cable's management, questioned Morgan Stanley's motives and last month made a novel move that may well become a defensive classic in the tender game: He proposed that his board of directors be given the power to liquidate Microdot rather than surrender—that is, sell the assets, piecemeal if necessary, to other companies. Such a liquidation could bring at least \$27 a share, more than half again as much as General Cable proposes offering. Eberstadt says he even considered tendering for the tenderer. In the end, however, he decided against the move: "General Cable just isn't worth

it," he says. "Maybe I should take out an advertisement offering \$3 a share [the stock sells for \$10]; that would show my contempt for them."

Eberstadt has a point. A ho-hum kind of company making wire and cable, General Cable has had a lackluster earnings record. Microdot, a diversified maker of industrial supplies, by contrast, has shown considerable growth. For example, Microdot's common book value has more than trebled in the past decade. General Cable's has increased by only about one-fourth as much. A takeover of Microdot would give Cable some badly needed glamour. Financed with money borrowed from four banks, including Microdot's own lead bank, Irving Trust, the takeover would be highly leveraged and bring quick, substantial gains in earnings per share for General Cable.

Defensive fights like the one Microdot is waging are making it more difficult and costly to take over companies that do not want to be taken over. In spite of the sick stock market last year, according to figures prepared by the Chicago merger consultant W.T. Grinn & Co., there were fewer tender offers for publicly held companies than in 1974. The score: 76 vs. 58. But, as long as most stocks sell below book value and at low earnings multiples, the tender game will go on. The cost may be high, but the potential rewards are tremendous.

In fact, the fights are getting more vicious all the time. Raids are being made when rival presidents are out of the country or even ill.

Consider this tactic, now fairly standard: Shortly before closing time on a Friday, the tendering company's lawyer appears at the Securities & Exchange Commission with a copy of the required Schedule 13D form, which includes information about the offerer and his intentions. Ads are placed in *The New York Times* and *The Wall Street Journal* for publication Monday morning. The raid is still secret. On Monday morning, the target company receives a copy of the 13D along with newspaper stories announcing the offer. The offer may give shareholders as few as seven days (including weekends and holidays) to consider the offer.

In consideration for the interests of the arbitrageurs—nobody seems to worry much about the stockholders who tender—investment bankers have developed a new technique. Follow a low initial bid with a second higher one. The early arbitrageurs who acted on the first bid thus get a double reward. (There have even been suggestions that some arbitrageurs

have been given advance information on takeovers.)

It is important for the aggressor that he strike with great power and confidence: He needs the arbitrageurs, and they must be convinced that the raid will succeed. There is nothing worse for an arbitrageur than to pay a premium over market for a stock and then have the tender offer collapse. The arbitrageurs can't afford risk and they can't afford delays. As one of them puts it, "Five percent profit in one week is a 260% annual rate; 5% in a month is only 60%." And there are risks: Many arbitrageurs got bloodied last November when they bought Austral Oil at 17 to sell to St. Joe Minerals for stock worth 20. The deal was called off, and many arbitrageurs ended up selling their shares for as little as \$11. Good-bye to many months' profits!

Arbitrageurs are nervy, hard-to-scare types; some are lawyers who instinctively know if a highly publicized lawsuit has any chance of success or is just a smoke screen. The best are right as often as 19 out of 20 times. But if they see a deal becoming really tainted, they will not hesitate to dump their stock on the open market.

A Quick Kill?

It is also important to strike with vigor so that the stockholders won't be encouraged to hold out for a higher price; every share tendered at a low price makes the final acquisition that much cheaper. It is also tougher for a rival bidder if the first bidder already has a good-sized block of stock in his pocket.

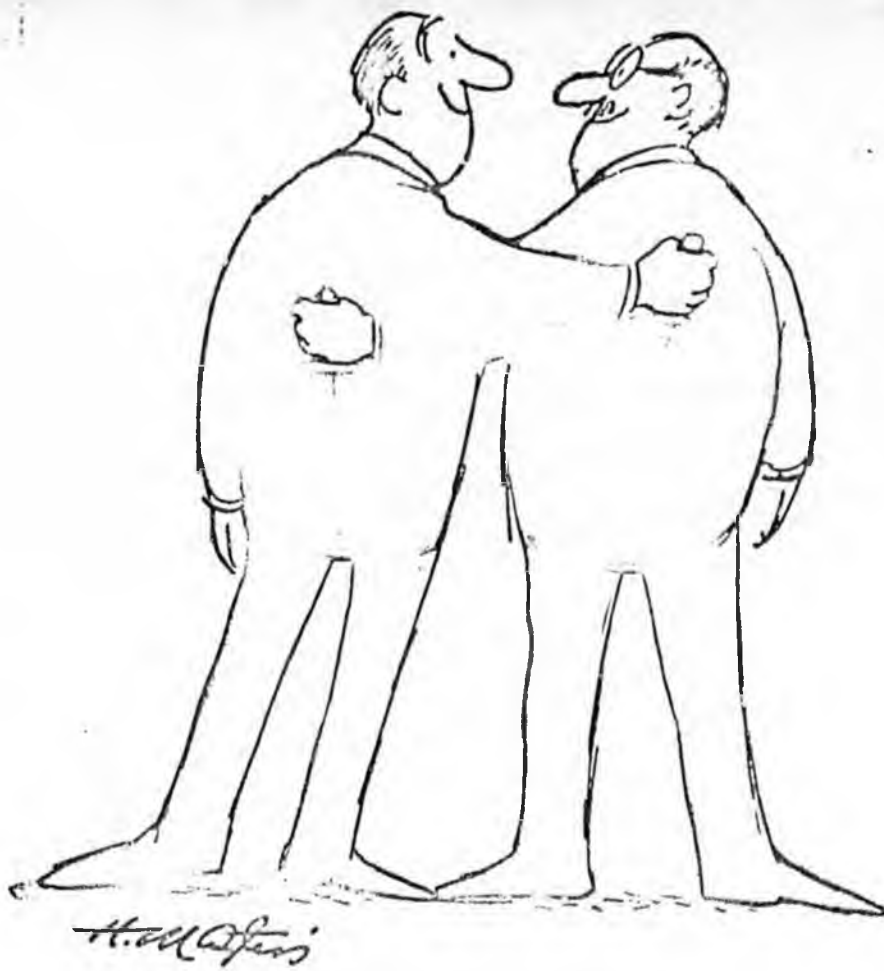
When a tender offer does not succeed at first stroke, the resulting bidding can be very costly for the bidders, but very advantageous for the shareholders of the acquired company. Take the 1974 takeover of ESB Inc. by International Nickel. ESB was at 19. Inco offered \$28 a share, a nice premium. However, ESB had previously talked merger with another company, United Technologies (formerly United Aircraft). UT knew that ESB was worth a good deal more than \$28 a share. So UT made a rival offer of \$31. In the end, Inco topped the UT offering at \$41 a share. As a result of UT's rival offer, ESB stockholders came out a full 46% better than they otherwise would have. Inco, moreover, seemed glad to have won ESB even at the higher price (although the Justice Department's Antitrust Division is now pressing a suit to force Inco's divestiture of ESB). But in how many takeovers do stockholders get this kind of a price break?

More recently, Mesa Petroleum bid

Rudolph Eberstadt Jr. is clearly outraged at General Cable's attempt to take over his company, Microdot. But here Eberstadt is displaying a short memory: Only a few years ago he himself tried—unsuccessfully—to mount an unfriendly tender offer for a small company named Eeco.

\$22 a share for control of Aztec Oil—nearly 50% over market. But the Mesa bid attracted other bidders and Mesa dropped out. The bidding for Aztec is up to \$32 a share, and Aztec stockholders will get a real windfall.

For such reasons, companies will go to great lengths to keep away rivals. Thomas Mellon Evans, chairman of H.K. Porter Co. as well as C.P. Co., has played the takeover game for 25 years. He deliberately cultivates a tough guy image to overcome both his targets and potential rivals. In bidding recently for control of Missouri Portland Cement Co. on behalf of his H.K. Porter Co., Evans



"What! Me make an unfriendly tender!"

found himself facing a potential rival bid from Chromalloy American Corp. Evans ran into Chromalloy's Chairman Joseph Friedman, who remarked that he hoped there would be no hard feelings over Chromalloy's designs on H.K. Porter's quarry. Evans reply made it quite clear that there would be considerable hard feelings. He went on to point out that Chromalloy was heavily in debt while his H.K. Porter wasn't, and that this and similar comparisons would have to be made if a fight developed. "These things get rather bloody, you know," Evans told Friedman. Chromalloy called off its proposed merger with Missouri Portland, and Porter has acquired 527 of Portland's stock.

Lawyer David Hall of Demas & Hall, which specializes in tender work, claims he knows two cases where raiders maneuvered so they could scotch a competing tender bid. The first was when a raider used detectives to uncover damaging financial facts about its potential rival, and then warned the rival that that material would have to be disclosed in the event of two competing tenders. Currently, one of Hall's clients has been threatened with a tender offer if it refuses to sell a prize division for a ridiculously low price.

It's quite obvious that this is no gentlemanly game, and the successful defender is often at least as ruthless as his attacker. One of the more successful defenders in proxy battles is Richard Cheney, 51, executive vice president at the big public relations firm of Hill & Knowlton. Cheney is well known for his successful defenses of such companies as Dictaphone and Goodrich, but Cheney has dropped

The Middle Men

CONVENTIONAL arbitrage is almost riskless, involving simultaneous buying and selling. But arbitrage as practiced in the tender game is far from riskless. It involves buying a stock at a higher price than it recently sold, if the tender offer falls through, the stock may drop back and the arbitrageur may get clobbered. A few such clobberings and he is out of business. The game is only for a few tough, experienced men, but they get very rich turning their money over every few weeks if they are lucky. The biggest arbitrageur is probably Leonard Sheriff, 60, a Yale Law School graduate who operates his own firm. Among brokers, Goldman, Sachs, Bache & Co., Bear, Stearns are big.

a few, too. Only recently he lost a client, Garlock Inc., to Colt Industries, in a surprise attack that Garlock didn't have time to resist, though other bidders were interested. Cheney helped Goodrich fight off raider Ben Heineman of Northwest Industries. He had Goodrich take out full-page advertisements criticizing the way Northwest was running its own business and implying that Heineman would be a very poor doctor for what ailed Goodrich. In addition, Goodrich deliberately bought a small trucking company in order to raise the anti-trust issue for Northwest, which at that time owned the Chicago & North Western Railway.

Another successful Cheney defense involved Dictaphone Corp. against a takeover bid from Canada's Northern Electric Co., Ltd. The defense involved publicizing pre-tender trading by the wife of Northern Chairman John Lobb. Cheney also made sure every Dictaphone employee knew that there had been a good deal of firing at Northern Electric after Lobb took over. This, not surprisingly, got Dictaphone's union riled up. The union saw to it that Connecticut Senator Lowell Weicker attacked this "foreign takeover" of a Connecticut company. The clincher was an antitrust charge involving Northern's parent, Bell of Canada.

In the end, Northern Electric broke off the attack. Dictaphone was "saved." But there is a postscript: Management's defense prevented stockholders from selling out at \$12 a share, but Dictaphone stock recently sold at 9.

Another veteran tender-defender is Manning Selvage & Lee Chairman Morris Lee, who goes back to Sewell Avery's successful defense against raider Louis Wolfson in the mid-Fifties. Lee likes to try stopping tenders before they are made. Lee says he stopped one group of raiding Texans by exposing a lie they had told their financiers, thereby killing their loan.

One of the most successful defenses was engineered in 1974 by California-based Signal Cos. This \$1.6-billion conglomerate was under attack by a group of investors including the Brontmans: interests in Distillers Corp.-Seagrams Ltd. Signal's management figured out that the Brontmans hoped to sell Signal's Mack Trucks and Garrett Corp. and end up owning Signal's oil and gas operations for free. By the time the raiders had 10% of Signal stock, Signal turned around and sold the oil and gas to Britain's Birmah Oil and used part of the proceeds to buy out the would-be raiders.

