AS 10.05.237 is amended to read:

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.

(b) A corporation shall make these books and records, or certified copies of them, available for inspection at the registered office or principal place of business in Alaska.

Re: SB 490

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

MEMORANDUM

May 13, 1976

SUBJECT: Amendment to AS 10.05.237 (WO #2625)

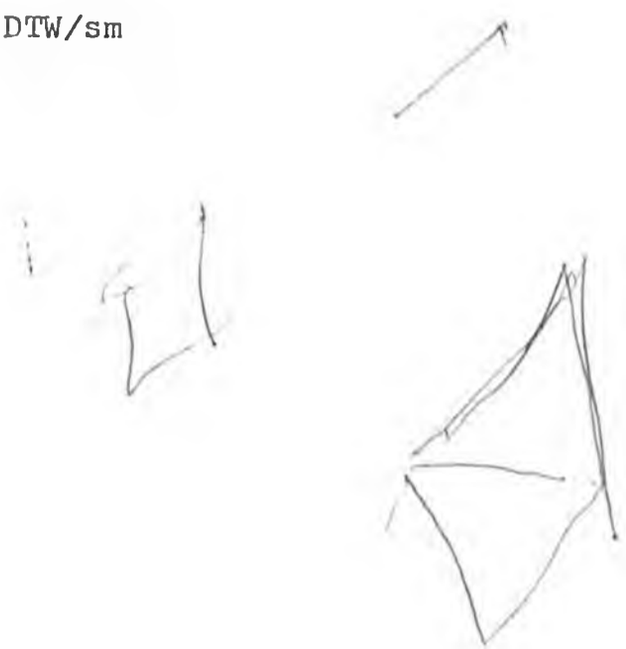
TO: Representative Cowper

FROM: David T. Walker, Legislative Counsel

Attached is an amendment to AS 10.05.237 which I believe would have the effect you desire.

You should also take a look at AS 42.05.491 relating to the records kept by public utilities. It contains some options you might want to include.

DTW/sm



Introduced: 1/14/76
Referred: Judiciary

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 490 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act making miscellaneous amendments in the corporation statutes; and providing for an effective date."

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

* Section 1. AS 10.05.021(a) is amended to read:

(a) The corporate name shall contain the word "corporation," "company," "incorporated" or "limited," or an abbreviation of one of these words. It shall not contain a word or phrase which indicates or implies that it is organized for a purpose other than the purpose contained in the articles of incorporation. It shall not be the same as, or deceptively similar to, the name of a domestic corporation existing under the laws of the state or a foreign corporation authorized to transact business in the state, or a name which has been reserved or registered as provided in this title [CHAPTER].

* Sec. 2. AS 10.05.057(b) is amended to read:

(b) Whenever a corporation fails to appoint or maintain a registered agent in the state, or whenever its registered agent cannot, with reasonable diligence, be found at the registered office, the commissioner is an agent of the corporation upon whom the process, notice or demand may be served. Service is made upon the commissioner as agent by leaving with him, or with a clerk having charge of the corporation division [DEPARTMENT] of his office, duplicate copies of the process, notice or demand. Service upon the commissioner must be accompanied by a fee of $10. When process, notice or demand is served

on the commissioner, he shall immediately forward a copy of it by registered mail to the corporation at its registered office. Service on the commissioner is returnable in not less than 30 days.

* Sec. 3. AS 10.05.189 is amended to read:

Sec. 10.05.189. VACANCIES. A vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though the majority is less than a quorum of the board. A director elected to fill a vacancy is elected for the unexpired term of his predecessor in office. A directorship to be filled by reason of an increase in the number of directors shall be filled by election at an annual meeting or at a special meeting of shareholders called for that purpose. In no case may a vacancy continue for longer than six months or until the next annual meeting, whichever occurs first.

~~* Sec. 4. AS 10.05.250 is repealed.~~ Alien corporate rights

* Sec. 5. AS 10.05.489 is amended by adding a new paragraph to read:

(4) shall, if it has not completed dissolution proceedings within two years after the date the statement of intent to dissolve is filed, be involuntarily dissolved by the commissioner after 60-days notice of his intent to do so has been given to the corporation.

* Sec. 6. AS 10.05.519(a) is amended to read:

(a) A corporation may be dissolved involuntarily by the commissioner when

(1) the corporation is delinquent six months [ONE FULL YEAR] in filing its annual report or in paying a license filing fee or penalty;

(2) the corporation has failed for 30 days to appoint and maintain a registered agent in this state; [OR]

(3) the corporation has failed for 30 days after change of

its registered office or registered agent to file in the office of the commissioner a statement of the change;

(4) the corporation has failed for two years to complete dissolution pursuant to a statement of intent to dissolve; or

(5) a vacancy in the board of directors of a corporation is not filled within six months or the next annual meeting whichever occurs first.