The Signal story has an ironic twist: The oil and gas operations proved a

disappointment to Burmah, which in effect was driven to the wall by that purchase. Burmah has been trying unsuccessfully to sell the former Signal properties ever since, while Signal, by contrast, is now cash-rich and raider-free.

The Goodrich ploy of buying a trucking company to block takeover by a railroad has been used many times. In one case, an Iranian tender was discouraged because some of coal producer Pittston's subsidiaries were regulated by the Interstate Commerce Commission. GAF Corp. is purchasing a radio station, apparently to make it difficult for outsiders to try taking it over; U.S. law requires unusually close scrutiny of broadcast company ownership.

Anaconda Co., under assault from Tom Evans and Crane, used the same tactic. It bought the Walworth Co., a competitor of Crane. This raised probably insuperable antitrust obstacles to a Crane takeover of Anaconda. In the end Evans settled for going after no more than 5 million shares, about 23% of the company, but he agreed not to buy any more shares and not to seek representation on the Anaconda board. (Evans-watchers are betting that this stalemate will not last indefinitely.)

A Local Issue

The stakes are huge in these battles, and, not surprisingly, as fast as defenders of the *status quo* set up obstacles to takeovers, the attackers find ways around them. For a long time it was in vogue to have staggered elections to the boards of directors of companies worried about takeover; the aggressor might get most of the stock, but he still couldn't control the board for many years. But the takeover forces have found ways of forcing resignations from the board. Or of increasing the board's size. Or of weakening its powers. So managements have come up with a new defense. First undertaken by Chicago Pneumatic Tool Co., it involves protecting minority shareholders by requiring a 95% stockholder vote in favor of a merger—unless the attacker comes up with an offer for all the outstanding stock that meets certain preset requirements.

Frequently the strongest resistance to takeovers comes from communities where offices and plants of the target companies are located. For this reason, some state laws against takeover are much tougher than the federal laws. "Without the protection of the Ohio law, we'd be dead now," says Allen Howell, financial assistant to the president of Microdot. "We wouldn't have had time to toss up this de-

"I never see enough New York."



Here I go again. New York on business. Fun City. In a cab, in an office, in a meeting. I never see enough New York. But I finally figured out how to stay ahead of the game.

I stay at The Biltmore.

I can't think of anything that isn't a walk from The Biltmore.

There's more New York on the inside, too. The lobby. Under the Clock. The people. My room. (They don't make rooms like that anymore.)

They have a great check-out system, too. I just drop the room key off and leave. They bill me later.

I can't imagine coming all this way just to end up in one of those forgettable chain hotels.

New York is no place to be nowhere.

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fense." The Ohio law provides for "full and fair disclosure" before a tender can be made. The state laws may not hold up, however, since their constitutionality has been challenged on grounds that they abridge the Federal Government's power to regulate interstate commerce. If the state laws fall, pressure for tougher federal laws will probably follow.

Whose Interest?

When a management resists a takeover bid, it never fails to announce: "This offer is not in our stockholders' best interests." Is this just so much cant? In many cases, yes: It may not previously have bothered the management that its stockholders had become stuckholders, or at least it didn't bother them sufficiently to do much about it.

To be sure, takeover types are not philanthropists. They want assets at a discount. Or they want companies on the verge of a turnaround where the stock price does not yet reflect the potential. If they pay \$15 for a stock that recently sold at \$10, it is only because they think it will be worth \$20 or \$25 or \$30 within a reasonable amount of time.

For example, Tom Evans bought CF&I Steel in 1969 for a package of securities and cash with a market value of around \$100 million; in 1974 the steel properties earned \$35 million, a 35% return. Of course, Evans had to wait for the steel business to

pick up before he did that well, but he waited with a confidence and a sense of control that the ordinary shareholder can never have.

From a businessman's point of view—as opposed to that of an investor—a tender offer can be a cheap way of expanding. Through tenders, Tesoro Petroleum recently bought control of Commonwealth Oil Refining for \$52 million; Commonwealth's properties had a book value of only \$300 million and a probable replacement cost of over \$800 million.

If the businessman has incentives that the ordinary investor does not, so do the investment bankers.

If General Cable wins Microdot, then Morgan Stanley stands to earn an \$500,000 fee. Tenders are good pickings for the banks, too: safe loans with fast pay-back. These loans are so tempting that New York's Irving Trust Co. may have gotten into a conflict-of-interest situation. While doing business with Microdot (and receiving regular reports on the company), Irving agreed to serve as lead bank for General Cable in financing the proposed takeover of Microdot. The bank denies there was any conflict, but Microdot's Eberstadt insists there was and announced he plans to sue Irving Trust.

A Useful Alternative

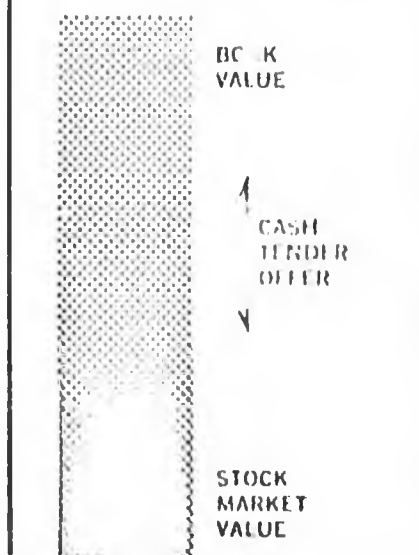
Men like Tom Evans argue that these tender offers play a useful role in keeping the economic system efficient. Even allowing for his obvious self-interest, Evans clearly has a point. Many managements are inefficient, and the country is better off if scarce capital is taken out of their hands. Too many other managements treat their stockholders in a cavalier fashion, considering them the last and the least of the publics they have to deal with. Seeing their money mishandled and their own interests largely ignored, many investors have turned away in anger from the stock market. Taking them out of depressed stocks through tender offers may not be the ideal way to restore their confidence, but at least it gives them an alternative to selling at a distressed price in a disinterested market.

An executive engaged in selling one of his company's plants to another company tells this story. Flippantly, the buyer twitted the seller: "You know, on a tender I could buy your whole company for the price of this plant." The seller winced, because he knew it was true.

As long as it is true for literally hundreds of good companies, the tender game will go on. As long as the game threatens established managements, the managements will fight the tenders tooth and nail.

BARGAIN FOR BOTH

The trick in pricing a cash tender offer is to come in with a price that is enough over market price to be good for the shareholder, but enough under book value or real company value to be good for the buying company.



Thomas Mellon Evans, of Crane Co. and H.K. Porter, is one of the country's takeover champions, but even he agrees that some reforms are desirable. For example, he believes that there should be a 60-day "cooling off" period after a takeover bid is initiated instead of just eight days as at present—if only so that the shareholders can have time to evaluate all the bids.

The important thing is to tighten the rules—and extend the bidding period so that stockholders won't be panicked into selling out to arbitrageurs at the first offer. If the stockholders stay cool and are able to wait, there are almost certain to be higher bids.

As for the stockholder's real interest, it is neither with attacker nor with victim. His interest is in getting the best possible price for his property. ■

MEMORANDUM IN SUPPORT
OF COMMITTEE SUBSTITUTE
FOR SENATE BILL 443,
THE "TAKE-OVER-BID DISCLOSURE ACT"

I. The Statute's Jurisdiction

Transactions Covered

The provisions of the statute apply to a take-over bid for any class of equity security of an Alaska corporation. A "take-over bid" is defined in Section 45.57.110 (8) and (9) as an offer made "directly or through an agent by advertisement or any other written or oral communication to (the security holders) to purchase "more than 5% of any outstanding class of the Alaska corporation's equity securities.

Only Alaska corporations and their shareholders may claim the benefit of this statute. Section 45.57.110 (4) specifies that the statute applies only to an offer made with respect to the equity securities of a corporation which is either incorporated in this State or which has both its principal office and substantial assets located in this State.

Transactions Exempted

Even if the target of the take-over bid is an Alaska corporation, the statute specifies certain situations in which the bid may proceed without compliance with the terms of the statute. The transactions exempted from the statute's coverage are ones in which the hazards of inequity or non-disclosure in a take-over bid are substantially reduced.

As stated in Section 45.57.110 (9), the statute does not apply if less than 5% of the corporation's equity securities are the subject of the bid. The acquisition of 5% of a corporation's equity securities typically will not carry with it the power to control the corporation, so that the danger of exploitation of the Alaska corporation and its shareholders is largely eliminated. To the extent that tendering security holders are injured in this situation, their remedies in private damage actions provide them relief.

The other exempt take-over bids are set out in Section 45.57.110 (2). These transactions involve situations in which any transfer of control of the Alaska corporation would occur only after complete disclosure and in which the security holders are at present adequately protected.

Section 45.57.110 (2) (A) exempts an isolated, private offer to purchase equity securities from individual security holders. In those instances where control is transferred in a private transaction with a few shareholders to the injury of the corporation and its remaining shareholders, common law and equitable remedies are available to redress that injury. On the other hand, if the selling shareholder in such a private transaction is injured by the offeror's misrepresentation or nondisclosure, he will have both common law and federal causes of action available to him.

The exemption provided in Section 45.57.110 (2) (B) permits an Alaska corporation to make an offer for its own securities. This section also exempts a corporation's take-over bid for the securities of its Alaska subsidiary if, at the time of the offer, the offeror beneficially owns two-thirds of the subsidiary's voting stock. The Alaska corporation's fiduciary duty to its own security holders provides protection against any unfairness or nondisclosure in connection with the offer. Similarly, the Alaska subsidiary's security holders are protected by the standards to which the offeror must conform by virtue of its status as an "insider" and as the subsidiary's controlling stockholder.

The exemption in Section 45.57.110 (2) (C) permits the purchase of the target's equity securities provided that the purchases occur in ordinary brokerage transactions on a stock exchange or in the over-the-counter market without solicitation of orders to sell.

Because of the dynamics of the stock market it is very difficult to acquire control of a company through such ordinary brokers' transactions. The security holders in these transactions would be left to their private remedies.

If made in compliance with the terms of Section 45.57.110 (2) (D) - an offer for the shares of a closely held Alaska corporation is exempted from the statute's coverage. The offer must be made to all the security holders of the target corporation and there must not be more than 100 such security holders. When the number of security holders is small, the opportunities for negotiation between the offeror, the target corporation and target security holders are significantly improved. Hence, the risks of nondisclosure are correspondingly diminished.

Finally, under Section 45.57.110 (2) (E) the statute does not apply to offers which are recommended to the security holders by the target Alaska corporation's board of directors. Since the target's board could be charged with responsibility for making adequate inquiry into the business character of the offeror and the terms of the offer, this statute's protective function would be largely duplicative of such investigation. Moreover, the section specifically requires the terms of the recommended offer to be furnished to the security holders and "any inducements to officers and directors which are not made available to all security holders" to be fully disclosed. The disclosure of any inducements to recommend the offer is designed to insure the integrity of the exemption. To the extent that recommendation of the target's directors is consistent with their fiduciary duty to the security holders, those security holders are as fully protected as if the statutory procedure were complied with. However, if the directors have been offered inducements to recommend the offer, the recommendation may be suspect and the disclosure of the inducements should alert the security holders to that possibility. If the recommendation violates the directors' fiduciary duty, the security holders have adequate common law remedies.

II. The Operation of the Statute

Once the statute is found to apply to a take-over bid for an Alaska corporation, the statute imposes three requirements. First, the offer must not be unfair or inequitable to the security holders; second, the terms of the offer must conform to certain provisions in the statute; and third, the offer must contain the prescribed disclosures.

The Provisions Governing the Terms of the Take-over Bid.

Section 45.57.010 contains the provisions which govern the terms of every take-over bid for an Alaska company. These provisions are designed to encourage a rational response by the security holders to the offer and to assure equal treatment among security holders accepting the offer. Section 45.57.010 (1) specifies the minimum and maximum durations of a take-over bid for an Alaska corporation. The offer may not remain open for less than 21 days or longer than 35 days. The minimum duration is necessary to insure that the security holders have ample opportunity to consider the offeror's disclosures in their decision to accept or reject the offer. This minimum duration is necessary since the federal law does not specifically set a minimum duration for a take-over bid, but merely provides that security holders who accept the offer have a right to withdraw their securities for seven days after the commencement of the offer. Conceivably, under federal law, an offer could be of an even shorter duration than seven days, provided the withdrawal rights were not infringed. Unfortunately, the minimum duration of a take-over bid under federal law is inimical to a rational response to the offer, promoting confusion and panic instead. A minimum duration of 21 days for the offer imposes no serious burden on the offeror and greatly encourages a reasoned response to the offer.



On the other hand, the take-over bid should not be permitted to extend over too long a time. Frequently, the offer will generate considerable uncertainty in the stock market. This uncertainty is particularly marked when the offer is for less than all the shares, since in the event of an oversubscription, proration of the securities taken up will occur. The 35-day limit set out in Section 45.57.010.(1) provides sufficient time for the offer to be fully disseminated to the security holders and accepted or rejected by them.

Security holders who accept the offer but reconsider should be provided with a reasonable period in which to withdraw their shares. Section 45.57.010 (2) permits a security holder to withdraw the tendered shares within 21 days after the commencement of the take-over bid. This withdrawal period is significantly longer than the seven-day period provided under federal law. During a withdrawal period as short as that provided by federal law, security holders have no genuine opportunity to reconsider their response to the offer.

Section 45.57.010 (3) insures the equal treatment of security holders who oversubscribe an offer for less than all of a class of a target corporation's equity securities. This section requires the offeror to take up the tendered securities as nearly as possible pro rata according to the number of securities tendered. This section significantly extends and improves the protection otherwise afforded the security holders by federal law, since under federal law an offeror must prorate the oversubscription of the offer for less than all of a class of equity securities only if the oversubscription occurs within ten days of the beginning of the offer or any increase in consideration offered to security holders by the offeror. If the oversubscription occurs later in the offer or such increase, no proration is required and security holders who deposit their securities after the expiration of such ten day period lose the benefit

of proration. Since there is no justification for such a limitation on the right to pro rata treatment in an offer for less than all the equity securities of a class, Section 45.57.010 (3) requires proration of an oversubscription of such an offer, regardless of when the oversubscription occurs.

Security holders who accept an offer should receive any additional consideration subsequently offered by the offeror for securities of the same class. Section 45.57.010 (4) stipulates that an offeror must pay any increased consideration for the target securities to all offerees, even if an offeree's securities were taken up prior to the increase in offered consideration. The reason for this provision is to prevent an offeror from manipulating security holders by increasing the offer price after taking up the securities deposited in response to the prior offer.

Finally, in order to insure full disclosure to offerees Section 45.57.010 (5) requires that an offer sent by mail to the security holders be accompanied by the disclosure statement filed with the Department of Commerce.

The Prescribed Disclosures

Besides regulating certain terms of the offer, the statute prescribes a set of disclosures which the offeror must make about itself and the offer. These disclosures are at the heart of the statute's remedial function. The disclosures are designed to make it possible for the security holders to understand fully the consequences of their decision to accept or reject the offer.

According to Section 45.57.020 (a) the offeror must file the disclosure statement at least 20 days prior to the effective date of the take-over bid. The disclosure statement must be filed with both the Department of Commerce and the target Alaska company. During this 20-day period the company and the Department will be able to examine the disclosure statement to determine whether a hearing must be held on the adequacy of the disclosures.

The disclosures which the offeror must make are set out in Section 45.57.020 (c). The disclosures prescribed by Section 45.57.020 (c) (1)-(6) in large part parallel disclosures already required by federal law. The Alaska statute calls for these disclosures in order to expose them to critical review before the offer commences.

Section 45.57.020 (c) (7) requires the offeror to provide comprehensive information about itself. The offeror must state the form of its organization and the jurisdiction in which it is organized; describe its financial structure and supply financial statements for the three most recent fiscal years; and provide a description of the location and character of its principal physical properties and the properties of its subsidiaries. Similarly, the offeror must reveal any pending legal proceedings of other than a routine nature to which it or any of its subsidiaries is a party; discuss the business in which it and its subsidiaries are engaged or in which they expect to be engaged; and give an account of those business activities for the most recent five years. Finally, the offeror must disclose certain information about its executive officers and directors, including the amount of their material interest in any material transaction during the most recent three years, or in any proposed material transaction, to which the offeror or any of its subsidiaries were or are to be a party.

Security holders need all of this information. A security holder's decision whether to accept the offer may depend on information concerning not only the terms of the offer and the offeror's plans, but also the business character of the offeror. If the security holder rejects the offer, he may find himself in an enterprise controlled by the offeror. The desirability of an investment in such a combined enterprise will depend in part upon the business character of the offeror.

Present federal statutory law regulating cash take-over bids has no analogue for Section 45.57.020 (c) (7). The federal statutes require no disclosures about the offeror itself so long as the target securities are to be purchased for cash. On the other hand, if the offeror intends to exchange its securities for the target company's securities, the federal statutes require a wide range of disclosures about the offeror. This dichotomy in federal law is hard to justify, since even in a cash offer, security holders who reject the offer should have enough information about the offeror to assess the consequences of maintaining their investment.

Although some federal courts have begun to require disclosures about the offeror, the accretion of federal precedent is slow and incomplete. The information called for in Section 45.57.020 (c) (7) is necessary to protect security holders who reject the offer, and this statute is the most expeditious means of requiring an offeror to disclose that information.

III. The Administrative Procedure

The Department of Commerce is the agency principally charged with the implementation and enforcement of this statute. The statute's substantive provisions will be most effectively implemented by administrative action since the Department will develop the expertise necessary to respond efficiently and knowledgeably to the questions arising under the provisions.

The Hearing

All questions about the fairness of the take-over bid or the adequacy of the offeror's disclosures should be resolved before the commencement of the offer. One of the most serious deficiencies of the federal law dealing with take-over bids is that an offeror's misstatements or non-disclosures are exposed during litigation, but after the commencement of the offer. Often the offeror's subsequent disclosure of information is too late and disjointed to be helpful to the target security holders.

In order to insure that the offer is fair, that the offer is made on substantially equal terms to all security holders and that the disclosures are complete at the start of the offer, a hearing procedure is established for the resolution of questions on those issues. Section 45.57.020 (a) (1) provides that within 10 days after the filing of the offeror's disclosure statement, the Department is authorized to order a hearing on questions arising from the proposed take-over bid. Section 45.57.020 (d) provides that the Department may order the hearing on its own motion if the Department finds that cause for such a hearing exists. The Section also provides that the Department must order the hearing if the target Alaska company requests it.

If a hearing is ordered, Section 45.57.020 (b) requires the hearing to be held within 20 days after the filing of the offeror's disclosure statement. This section also requires that the Department adjudicate the questions raised at the hearing within 30 days after the filing of the disclosure statement, unless either the convenience of the parties or the protection of security holders requires a delay of the adjudication. In order for the offer to proceed, Section 45.57.020 (a) (2) requires the Department to find that the offeror has made "fair, full and effective disclosure to offerees of all information material to a decision to accept or reject the offer." The Department has the power under Section 45.57.050 (c) to require the offeror to disclose information in addition to that specifically identified in Section 45.57.020 (c, (1)-(7).

The Department has the power under Section 45.57.050 to undertake investigations within or outside Alaska to determine whether any person has violated or is about to violate any provision of the statute. This broad investigatory power is especially important to the Department's adjudication on the fairness of the offer and the adequacy of the offeror's disclosures.

Section 45.57.060 provides that if the Department finds that the terms of the offer do not comply with the provisions of the statute or that the offeror's disclosures are incomplete, the Department may enjoin the take-over bid.

Rule-Making Power

Both substantial economies of judicial and administrative resources and more effective protection of security holders can be achieved by proscribing offensive practices by rule rather than by attacking them in adjudicative proceedings. As the Department builds its expertise in the analysis of the fairness of offers and the adequacy of the offeror's disclosures, it will be able to advance the statute's purposes by general rules. These rules will benefit prospective offerors by illuminating the statute's provisions. Consequently, the Department is empowered pursuant to Section 45.57.100 "to make and adopt such rules and regulations, and adopt such forms, as are necessary or desirable to carry out the provisions of the statute."

Filings of Solicitation Materials

The statute requires that certain solicitation materials be filed with the Department. Under Section 45.57.020 (e) all written soliciting material used by the offeror in connection with the take-over bid must be filed with the Department at least three days prior to their distribution to the security holders. That section also requires the offeror to file its solicitation materials with the target Alaska company. Under Section 45.57.030 a written solicitation or recommendation to offerees other than by the offeror to accept or reject a take-over bid shall be filed with the Department" at least simultaneously with their publication or distribution to security holders.

IV. Deceptive Practices

Section 45.57.060 specifically prohibits any person from making an untrue statement of a material fact, omitting to state a material fact or engaging in any fraudulent, deceptive or manipulative acts or practices, in connection with any take-over bid or solicitation of offerees to accept or reject the offer.

V. Crimes and Civil Liabilities

Section 45.57.070 imposes criminal penalties upon any person who willfully violates the statute or violates an order of the Department of which he has knowledge. Pursuant to Section 45.57.080 an offeror may, under certain circumstances, incur civil liability to offerees whose shares have been taken up.

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COMMITTEE REPORT

4/6/76

HOUSE

Mr. Speaker:

Date April 17, 1976

The Committee on JUDICIARY has had CS 484 am 11

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

() reports it back WITHOUT RECOMMENDATION

() "other"

Members signing the Majority report:

<u>[Signature]</u>	<u>D. P. [Signature]</u>	<u>[Signature]</u>
_____	_____	_____
_____	_____	_____
<u>[Signature]</u>	_____	_____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Terry Gardner Chairman

Original sponsor: Ray, Chance,
Colletta, et al

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 484
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to abandoned motor vehicles."

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

8 * Section 1. AS 28 is amended by adding a new chapter to read:

9 CHAPTER 11. ABANDONED VEHICLES.

10 Sec. 28.11.010. ABANDONMENT UNLAWFUL. (a) No person may abandon
11 a vehicle upon a highway or vehicular way or area.

12 (b) No person may abandon a vehicle upon public property or upon
13 private property without the consent of the owner or person in lawful
14 possession or control of the property.

15 (c) A person abandoning a vehicle as specified in (a) or (b) of
16 this section is considered responsible for the abandonment of a vehicle
17 and is liable for the cost of removal and disposition of the abandoned
18 vehicle.

19 (d) The lawful owner of the vehicle, as shown by the records of
20 the department, whether or not he has complied with the provisions of
21 AS 28.10.350, is considered responsible for the abandonment of a vehicle
22 and is liable for the cost of removal and disposition of the abandoned
23 vehicle unless

24 (1) the vehicle was abandoned by a person operating the
25 vehicle without permission; or

26 (2) the identity of the person abandoning the vehicle is
27 established and the abandonment was without the consent of the lawful
28 owner.

29 Sec. 28.11.020. PRESUMPTION OF ABANDONMENT. The department shall

1 adopt regulations governing the parking of vehicles on state property.
2 A vehicle which has been left unattended, left standing or parked upon a
3 highway in excess of 48 hours, or a vehicle left standing or parked on
4 public property or on private property in excess of 24 hours without the
5 consent of the owner or person in charge of the property shall, by
6 regulation, be subject to removal under sec. 30 of this chapter and
7 treatment as an abandoned vehicle for purposes of this chapter. The
8 department may provide for the parking of vehicles on state property in
9 excess of the limits specified in this section.

10 Sec. 28.11.030. REMOVAL OF ABANDONED VEHICLES. (a) A police
11 officer or an employee authorized by the state or a municipality may
12 remove or cause to be removed to a place for safe storage a vehicle
13 abandoned on a public street or highway, on a vehicular way or area, or
14 on private property.

15 (b) Removal of an abandoned vehicle from private property shall be
16 on the written request of the owner or person in lawful possession or
17 control of the property, and upon a form prescribed by the department.

18 (c) A written report of the removal shall be made by the police
19 officer or employee who removes or causes the removal of a vehicle under
20 this section, and the report shall be sent immediately to the depart-
21 ment. The report shall describe the vehicle, the date, time, and place
22 of removal, the grounds for removal, and the place of impoundment of the
23 vehicle.

24 Sec. 28.11.040. NOTICE TO OWNER. (a) Upon receipt of the removal
25 report prescribed in sec. 30 of this chapter, the department shall pro-
26 vide written notification by certified mail to the vehicle owner of
27 record and to lienholders of record, stating the grounds for removal and
28 the location of the place of impoundment of the vehicle. If the vehicle
29 is not registered in the state, the department shall make a reasonable

1 effort to notify the registered owner or the lienholder of the removal
2 and place of impoundment of the vehicle. The department shall forward
3 a copy of the notice to the owner or person in charge of the place of
4 impoundment.

5 (b) When the name and address of the registered or legal owner
6 cannot be ascertained, the department shall give notice by publication
7 in the manner prescribed for service of process by publication.

8 Sec. 28.11.050. VESTING OF TITLE. Title to an impounded vehicle
9 not reclaimed by the registered owner, the lienholder, or other person
10 entitled to possession of the vehicle within 30 days from the notice
11 provided by sec. 40 of this chapter vests with the state or, if a local
12 ordinance is adopted under sec. 100 of this chapter, with the local
13 governing body, as appropriate.

14 Sec. 28.11.060. REDEMPTION. A person who presents satisfactory
15 proof of ownership or right to possession may redeem a vehicle removed
16 under this chapter at any time before ^{Auction or relinquishment} ~~disposal~~ under sec. 70 of this
17 chapter by paying the charges of towing, storage, notice,
18 other cost of impoundment, and penalties imposed by law.

19 Sec. 28.11.070. DISPOSAL OF ABANDONED VEHICLES. (a) Upon satis-
20 faction of the notification and reporting requirements prescribed in
21 this chapter and when title to the vehicle has vested under sec. 50 of
22 this chapter, a vehicle may be disposed of

23 (1) by public auction 15 days after notice published in a
24 newspaper of general circulation in the area or municipality in which
25 the vehicle was found; the published notice shall describe the vehicle
26 and set out the place, date, and time at which it will be sold; a copy
27 of the published notice shall be conveyed to the department along with
28 documents required under (b) of this section; or

29 (2) by private sale or relinquishment in favor of a towing

1 or storage lien when the department determines that the lien amount
2 exceeds the fair market value of the vehicle.

3 (b) The title certificate and registration of a disposed vehicle
4 if available and a copy of the bill of sale or relinquishment of title
5 shall be surrendered to the department within 10 days of the disposal.

6 (c) A vehicle disposed under this section must be registered and
7 titled as prescribed in ch. 10 of this title, and subsequent sale of a
8 vehicle disposed under this section is prohibited without a certificate
9 of title issued by the department.

10 (d) Notwithstanding the provisions of this section, the department
11 may initiate a civil action against a driver or owner of a vehicle which
12 is abandoned in violation of this chapter for costs exceeding receipts
13 for the disposal of the vehicle.

14 Sec. 28.11.080. DISPOSAL FACILITIES. (a) The department shall,
15 if necessary, negotiate with appropriate state or municipal agencies in
16 an effort to designate and acquire centrally located land for the dis-
17 posal of abandoned vehicles. These areas may be used for the temporary
18 holding of vehicles before sale as prescribed in sec. 70 of this chap-
19 ter, or for the final disposal of unsold abandoned vehicles.

20 (b) A municipality which adopts an ordinance under sec. 100 of this
21 chapter shall designate appropriate areas within its jurisdiction for
22 the disposal of abandoned vehicles.

23 Sec. 28.11.090. TOWING AND STORAGE LIEN ON ABANDONED VEHICLE. A
24 person authorized by contract or other official order to remove an
25 abandoned vehicle has a lien upon a vehicle towed, moved, or stored by
26 him and in his possession in accordance with AS 28.10.515.

27 Sec. 28.11.100. LOCAL ABATEMENT PROCEDURE. (a) A municipality
28 may adopt an ordinance establishing procedures for the abatement and
29 removal from private or public property, as a public nuisance or a

1 health or safety hazard, a wrecked, dismantled, or inoperative vehicle
2 or a vehicle otherwise believed to be abandoned. The ordinance written
3 under this section shall contain provisions for notice to owners and for
4 disposal of abandoned vehicles as provided in secs. 40 and 70 of this
5 chapter.

6 (b) The department shall assist a municipality which elects to
7 adopt its own procedures for the removal and impoundment of vehicles
8 within its boundaries.

9 (c) A municipality which fails to adopt procedures for the removal
10 and impoundment of abandoned vehicles under (a) of this section is bound
11 by the procedure specified in this chapter.

12 Sec. 28.11.110. ABANDONED MOTOR VEHICLE FUND. (a) There is
13 created in the department an abandoned motor vehicle fund, to be com-
14 posed of appropriations by the legislature and proceeds from the sale of
15 abandoned motor vehicles.

16 (b) The proceeds from the sale of an abandoned motor vehicle under
17 this chapter, after deducting the cost of impounding, advertising, and
18 selling the vehicle, shall be deposited in the fund set out in (a) of
19 this section.

20 (c) Money in the fund shall be disbursed to the department and to
21 each of the municipalities bound by the provisions of this chapter upon
22 presentation of a voucher for payment of services rendered in compliance
23 with this chapter.

24 * Sec. 2. AS 28.10.515(a) is amended to read:

25 (a) A person engaged in the business of towing motor vehicles, who
26 tows, transports or stores a motor vehicle has a lien on the motor
27 vehicle. This lien attaches when the person acts under a contract with
28 the owner or at the direction of a public officer acting lawfully or a
29 person entitled to possession of the property upon which the motor

1 vehicle is parked without consent. The lien remains in effect while the
2 motor vehicle is in the possession of the person and may be sold, as
3 provided in (b) of this section, to pay the charges for towing, trans-
4 portation or storage. The lien is limited to towing charges assessed
5 according to the tariff filed by the carrier with the Alaska Transporta-
6 tion Commission and storage charges of no more than \$1.50 per day. In
7 the absence of a filed tariff, the towing charge shall be the same as
8 the lowest towing charge in the other filed tariffs covering the same
9 service and route. Storage charges shall cease to be part of the lien
10 after 60 [30] days unless the prior lien holder has been given actual
11 notice of the possessory lien within that time or unless a certified
12 letter has been mailed within that time to the owner and prior lien
13 holder at their addresses of record with the office in which the title
14 to the motor vehicle and the lien on it are recorded.

15 * Sec. 3. AS 28.31 is repealed.
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March 23, 1976. State Affairs Committee Report: The Committee recommends it do pass with the following amendment No. 1:

Page 4, line 16: After the word "him", insert a period". "and delete rest of sentence. After the period, insert new sentence to read: "The lien remains in effect while the motor vehicle is in the possession of the person and may be sold, as provided in AS 28.10.515(b), to pay the charges for towing, transportation or storage. The lien is limited to towing and storage charges assessed according to the approved tariff filed by the carrier with the Alaska Transportation Commission. In the absence of a filed tariff, the towing charge shall be the same as the lowest towing charge in the other filed tariffs covering the same service and route. Storage charges shall cease to be part of the lien after 60 days unless the prior lien holder

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60

SB 484 3-23-76 continued page 2 . . .

has been given actual notice of the possessory lien within that time or unless a certified letter has been mailed within that time to the owner and prior lien holder at their addresses of record with the office in which the title to the motor vehicle and the lien on it are recorded."

The report was signed by McKinnon, Chairman, and concurred in by Wallis, Fischer, Miller and McKinnon.

[HJ 670 - 671]

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

02 04 6 ANCHORAGE AK 34 04-12 1242P AST

PMS REP TERRY GARDNER

JUN" 2115

SB484 I APPROVE AMENDMENT PAGE FOUR LINE SIXTEEN IMPOUNDED
IN FRONT OF THE MOTOR VEHICLE APPROVED TARIFF FILED BY THE
PERMITTED CARRIER THIRTY DAYS CHANGED TO SIXTY DAYS

DENNIS KALPAKOFF

4520 EAGLE ST

ANCHORAGE ALASKA 99503

1976 APR 12 PM 5 31

TELEGRAM

MCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

02 062 POM ANCHORAGE AK 15 04-12 12 15P AST

PMS REP TERRY GARDINER

JUN"

2130

I SUPPORT SB484 AND HOUSE AMENDMENT DATED 3-23-76 WITH
REVISIONS OUTLINED BY JIM CHRISTOPHER 4-9-76.

CHUCK HIGGINS

NORTHWEST AUTO PARTS

345 BONIFACE PARKWAY

ANCHORAGE ALASKA 99504

1976 APR 12 PM 5 38

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

02 127 NL ANCHORAGE ALASKA 50 04-12 710P AST

PMS REP TERRY GARDNER

JUN

2248

GENTLEMEN PLEASE BE ADVISED I WISH TO SUPPORT BILL 484

AS AMENDED MARCH 23 1976 AS EXPLAINED TO YOU BY JIM

CHRISTOPHER 4-9-76. PLEASE VOTE TO PASS THIS BILL.

THANK YOU

RODNEY LEWIS 1039 MULDOON RD ABC TOWING AND WRECKING

ANCHORAGE AK 99504

1976 APR 12 PM 10 14

TELEGRAM

CA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

02 055 POM TDA CHUGIAK 15 04-12 1014A AST

PMS REP TERRY GARDNER

JUN" **2142**

I SUPPORT SB484 AND HOUSE AMENDMENT 3-23-76 AS DISCUSSED
BY JIM CHRISTOPHER APRIL 9 76.

L G GARDNER

HILLTOP SALES AND SERVICE

STAR ROUTE BOX 485

EAGLE RIVER ALASKA 99577

1976 APR 12 PM 6 08

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE

Second Session - Ninth Legislature

I. REQUEST

Bill No. Proposed Amendment to SB 484
 Title: Relating to abandoned motor vehicles
 Requested by: Rep. Bob Bradley Date: _____
 Return Date Requested: _____
 Agency: Ak. Transportation Commission Program: _____

II. FISCAL DETAIL

Budget Request Unit(s) Affected: _____

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100 PERSONAL SERVICES		* 2.5	* 1.0	* 1.0	* 1.2	* 1.3
200 TRAVEL		* .5				
300 CONTRACTUAL		1.0	1.0	1.2	1.2	1.3
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

B. FUNDING: (Thousands of dollars)

GENERAL FUND		1.0	1.0	1.2	1.2	1.3
FEDERAL FUNDS						
OTHER						

C. POSITIONS: no new positions

PERMANENT/TEMPORARY	/	/	/	/	/	/
MAN MONTHS (P./T.)	/	/	/	/	/	/

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

* reflects costs absorbed within existing budget

IV. ATTACHMENTS

V. DATE: 4-12-76 PREPARED BY: James J. Johnson, Chairman

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

AS 28 Revision Interim Review Committee

Sectional Analysis of Proposed Legislation

Section Heading	Section	Current Statute	Changes Proposed	Comments
Ch. 10: Motor carrier and bus transportation fees paid with registration fee.....	28.10.571	-----	Fees required under AS 42.10 & AS 42.15 to be paid to department at time of registration [also see Sec. 211(k)].	
Registration fee imposed regardless of weight.....	28.10.581	28.10.200	Clarification of wording; fees same as established by 1975 Legislature. (e) requires payment of any other applicable fees which attach upon conversion of a vehicle to a vehicle of a different type (with different registration fees applicable) prior to its operation.	
Schedule of other fees and charges.....	28.10.591	28.10.150 28.10.320 28.10.340 28.10.480(d)	Relocation of 'other' fees into single section with \$3 increases in certain fees.	
<u>ARTICLE 7. CRIMES & OFFENSES</u>				
Unlawful to violate provisions requiring registration & title....	28.10.611	28.10.640	Clarification of wording.	
Felonies relating to title, registration, identification number, and removal and rerepresentation of vehicle.....	28.10.621	28.10.600 28.10.610 28.10.620 28.10.630	Clarification of wording. No specific penalties provided. New crimes involve (1) removal/falsification of vehicle identif. # (VIN), (2) concealment/misrepresentation of identity of a vehicle; and (3) sale/possession/disposal of a vehicle or vehicle equipment knowing the identif. # to be removed or falsified.	
Ch. 11: Abandonment unlawful.....	28.11.010	28.31.010(a) 28.31.010(b) 28.31.080	Expanded to include vehicular ways and areas as defined in proposed AS 28.35.010. Violation is infraction rather than misdemeanor (see proposed AS 28.35.100 for penalties). Owner of vehicle not completing transfer of title or interests, as required in proposed Ch.10, is liable for costs of impoundment and disposition.	

AS 28 Revision Interim Review Committee

Sectional Analysis of Proposed Legislation

Section Heading	Section	Current Statute	Changes Proposed	Comments
Ch. 11: Presumption of abandonment.....	28.11.020	28.31.010(d)	Times required for presumption of abandonment are reduced to 48 hours (from 7 days) on a highway, and 24 hours (from 3 days) on public or private property. Commissioner is to promulgate regulations to cover situations where additional time is required and where such interests as hunting and protection against theft/vandalism are balanced.	
Removal of abandoned vehicles.....	28.11.030	28.31.010(c)	Minor wording changes substitute 'place of safekeeping' for 'garage or other place for impoundment and storage'.	
Notice to owner.....	28.11.040	28.31.010(c)	Upon receipt of impound report (see Sec. 30), department is to give notice to owner; however, if owner's name or address is unknown, notice is to given in newspaper.	
Vesting of title.....	28.11.050	28.31.020	Renumbered only.	
Redemption.....	28.11.060	28.31.030	Minor wording clarification: 'Impounded vehicle' is changed to 'vehicle removed under this chapter'.	
Disposal of abandoned vehicles.....	28.11.070	28.31.040	Vehicles may be disposed by public auction 15 days after notice in newspaper (copy of notice to be sent to dept.) or by private sale or relinquishment of title in favor of a towing and storage lien (also see proposed AS 28.10.551). Form describing vehicle, date, place and method of disposal to be submitted to department. <i>NOTE ADDED CIVIL REMEDY</i>	
Disposal facilities.....	28.11.080	28.31.050	Public Safety may negotiate with State <u>and</u> municipal agencies for disposal sites.	
Towing and storage lien on abandoned vehicle.....	28.11.090	-----	Person authorized by contract or official order to remove vehicles has lien under proposed AS 28.10.551.	
Local abatement procedure.....	28.11.100	28.31.060	Municipal ordinances not to be inconsistent with State law. No cut-off date for municipal adoption of ordinance.	
Abandoned motor vehicle fund.....	28.11.110	28.31.065 28.31.070	Municipalities to be reimbursed upon presentation of a voucher for payment of services which they rendered in compliance with this chapter. [NOTE: Current law Sec. 28.31.075 is replaced with proposed AS 28.05.010(a)(4).]	

Ch. 12: [NOTE: see COMPANION BILL]

Chapter 30. Abandoned Vehicles.

Section

10-40. [Repealed]

Secs. 28.30.010-28.30.040.

Repealed by § 36 ch 127 SLA 1974.

Editor's note.—The repealed chapter § 9, ch. 19, SLA 1963; § 1, ch. 11, SLA 1964; § 1, ch. 52, SLA 1953; § 1, ch. 117, SLA 1965; § 9, ch. 117, SLA 1965.

Chapter 31. Abandoned Motor Vehicles.

Section

- 10. Removal of abandoned motor vehicles
- 20. Vesting of title
- 30. Redemption
- 40. Disposal of abandoned vehicle
- 50. Disposal facilities

Section

- 60. Local ordinances
- 65. Abandoned motor vehicle fund
- 70. Disposition of proceeds of public auction
- 75. Regulations
- 80. Penalty

Legislative committee report.—For report on ch. 81, SLA 1973 (CSHB 34 [Finance] am S), see 1973 House Journal, p. 547.

Sec. 28.31.010. Removal of abandoned motor vehicles. (a) No person may abandon a vehicle on a highway in the state.

(b) No person may abandon a vehicle on public or private property without the express or implied consent of the owner or person in lawful possession or control of the property.

(c) A peace officer or an authorized employee of a general law municipality in the case of a general law municipality bound by the procedure specified in this chapter, who reasonably believes that a vehicle has been abandoned may have the vehicle removed to the nearest garage or other place for impoundment and storage. Removal of an abandoned vehicle from private property shall be on the written request, on a form prescribed by the Department of Public Safety, of the owner or person in lawful possession or control of the property. A written report of the removal shall be sent immediately to the Department of Public Safety, describing the vehicle, the date, time and place of removal, the grounds for removal, and place of impoundment of the vehicle. Upon receipt of the removal report, the Department of Public Safety shall provide written notification by certified mail to the vehicle owner of record and to lien holders of records, stating the grounds for removal and the name of the place of impoundment of the vehicle; however, notice is not required if the retail value of an abandoned vehicle is \$200 or less. If the vehicle is not registered in the state, the Department of Public Safety shall make a reasonable effort to

notify the re- place of imp Safety shall in charge of l

(d) For p abandoned i excess of sev express or in sion or contr (§ 2 ch 81 SL

Effect of an amendment, e substituted "I

Sec. 28.31 not reclaimed days from th state or, if a chapter, with SLA 1973)

Sec. 28.31 proof of own vehicle by pa of impoundm 1973)

Sec. 28.31 impounded v published in trict in whic vehicle and s The date of of publicatio

(b) Title be conveyed body, as app Public Safet Department

(c) Any s tion is prohi partment of am §§ 20, 21

Effect of an amendment, e substituted "I Safety" for *

notify the registered owner or any lien holder of removal and the place of impoundment of the vehicle. The Department of Public Safety shall forward a copy of the notice to the owner or person in charge of the place of impoundment.

(d) For purposes of this section, a vehicle is presumed to be abandoned if it is left unattended on a highway for a period in excess of seven days or on any public or private property without express or implied consent of the owner or person in lawful possession or control of the property for a period in excess of three days. (§ 2 ch 81 SLA 1973; am § 19 ch 214 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, substituted "Department of Public Safety" for "Department of Revenue" in the second through sixth sentences of subsection (c).

Sec. 28.31.020. Vesting of title. Title to an impounded vehicle not reclaimed by the registered owner or the lien holder within 10 days from the notice provided by § 10 of this chapter vests with the state or, if a local ordinance is adopted as specified in § 60 of this chapter, with the local governing body, as appropriate. (§ 2 ch 81 SLA 1973)

Sec. 28.31.030. Redemption. A person who presents satisfactory proof of ownership or right to possession may redeem an impounded vehicle by paying the charges of towing, storage, notice, other costs of impoundment, and any penalties imposed by law. (§ 2 ch 81 SLA 1973)

Sec. 28.31.040. Disposal of abandoned vehicle. (a) Disposal of impounded vehicles shall be conducted by public auction upon notice published in a newspaper of general circulation in the judicial district in which the vehicle was found. The notice shall describe the vehicle and set out the place, date, and time at which it will be sold. The date of sale shall be no later than one week following the date of publication.

(b) Title to a vehicle disposed of under (a) of this section shall be conveyed by a bill of sale issued by the state or local governing body, as appropriate, on a form prescribed by the Department of Public Safety. A copy of the bill of sale shall be forwarded to the Department of Public Safety by the purchaser within 10 days.

(c) Any subsequent sale of a vehicle sold under (a) of this section is prohibited without a certificate of title issued by the Department of Public Safety under AS 28.10. (§ 2 ch 81 SLA 1973; am §§ 20, 21 ch 214 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, substituted "Department of Public Safety" for "Department of Revenue" in the first and second sentences of subsection (b) and in subsection (c).

Sec. 28.31.050. Disposal facilities. (a) The Department of Public Safety shall, if necessary, negotiate with other appropriate state agencies in an effort to designate and acquire centrally located state land for the disposal of abandoned vehicles. These areas may be used for the temporary holding of vehicles before sale as prescribed in § 40 of this chapter, or for the final disposal of unsold abandoned vehicles.

(b) A general law municipality which is bound by the procedure specified in this chapter shall designate appropriate areas within its jurisdiction for the disposal of abandoned vehicles. (§ 2 ch 81 SLA 1973; am § 22 ch 214 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, deleted "Department of Revenue, in conjunction with the" preceding "De-

partment of Public Safety" near the beginning of the first sentence of subsection (a).

Sec. 28.31.060. Local ordinances. (a) Notwithstanding the provisions of this chapter, a general law municipality may adopt by ordinance procedures for the removal and impoundment of abandoned vehicles found within the municipality. However, in no case may a vehicle be disposed of unless adequate notice is given to the owner, if known. If the owner of the vehicle is not known, notice of the removal shall be published at least once in a newspaper of general circulation in the municipality. The vehicle may be disposed of by the municipality at any time 20 days after the date of publication.

(b) The Department of Public Safety shall assist general law municipalities which elect to adopt their own procedures for the removal and impoundment of vehicles within their boundaries.

(c) A general law municipality which fails to adopt procedures for the removal and impoundment of abandoned vehicles as specified in (a) of this section within six months from July 25, 1973 is bound by the procedure specified in this chapter. (§ 2 ch 81 SLA 1973; am § 23 ch 214 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, deleted "Department of Revenue and the" preceding "Department of Public Safety" near the beginning of subsection (b).

Sec. 28.31.065. Abandoned motor vehicle fund. There is created within the Department of Public Safety an abandoned motor vehicle fund, to be composed of appropriations by the legislature and proceeds from the sale of abandoned motor vehicles. (§ 2 ch 81 SLA 1973; am § 24 ch 214 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, substituted "Department of Public Safety" for "Department of Revenue."

Sec. 28.31.070. Disposition of proceeds of public auction. (a) The proceeds from the sale of abandoned motor vehicles under § 40

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of this chapter, if any, after deducting the cost of impounding the vehicle, and advertising and selling it, shall be deposited in an abandoned motor vehicle fund within the Department of Public Safety. The Department of Public Safety shall prorate the money in the fund to each general law municipality bound by the procedure specified in this chapter in proportion to the number of abandoned vehicles disposed of within its boundaries.

(b) If available, money in the abandoned vehicle fund shall be disbursed by the Department of Public Safety to provide for the removal of abandoned vehicles in areas outside general law municipalities. (§ 2 ch 81 SLA 1973; am § 25 ch 214 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, substituted "Department of Public Safety" for "Department of Revenue" in the first and second sentences of subsection (a) and substituted "by" for "from the Department of Revenue" in subsection (b).

Sec. 28.31.075. Regulations. The Department of Public Safety shall promulgate regulations necessary to implement §§ 10—80 of this chapter. (§ 2 ch 81 SLA 1973; am § 26 ch 214 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, deleted "Department of Revenue, in conjunction with the" preceding "Department of Public Safety" near the beginning of the section.

Sec. 28.31.080. Penalty. A person who violates § 10(a) or (b) of this chapter, upon conviction, is punishable by a fine of not less than \$25 nor more than \$100. (§ 2 ch 81 SLA 1973)

Chapter 35. Miscellaneous Provisions.

Section	Section
10. Driving a vehicle without owner's consent	33. Chemical analysis of blood
30. Driving while under the influence of intoxicating liquor or drugs	40. Reckless driving
32. Refusal to submit to chemical test	45. Negligent driving
	190. [Repealed]
	260. Definitions

Sec. 28.35.010. Driving a vehicle without owner's consent. (a) A person who drives, tows away, or takes a vehicle not his own without the consent of the owner, with intent temporarily to deprive the owner of possession of the vehicle, or a person who is a party or accessory to or an accomplice in the driving or unauthorized taking is guilty of a misdemeanor, and upon conviction is punishable by imprisonment for not less than 30 days nor more than one year, and by a fine of not less than \$100 nor more than \$1,000. Upon a conviction for a second or subsequent offense, the offender may be charged with a felony, and if so charged and convicted, is punishable by imprisonment for not more than three years, or by a fine of not more than \$5,000. The court may, upon conviction of a second or subsequent violation of this section,

4-17-76

Carriers are required to have
certificat under ATC before it
can ~~be~~ take

Brown says AS 28.10.515
is not applicable to non-certificated
towers

Neither passes

page 3 line 20 delete private sale
and allow relinquishment when
reasonable market value will not
exceed amount of lien

page 1 line 19 First go to person who abandoned them to lawful owner

add at end of this sentence unless the abandonment was the result of unlawful or unauthorized possession

page 1 line 23 Brown wants change in prison in possession

Effective date on Resumption of Abandonment

4-13-76

New effective date for 28.11.020 until regulations are adopted

Brown notes page 2 line 25 notice shall be the same

Brown notes that reclamation can be had up till time of public action and he shall bare all costs

and retain title upon proof of ownership, actual costs page 3 line 8 through 10

4/9
Wilton

March 23, 1976. State Affairs Committee Report: The Committee recommends it do pass with the following amendment No. 1:

Page 4, line 16: After the word "him", insert a period". "and delete rest of sentence. After the period, insert new sentence to read: "The lien remains in effect while the motor vehicle is in the possession of the person and may be sold, as provided in AS 28.10.515(b), to pay the charges for towing, transportation or storage. The lien is limited to towing and storage charges assessed according to the approved tariff filed by the carrier with the Alaska Transportation Commission. In the absence of a filed tariff, the towing charge shall be the same as the lowest towing charge in the other filed tariffs covering the same service and route. Storage charges shall cease to be part of the lien after 30 days unless the prior lien holder

four fifteen "L" Street Anchorage, Alaska 99501 (907) 279-4531

60 days



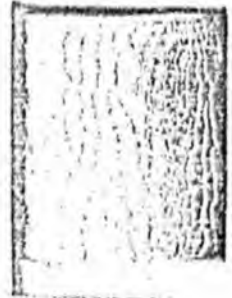
SB 484 3-23-76 continued page 2 . . . Alaska
Legislative
Report

has been given actual notice of the possessory lien within that time or unless a certified letter has been mailed within that time to the owner and prior lien holder at their addresses of record with the office in which the title to the motor vehicle and the lien on it are recorded."

The report was signed by McKinnon, Chairman, and concurred in by Wallis, Fischer, Miller and McKinnon.

[HJ 670 - 671]

four fifteen "L" Street Anchorage, Alaska 99501 (907) 279-4531



Original sponsor: Ray, Chance,
Colletta, et al

Offered: 1/21/76
Referred: Rules

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 484

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to abandoned motor vehicles."

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

8 * Section 1. AS 28 is amended by adding a new chapter to read:

9 CHAPTER 11. ABANDONED VEHICLES.

10 Sec. 28.11.010. ABANDONMENT UNLAWFUL. (a) No person may abandon
11 a vehicle upon a highway or vehicular way or area.

12 (b) No person may abandon a vehicle upon public ^{upon} private property
13 without the consent of the owner or person in lawful possession or con-
14 trol of the property.

15 (c) A person abandoning a vehicle as specified in (a) or (b) of
16 this section is considered responsible for the abandonment of a vehicle
17 and is liable for the cost of removal and disposition of the abandoned
18 vehicle.

19 (d) The lawful owner of the vehicle, as shown by the records of
20 the department, ^{whether or not he has complied} who has not complied with the provisions of AS 28.10.-
21 350, is considered responsible for the abandonment of a vehicle and is

22 liable for the cost of removal and disposition of the abandoned vehicle, ^{unless}
23 ~~unless~~ ^{unless} ~~the~~ ^{the} ~~abandonment~~ ^{abandonment} ~~is~~ ^{is} ~~the~~ ^{the} ~~result~~ ^{result} ~~of~~ ^{of} ~~an~~ ^{an} ~~author~~ ^{author}

24 Sec. 28.11.020. PRESUMPTION OF ABANDONMENT. A vehicle which has
25 ^{or un law possession} been left unattended, left standing or parked upon a highway in excess
26 of 48 hours, or a vehicle left standing or parked on public or private
27 property in excess of 24 hours without the consent of the owner or
28 person in charge of the property is presumed to be abandoned, [←] The
29 department shall adopt regulations governing the parking of vehicles [on
state property] in excess of the limits specified in this section.

*make
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*Sec 230
of this
chapter*

*unless removed before -1- it is returned and removed before
action regarding removal under 28.12.030 is under take*

CSSB 484

1 Sec. 28.11.030. REMOVAL OF ABANDONED VEHICLES. (a) A police
2 officer or an employee authorized by the state or a municipality may
3 remove or cause to be removed to a place for safe storage a vehicle
4 abandoned on a public street or highway, on a vehicular way or area, or
5 on private property.

6 (b) Removal of an abandoned vehicle from private property shall be
7 on the written request of the owner or person in lawful possession or
8 control of the property, and upon a form prescribed by the department.

9 (c) A written report of the removal shall be made by the police
10 officer or employee who removes or causes the removal of a vehicle under
11 this section, and the report shall be sent immediately to the depart-
12 ment. The report shall describe the vehicle, the date, time, and place
13 of removal, the grounds for removal, and the place of impoundment of the
14 vehicle.

15 Sec. 28.11.040. NOTICE TO OWNER. (a) Upon receipt of the removal
16 report prescribed in sec. 30 of this chapter, the department shall pro-
17 vide written notification by certified mail to the vehicle owner of
18 record and to lienholders of record, stating the grounds for removal and
19 the location of the place of impoundment of the vehicle. If the vehicle
20 is not registered in the state, the department shall make a reasonable
21 effort to notify the registered owner or the lienholder of the removal
22 and place of impoundment of the vehicle. The department shall forward
23 a copy of the notice to the owner or person in charge of the place of
24 impoundment.

25 (b) When the name and address of the registered or legal owner
26 cannot be ascertained, the department shall give notice by publication
27 in a newspaper of general circulation in the area or municipality in
28 which the vehicle was found. *accordance with the Alaska Rules of Civil Procedure*

29 Sec. 28.11.050. VESTING OF TITLE. Title to an impounded vehicle

1 not reclaimed by the registered owner, the lienholder, or other person
2 entitled to possession of the vehicle within ~~30~~ days from the notice
3 provided by sec. 40 of this chapter vests with the state or, if a local
4 ordinance is adopted under sec. 100 of this chapter, with the local
5 governing body, as appropriate.

6 Sec. 28.11.060. REDEMPTION. A person who presents satisfactory
7 proof of ownership or right to possession may redeem a vehicle removed
8 under this chapter by paying the charges of towing, storage, notice,
9 other cost of impoundment, and penalties imposed by law.

10 Sec. 28.11.070. DISPOSAL OF ABANDONED VEHICLES. (a) Upon satis-
11 faction of the notification and reporting requirements prescribed in
12 this chapter and when title to the vehicle has vested under sec. 50 of
13 this chapter, a vehicle may be disposed of

14 (1) by public auction 15 days after notice published in a
15 newspaper of general circulation in the area or municipality in which
16 the vehicle was found; the published notice shall describe the vehicle
17 and set out the place, date, and time at which it will be sold; a copy
18 of the published notice shall be conveyed to the department along with
19 documents required under (b) of this section; or

20 ~~(2) by private sale or~~ relinquishment in favor of a towing
21 or storage lien. *new language*

22 (b) The title certificate and registration of a disposed vehicle
23 if available and a copy of the bill of sale or relinquishment of title
24 shall be surrendered to the department within 10 days of the disposal.

25 (c) A vehicle disposed under this section must be registered and
26 titled as prescribed in ch. 10 of this title, and subsequent sale of a
27 vehicle disposed under this section is prohibited without a certificate
28 of title issued by the department.

29 (d) Notwithstanding the provisions of this section, the department

1 may initiate a civil action against a driver or owner of a vehicle which
2 is abandoned in violation of this chapter for costs exceeding receipts
3 for the disposal of the vehicle.

4 Sec. 28.11.080. DISPOSAL FACILITIES. (a) The department shall,
5 if necessary, negotiate with appropriate state or municipal agencies in
6 an effort to designate and acquire centrally located land for the dis-
7 posal of abandoned vehicles. These areas may be used for the temporary
8 holding of vehicles before sale as prescribed in sec. 70 of this chap-
9 ter, or for the final disposal of unsold abandoned vehicles.

10 (b) A municipality which adopts an ordinance under sec. 100 of this
11 chapter shall designate appropriate areas within its jurisdiction for
12 the disposal of abandoned vehicles.

13 Sec. 28.11.090. TOWING AND STORAGE LIEN ON ABANDONED VEHICLE. A
14 person authorized by contract or other official order to remove an
15 abandoned vehicle has a lien upon a vehicle towed, moved, or stored by
16 him and in his possession in accordance with AS 28.10.515.

17 Sec. 28.11.100. LOCAL ABATEMENT PROCEDURE. (a) A municipality
18 may adopt an ordinance establishing procedures for the abatement and
19 removal from private or public property, as a public nuisance or a
20 health or safety hazard, a wrecked, dismantled, or inoperative vehicle
21 or a vehicle otherwise believed to be abandoned. The ordinance written
22 under this section shall contain provisions for notice to owners and for
23 disposal of abandoned vehicles as provided in secs. 40 and 70 of this
24 chapter.

25 (b) The department shall assist a municipality which elects to
26 adopt its own procedures for the removal and impoundment of vehicles
27 within its boundaries.

28 (c) A municipality which fails to adopt procedures for the removal
29 and impoundment of abandoned vehicles under (a) of this section is bound

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by the procedure specified in this chapter.

Sec. 28.11.110. ABANDONED MOTOR VEHICLE FUND. (a) There is created in the department an abandoned motor vehicle fund, to be composed of appropriations by the legislature and proceeds from the sale of abandoned motor vehicles.

(b) The proceeds from the sale of an abandoned motor vehicle under this chapter, after deducting the cost of impounding, advertising, and selling the vehicle, shall be deposited in the fund set out in (a) of this section.

(c) Money in the fund shall be disbursed to the department and to each of the municipalities bound by the provisions of this chapter upon presentation of a voucher for payment of services rendered in compliance with this chapter.

* Sec. 2. AS 28.31 is repealed.

4/9
Milton
4/13

Original sponsor: Ray, Chance,
Colletta, et al

Offered: 1/21/76
Referred: Rules

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 484

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to abandoned motor vehicles."

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

8 * Section 1. AS 28 is amended by adding a new chapter to read:

9 CHAPTER 11. ABANDONED VEHICLES.

10 Sec. 28.1. 010. ABANDONMENT UNLAWFUL. (a) No person may abandon
11 a vehicle upon a highway or vehicular way or area.

12 (b) No person may abandon a vehicle upon public or private property
13 without the consent of the owner or person in lawful possession or con-
14 trol of the property.

15 (c) A person abandoning a vehicle as specified in (a) or (b) of
16 this section is considered responsible for the abandonment of a vehicle
17 and is liable for the cost of removal and disposition of the abandoned
18 vehicle.

19 (d) The lawful owner of the vehicle, as shown by the records of
20 the department, ^{whether or not he has} [who has not] complied with the provisions of AS 28.10.-
21 350, is considered responsible for the abandonment of a vehicle and is
22 liable for the cost of removal and disposition of the abandoned vehicle.

23 Sec. 28.11.020. PRESUMPTION OF ABANDONMENT. A vehicle which has
24 been left unattended, left standing or parked upon a highway in excess
25 of 48 hours, or a vehicle left standing or parked on public or private
26 property in excess of 24 hours without the consent of the owner or
27 person in charge of the property is presumed to be abandoned. The
28 department shall adopt regulations governing the parking of vehicles
29 state property] in excess of the limits specified in this section.

*Who is in charge
of public property?*

*Does not apply
if vehicle has
been stolen*

*unless it is reclaimed
before
The action re-
moved
under 28.11.030
and
undertaken*

1 Sec. 28.11.030. REMOVAL OF ABANDONED VEHICLES. (a) A police
2 officer or an employee authorized by the state or a municipality may
3 remove or cause to be removed to a place for safe storage a vehicle
4 abandoned on a public street or highway, on a vehicular way or area, or
5 on private property.

6 (b) Removal of an abandoned vehicle from private property shall be
7 on the written request of the owner or person in lawful possession or
8 control of the property, and upon a form prescribed by the department.

9 (c) A written report of the removal shall be made by the police
10 officer or employee who removes or causes the removal of a vehicle under
11 this section, and the report shall be sent immediately to the depart-
12 ment. The report shall describe the vehicle, the date, time, and place
13 of removal, the grounds for removal, and the place of impoundment of the
14 vehicle.

15 Sec. 28.11.040. NOTICE TO OWNER. (a) Upon receipt of the removal
16 report prescribed in sec. 30 of this chapter, the department shall pro-
17 vide written notification by certified mail to the vehicle owner of
18 record and to lienholders of record, stating the grounds for removal and
19 the location of the place of impoundment of the vehicle. If the vehicle
20 is not registered in the state, the department shall make a reasonable
21 effort to notify the registered owner or the lienholder of the removal
22 and place of impoundment of the vehicle. The department shall forward
23 a copy of the notice to the owner or person in charge of the place of
24 impoundment.

25 (b) When the name and address of the registered or legal owner
26 cannot be ascertained, the department shall give notice by publication
27 in a newspaper of general circulation in the area or municipality in
28 which the vehicle was found.

29 Sec. 28.11.050. VESTING OF TITLE. Title to an impounded vehicle

*Subsidiary
Procedure*

1 not reclaimed by the registered owner, the lienholder, or other person
2 entitled to possession of the vehicle within 10 days from the notice
3 provided by sec. 40 of this chapter vests with the state or, if a local
4 ordinance is adopted under sec. 100 of this chapter, with the local
5 governing body, as appropriate.

6 Sec. 28.11.060. REDEMPTION. A person who presents satisfactory
7 proof of ownership or right to possession may redeem a vehicle removed
8 under this chapter by paying the charges of towing, storage, notice,
9 other cost of impoundment, and penalties imposed by law.

10 Sec. 28.11.070. DISPOSAL OF ABANDONED VEHICLES. (a) Upon satis-
11 faction of the notification and reporting requirements prescribed in
12 this chapter and when title to the vehicle has vested under sec. 50 of
13 this chapter, a vehicle may be disposed of

14 (1) by public auction 15 days after notice published in a
15 newspaper of general circulation in the area or municipality in which
16 the vehicle was found; the published notice shall describe the vehicle
17 and set out the place, date, and time at which it will be sold; a copy
18 of the published notice shall be conveyed to the department along with
19 documents required under (b) of this section; or

20 (2) [by private sale or] relinquishment in favor of a towing
21 or storage lien. *when lien is \leq fair market value of vehicle.*

22 (b) The title certificate and registration of a disposed vehicle
23 if available and a copy of the bill of sale or relinquishment of title
24 shall be surrendered to the department within 10 days of the disposal.

25 (c) A vehicle disposed under this section must be registered and
26 titled as prescribed in ch. 10 of this title, and subsequent sale of a
27 vehicle disposed under this section is prohibited without a certificate
28 of title issued by the department.

29 (d) Notwithstanding the provisions of this section, the department

1 may initiate a civil action against a driver or owner of a vehicle which
2 is abandoned in violation of this chapter for costs exceeding receipts
3 for the disposal of the vehicle.

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5 if necessary, negotiate with appropriate state or municipal agencies in
6 an effort to designate and acquire centrally located land for the dis-
7 posal of abandoned vehicles. These areas may be used for the temporary
8 holding of vehicles before sale as prescribed in sec. 70 of this chap-
9 ter, or for the final disposal of unsold abandoned vehicles.

10 (b) A municipality which adopts an ordinance under sec. 100 of this
11 chapter shall designate appropriate areas within its jurisdiction for
12 the disposal of abandoned vehicles.

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21 or a vehicle otherwise believed to be abandoned. The ordinance written
22 under this section shall contain provisions for notice to owners and for
23 disposal of abandoned vehicles as provided in secs. 40 and 70 of this
24 chapter.

25 (b) The department shall assist a municipality which elects to
26 adopt its own procedures for the removal and impoundment of vehicles
27 within its boundaries.

28 (c) A municipality which fails to adopt procedures for the removal
29 and impoundment of abandoned vehicles under (a) of this section is bound

1 by the procedure specified in this chapter.

2 Sec. 28.11.110. ABANDONED MOTOR VEHICLE FUND. (a) There is
3 created in the department an abandoned motor vehicle fund, to be com-
4 posed of appropriations by the legislature and proceeds from the sale of
5 abandoned motor vehicles.

6 (b) The proceeds from the sale of an abandoned motor vehicle under
7 this chapter, after deducting the cost of impounding, advertising, and
8 selling the vehicle, shall be deposited in the fund set out in (a) of
9 this section.

10 (c) Money in the fund shall be disbursed to the department and to
11 each of the municipalities bound by the provisions of this chapter upon
12 presentation of a voucher for payment of services rendered in compliance
13 with this chapter.

14 * Sec. 2. AS 28.31 is repealed.
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When the person person who is identified in (c) can not

Original sponsor: Ray, Chance,
Colletta, et al

Offered: 1/21/76
Referred: Rules

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 484

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE -- SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to abandoned motor vehicles."

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

8 * Section 1. AS 28 is amended by adding a new chapter to read:

9 CHAPTER 11. ABANDONED VEHICLES.

10 Sec. 28.11.010. ABANDONMENT UNLAWFUL. (a) No person may abandon
11 a vehicle upon a highway or vehicular way or area.

12 (b) No person may abandon a vehicle upon public or private property
13 without the consent of the owner or person in lawful possession or con-
14 trol of the property.

15 (c) A person abandoning a vehicle as specified in (a) or (b) of
16 this section is considered responsible for the abandonment of a vehicle
17 and is liable for the cost of removal and disposition of the abandoned
18 vehicle.

19 (d) The lawful owner of the vehicle, as shown by the records of
20 the department, ~~who has not~~ ^{whether or not he has} complied with the provisions of AS 28.10.-
21 350, is considered responsible for the abandonment of a vehicle and is
22 liable for the cost of removal and disposition of the abandoned vehicle.

23 ^{unless the vehicle was stolen or joyriding}
24 Sec. 28.11.020. PRESUMPTION OF ABANDONMENT. A vehicle which has
25 been left unattended, left standing or parked upon a highway in excess
26 of 48 hours, or a vehicle left standing or parked on public or private
27 property in excess of 24 hours without the consent of the owner or

28 person in charge of the property is presumed to be abandoned. The
29 department shall adopt regulations governing the parking of vehicles

~~stat property~~ in excess of the limits specified in this section.

property upon

When (C) not found then (D) responsible

unless the vehicle was stolen or joyriding

Make this consistent under Section 30 of this chapter

1 Sec. 28.11.030. REMOVAL OF ABANDONED VEHICLES. (a) A police
2 officer or an employee authorized by the state or a municipality may
3 remove or cause to be removed to a place for safe storage a vehicle
4 abandoned on a public street or highway, on a vehicular way or area, or
5 on private property.

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7 on the written request of the owner or person in lawful possession or
8 control of the property, and upon a form prescribed by the department.

9 (c) A written report of the removal shall be made by the police
10 officer or employee who removes or causes the removal of a vehicle under
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19 the location of the place of impoundment of the vehicle. If the vehicle
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21 effort to notify the registered owner or the lienholder of the removal
22 and place of impoundment of the vehicle. The department shall forward
23 a copy of the notice to the owner or person in charge of the place of
24 impoundment.

25 (b) When the name and address of the registered or legal owner
26 cannot be ascertained, the department shall give notice by publication
27 ~~in a newspaper of general circulation in the area or municipality in~~
28 ~~which the vehicle was found.~~
29

30 Sec. 28.11.050. VESTING OF TITLE. Title to an impounded vehicle

*Title 34
Requirements
for real property*

existing law

1 not reclaimed by the registered owner, the lienholder, or other person
2 entitled to possession of the vehicle within 30 days from the notice
3 provided by sec. 40 of this chapter vests with the state or, if a local
4 ordinance is adopted under sec. 100 of this chapter, with the local
5 governing body, as appropriate.

6 Sec. 28.11.060. REDEMPTION. A person who presents satisfactory
7 proof of ownership or right to possession may redeem a vehicle removed
8 under this chapter by paying the charges of towing, storage, notice,
9 other cost of impoundment, and penalties imposed by law. *May be done until*

10 Sec. 28.11.070. DISPOSAL OF ABANDONED VEHICLES. (a) Upon satis- *the time of auction if all incurred costs are payed and may require title*
11 faction of the notification and reporting requirements prescribed in
12 this chapter and when title to the vehicle has vested under sec. 50 of
13 this chapter, a vehicle may be disposed of

14 (1) by public auction 15 days after notice published in a
15 newspaper of general circulation in the area or municipality in which
16 the vehicle was found; the published notice shall describe the vehicle
17 and set out the place, date, and time at which it will be sold; a copy
18 of the published notice shall be conveyed to the department along with
19 documents required under (b) of this section; or

20 (2) by ~~relinquishment~~ *other language* of relinquishment in favor of a towing
21 or storage lien. *other language*

22 (b) The title certificate and registration of a disposed vehicle
23 if available and a copy of the bill of sale or relinquishment of title
24 shall be surrendered to the department within 10 days of the disposal.

25 (c) A vehicle disposed under this section must be registered and
26 titled as prescribed in ch. 10 of this title, and subsequent sale of a
27 vehicle disposed under this section is prohibited without a certificate
28 of title issued by the department.

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2 is abandoned in violation of this chapter for costs exceeding receipts
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27 within its boundaries.

28 (c) A municipality which fails to adopt procedures for the removal
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1 by the procedure specified in this chapter.

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6 (b) The proceeds from the sale of an abandoned motor vehicle under
7 this chapter, after deducting the cost of impounding, advertising, and
8 selling the vehicle, shall be deposited in the fund set out in (a) of
9 this section.

10 (c) Money in the fund shall be disbursed to the department and to
11 each of the municipalities bound by the provisions of this chapter upon
12 presentation of a voucher for payment of services rendered in compliance
13 with this chapter.

14 * Sec. 2. AS 28.31 is repealed.
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≠ Restrict to

SB

490

COMMITTEE REPORT

3/13/76

HOUSE

Mr. Speaker.

Date May 22, 1976

The Committee on JUDICIARY has had SB 490 am

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
- reports it back WITHOUT RECOMMENDATION
- "other"

Members signing the Majority report:

<u>Tony Gardiner - Do Pass</u>	<u>Spokane</u>
_____	_____
_____	_____
_____	_____

Members NOT concurring in the Majority report:

- _____ recommends:
- _____ recommends:
- _____ recommends:
- _____ recommends:
- _____ recommends:

Tony Gardiner Chairman

AS 10.05.237 is amended to read:

*changed under
this chapter
10.05.020*

Sec. 10.05.237 BOOKS AND RECORDS. (a) A corporation shall keep correct and complete books and records of account, [AND SHALL KEEP] minutes of the proceedings of its shareholders and board of directors, and [SHALL KEEP AT ITS REGISTERED OFFICE OR PRINCIPAL PLACE OF BUSINESS, OR AT THE OFFICE OF ITS TRANSFER AGENT OR REGISTER,] a record of its shareholders, containing the names and addresses of all shareholders and the number and class of the shares held by each.

*under
10.05.240*

(b) A ^{domestic} corporation, ^{organized under this chapter} shall make these books and records, or certified copies of them, ^{reasonably} available for inspection at the ^{to the shareholder or the dept} registered office or principal place of business in Alaska.

*Eliason
H. Bierne*

A M E N D M E N T

TO: SB 490 am

Page 21, between lines 1 and 2, insert the following and renumber the remaining section accordingly:

* Sec. 54. AS 10.05.177(a) is amended to read:

(a) Corporations with three or more shareholders shall have at least three directors. A corporation having less than three shareholders may have the same number of directors as it has shareholders.

[THE NUMBER OF DIRECTORS OF A CORPORATION SHALL BE AT LEAST THREE.] The number of directors shall be fixed by the bylaws, except that the number constituting the initial board of directors shall be fixed by the articles of incorporation.

* Sec. 55. AS 10.05.252 is amended to read:

Sec. 10.05.252. INCORPORATORS. One [THREE] or more natural persons at least 19 years of age may act as incorporators of a corporation by signing, verifying and delivering in duplicate to the commissioner articles of incorporation for the corporation.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS

POUCH D — JUNEAU 99811

May 21, 1976

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

Re: Committee Hearing of May 20, 1976 on SB 490 (Corporation Bill)

Dear Terry:

Attached to this letter at your request, I am enclosing a copy of the memo that was sent to Senator Robert Ziegler, Sr. dated February 3, 1976 giving a section-by-section analysis of SB 490. Because of amendments, the section numbers of the bill have changed. I have written in the new section numbers to correspond to the form of the bill before you, i.e., SB 490am. If it were not for the press of time, I would have provided a new section-by-section analysis. However, I hope that this will serve as well for all practical purposes.

Prior to commenting on the Corporation Act Amendments, permit me to respond to your question concerning the possible repeal of AS 10.10, the Business and Industrial Development Act. While it is true that no attempt to date has been made to utilize the act, we are of the opinion that having this type of investment vehicle available for use by industrial developers is a healthy posture for the state to maintain. I am advised by Mr. Jim Edenso, Deputy Commissioner of Commerce and Economic Development, that if you or any other legislative committee desires to explore possible amendments to this act to make it more workable we would be most happy to assist in that effort. We do not, however, feel that the entire act should be repealed.

I would like to confirm my comments on the amendments considered by the Judiciary Committee yesterday evening to § 54 and 55 of the bill. I see no real problems with these amendments, and I believe they are useful, especially since they are limited to small corporations.

However, I do have some reservations concerning the amendment to AS 10.05.237 that was also considered by the committee. To require a domestic corporation to make available for inspection at its registered office or principal place of business in Alaska its books and records might at first glance seem to be a reasonable requirement. However, one must keep in mind that to so require could create a heavy monetary burden on corporations, and the added costs would be passed on to customers of the corporations. For example, if the telephone company were required to physically keep its records in Alaska while the company presently stores its records out of the state, this would add to the cost of service. The company would likely seek a tariff increase through APUC. This would then be passed on to the company's customers by increased rates for service.

Also, it is not clear whether § 237(b) requires the records to be physically present

Honorable Terry Gardiner

-2-

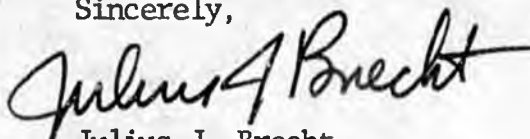
May 21, 1976

in the state. I feel, personally, that the wording can be interpreted to mean that corporations must make available the books and records within a reasonable time of the demand by a given person.

Another serious problem, as I see it, with the proposed amendment of § 237 is that it could be used as a vehicle for a fishing expedition into the records of a corporation. I would, therefore, suggest that if you or other committee members believe that this sort of legislation is necessary, that the scope of the demand for information be limited to the records directly affecting the person making the request. For example, in the case of the telephone company records, the person should only have access to his personal billing and telephone log records.

Thank you for the opportunity to appear before the committee to discuss SB 490.

Sincerely,



Julius J. Brecht
Director

Enclosures

MEMORANDUM

State of Alaska

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

TO: Senator Robert Ziegler, Sr.
Chairman
Senate Judiciary Committee

DATE: February 3, 1976

FILE NO: OPR: William W. Ladwig
Deputy Director
Ext. 2533

TELEPHONE NO:

FROM: Miles S. Schlosberg
Director
Division of Banking and Securities
Ext. 2521

SUBJECT: Senate Bill 490

SECTIONAL ANALYSIS OF SENATE BILL 490: An Act making Miscellaneous Amendments to the Corporations Statutes, and providing for an Effective Date.

Section 1: AS 10.05.021(a) is amended to provide "name" protection for all names, either corporate or business, reserved or registered under Title 10.

Section 2: AS 10.05.057(b) is amended to reflect more closely the organizational structure of the Department and to provide a fee for the service of process service, which is provided by this Department. This fee approximates the actual cost of manpower and material to effect service in the manner prescribed by statute.

Section 3: AS 10.05.189 is amended to mandate that the Board of Directors fill any vacancies created so that unscrupulous directors may not purposely leave directorships vacant to manipulate the corporation to their advantage.

Sec. 4.-See Note(i)

Section ⁵4: AS 10.05.489 is amended to provide the Commissioner with power to involuntarily dissolve corporations when they have filed an intent to dissolve, and failed to follow through on it within a specified period of time. This will allow the Department to purge its files in a more timely fashion.

Section ⁶5: AS 10.05.519(a) is amended to shorten the delinquency period from one year to six months, to allow a more rapid purging of the Department's files and to incorporate those changes discussed under Sections 3 and 4 above.

Section ⁷6: AS 10.05.519(d) is amended to allow the Department to collect taxes on reinstating corporations for the two-year reinstatement grace period. Since reinstatement is retroactive, taxing should also be retroactive.

Section ⁸7: AS 10.05.606(3) - See comments in Section 1 above.

February 3, 1976

⁹
Section ~~8~~: AS 10.05.607 is a new section to allow foreign corporations to use an assumed name. Presently, a foreign corporation would not be authorized to do business in Alaska if there already were an existing corporation with a similar name doing business in the state.

¹⁰
Section ~~9~~: AS 10.05.696 is amended to allow the state, through this Department, to collect a penalty from foreign corporations who are operating in Alaska without complying with the provisions of Title 10, i.e. filing the requisite documents and paying the appropriate franchise tax.

¹¹
Section ~~10~~: AS 10.05.703 is amended to increase the filing fees for new corporations. This new increase . fees will bring Alaska in line with the majority of the other states.

¹²
Section ~~11~~: AS 10.05.711 - See comments in Section 10 above.

¹³
Section ~~12~~: AS 10.05.717(a) is amended to make the statute more readable, and to provide a penalty for each year of delinquency rather than one "coverall" penalty.

¹⁴
Section ~~13~~: AS 10.05.747 is amended to provide an increase in the fee. Such increase will allow the Department to recapture a greater portion of the cost of providing the service.

¹⁵
Section ~~14~~: AS 10.05.717 is amended to provide greater clarity in the statutory language to make the computation of the penalty more easy.
Sec. 16-See Note(ii)

¹⁷
Section ~~15~~: AS 10.10.040(3) is amended to reflect the combination of the Departments of Commerce and Economic Development.

¹⁸
Section ~~16~~: AS 10.10.150 is amended to identify the specific commissioner, and to reflect the merger of the Departments of Commerce and Economic Development.
Sec. 19-See Note (iii)

¹⁷⁻²⁰
Section ~~17~~: AS 10.15.325 is amended to require a more timely filing of the annual report, thereby making its content of more value.

²¹
Section ~~18~~: AS 10.15.475 - See comments in Section 4 above.

²²
Section ~~19~~: AS 10.15.535 - See comments in Section 13 above.

²³
Section ~~20~~: AS 10.15.545 - See comments in Section 13 above.

²⁴
Section: ~~21~~: AS 10.15.550 is amended to make the penalty for late filing a flat fee, rather than a percentage, for ease of computation. Also, to make the penalty more realistic.

²⁵
Section ~~22~~: AS 10.15.555 is amended to increase filing fees to recapture a greater portion of the cost of the services provided.

²⁶
Section 23: AS 10.20.021 is amended to provide "name" protection for sole proprietorships.

²⁷
Section 24: AS 10.20.101 - See comments in Section 3 above.

²⁸
Section 25: AS 10.20.290 - See comments in Section 4 above.

²⁹
Section 26: AS 10.20.300 is amended to require the filing of a plan of distribution of corporate assets, so that a corporation may not be dissolved to the detriment of the shareholders or persons entitled to share in the distribution of assets.

³⁰
Section 27: AS 10.20.305 is amended to provide for the filing of the resolution to dissolve, to possibly prohibit, by disclosure, unnecessary dissolution to the detriment of the shareholders or members of the corporation.

³¹
Section 28: AS 10.20.325 is amended to provide the authority to the Commissioner of Commerce and Economic Development to involuntarily dissolve non-profit corporations, and to remove this authority from the office of the Attorney General.

³²
Section 29: AS 10.20.330 is repealed. See comments, Section 28 above.

³³
Section 30: AS 10.20.335 - See comments in Section 28 above.

³⁴
Section 31: AS 10.20.340 is repealed. See comments in Section 28 above.

³⁵
Section 32: AS 10.20.345 - See comments in Section 28 above, and to provide clarity in the statutory language.

³⁶
Section 33: AS 10.20.350 is repealed. See section 28 above.

³⁷
Section 34: AS 10.20.355 is repealed. See Section 28 above.

³⁸
Section 35: AS 10.20.375 is repealed. See Section 28 above.

³⁹
Section 36: AS 10.20.470 is amended to provide "name" protection to sole proprietorships.

⁴⁰
Section 37: AS 10.20.471 is added to provide authority for and guidelines under which a foreign corporation may use an assumed name in conducting its business in Alaska.

⁴¹
Section 38: AS 10.20.530 is amended to provide clarity in statutory language and to further provide a fee for the service provided by this Department in acting as agent for service of process. This fee approximates the cost of the service provided.

⁴²
Section 39: AS 10.20.615 is amended to provide clarity in the statutory language and to provide a significant monetary penalty for those corporations who operate in Alaska without compliance to the provision of Subtitle 10.

⁴³
Section ~~41~~: AS 10.20.630 is amended to provide clarity in the statutory language and to provide a staggering in the time sequence of filing the various corporate annual reports, to make the workload of the Department more even.

⁴⁴
Section ~~42~~: AS 10.20.635 - See Comments in Section 13 above.

⁴⁵
Section ~~43~~: AS 10.20.645(a) - See comments in Section 13 above.

⁴⁶
Section ~~44~~: AS 10.25.330 - See comments in Section 4 above.

⁴⁷
Section ~~45~~: AS 10.25.530 - See comments in Section 13 above.

⁴⁸
Section ~~46~~: AS 10.35.020 is amended to provide "name" protection for sole proprietorships. Also, to provide a prohibition against sole proprietorships representing that they are incorporated.
Sec. 49-See Note(iv)

⁵⁰
Section ~~47~~: AS 10.35.060 - See comments in Section 46 above.

⁵¹
Section ~~48~~: AS 10.35.070 - See comments in Section 13 above.

⁵²
Section ~~49~~: AS 10.40.040 is amended to provide that religious corporations must name apperson and address where they can be found, upon whom legal service may be made.

⁵³
Section ~~51~~: AS 10.40.130, .140, and .150, are new sections designed to give the Department the authority to require religious corporations to maintain registered agents and offices, pay fees for documents filed with this office, provide penalties for failure to file of a monetary nature, and provide the penalty of involuntary dissolution for continued non-compliance.

⁵⁴
Section ~~52~~: Proposed effective date of this bill is January 1, 1977, to allow, should this bill be enacted, sufficient time for the changes it encompasses to be disseminated to the legal profession.

MSS:WWL:bjl

Notes: (i) This section would repeal AS 10.05.250 which deals with the disclosures of alien interests in a corporate reorganization.

(ii) This section repeals AS 10.05.825(21), a definition of reorganization which would no longer be required if AS 10.05.250 is repealed.

(iii) This section was added in the Senate at the direction of Senator Kerttula to protect retired members of cooperatives.

(iv) This section extends protection to the name of a business in analogy to AS 10.05.021(a). See Section 1. of the bill.

A M E N D M E N T

TO: SB 490 am

Page 21, between lines 1 and 2, insert the following and renumber the remaining section accordingly:

* Sec. 54. AS 10.05.177(a) is amended to read:

(a) Corporations with three or more shareholders shall have at least three directors. A corporation having less than three shareholders may have the same number of directors as it has shareholders.

[THE NUMBER OF DIRECTORS OF A CORPORATION SHALL BE AT LEAST THREE.] The number of directors shall be fixed by the bylaws, except that the number constituting the initial board of directors shall be fixed by the articles of incorporation.

* Sec. 55. AS 10.05.252 is amended to read:

Sec. 10.05.252. INCORPORATORS. One [THREE] or more natural persons at least 19 years of age may act as incorporators of a corporation by signing, verifying and delivering in duplicate to the commissioner articles of incorporation for the corporation.