* Sec. 7. AS 10.05.519(d) is amended to read:

(d) A corporation dissolved by the commissioner under the provisions of this section may be reinstated by the commissioner at any time within two years from the date of the certificate of involuntary dissolution whenever it is established to the satisfaction of the commissioner that in fact there was no cause for the dissolution, or whenever the neglect or delinquency resulting in dissolution has been corrected and payment made of double the amount delinquent along with the amount the corporation would have paid had it not been dissolved during the two-year period. Reinstatement may not be authorized if the same or a deceptively similar corporate, limited partnership, reserved or registered name is currently on file with the commissioner, unless the corporation being reinstated contemporaneously amends its articles of incorporation to change its name to conform with the provisions of this chapter.

* Sec. 8. AS 10.05.606(3) is amended to read:

(3) is not the same as, or deceptively similar to, the name of a domestic corporation existing under the laws of the state or a foreign corporation authorized to transact business in the state, or a name the exclusive right to which is reserved in the manner provided in this title [CHAPTER], or the name of a corporation which has in effect a registration of its name as provided in this chapter.

* Sec. 9. AS 10.05 is amended by adding a new section to read:

Sec. 10.05.607. ASSUMED CORPORATE NAME. When a foreign corporation, applying for a certificate of authority, has a name the same as or deceptively similar to that of a corporation registered under this chapter, it shall

(1) select a name under which it elects to do business in the state; and

(2) clearly identify on all advertising, contracts and other legal documents its true corporate name as well as its assumed name.

* Sec. 10. AS 10.05.696 is amended to read:

Sec. 10.05.696. LIABILITY TO STATE FOR TRANSACTING BUSINESS WITHOUT CERTIFICATE OF AUTHORITY. A foreign corporation ich transacts business in the state without a certificate of authority is liable to the state, for the years or portions of years during which it transacted business in the state without a certificate of authority, in an amount equal to all fees and franchise taxes which would have been imposed by this chapter on the corporation if it had applied for and received a certificate of authority to transact business in the state as required by this chapter and filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay the fees and francise taxes, plus a penalty of up to $5,000 per year or portion of a year for each year it transacted business in the state without a certificate of authority. The attorney general shall bring proceedings to recover amounts due the state under this section.

* Sec. 11. AS 10.05.708 is amended to read:

Sec. 10.05.708. INCORPORATION OR FILING FEES. (a) A domestic or foreign corporation which is required by law to file articles of incorporation with the department, except corporations organized under

ch. 20 of this title and foreign corporations organized under the laws of the United States or the laws of a state or territory of the United States or the laws of a foreign country for the same purposes as those allowed under ch. 20 of this title, shall pay to the commissioner,

(1) if the authorized capital stock of the corporation is $100,000, or less, a filing fee of $30 [$25];

(2) if the authorized capital stock of the corporation exceeds $100,000, the fee set forth in (1) of this subsection plus an additional fee of 20 [10] cents for each $1,000, or fraction of $1,000, of authorized capital stock above $100,000;

(3) if the authorized capital stock exceeds $1,000,000, the fees set forth in (1) and (2) of this subsection plus an additional fee of $15 [$10] for each $1,000,000, or fraction of $1,000,000, of authorized capital stock over $1,000,000.

(b) Shares of no par value are considered to be of the par value of $10 [$1] each for the purpose of computing the amount of the filing fee.

* Sec. 12. AS 10.05.711 is amended to read:

Sec. 10.05.711. FEES ON FILING AMENDATORY ARTICLES OR CERTIFICATES CHANGING CAPITAL STOCK. (a) A domestic or foreign corporation, except corporations organized under ch. 20 of this title and foreign corporations organized under the laws of the United States or the laws of a state or territory of the United States or the laws of a foreign country for the same purposes as those allowed under ch. 20 of this title, filing amendatory or supplemental articles of incorporation, or certificates of increase or decrease or capital stock with the department, shall pay to the commissioner

(1) for filing amendatory or supplemental articles which do not increase capital stock, or for filing a certificate of decrease of

capital stock, a fee of $10;

(2) for filing amendatory or supplemental articles which increase the capital stock, or for filing a certificate of increase of capital stock, a fee of $10, plus

(A) a further fee of 20 [10] cents per $1,000 or fraction of $1,000 of authorized increase of capital stock above $100,000 and less than $1,000,000;

(B) a further fee of $15 [$10] per $1,000,000 or authorized increase over $1,000,000.

(b) Shares of no par value are considered to be of the par value of $10 [$1] each for the purpose of computing the amount of the filing fee.

* Sec. 13. AS 10.05.717(a) is amended to read:

(a) Each domestic corporation and each foreign corporation doing business in this state or having its articles of incorporation on file with the department shall, before January 2 of each year, pay to the commissioner an annual corporation tax as follows: domestic corporation, $50; foreign corporation, $100. A corporation which fails to pay the annual corporation tax before February 1 [OF EACH YEAR] shall pay to the commissioner a penalty of $25 for each year or part of a year of delinquency [THE FURTHER SUM OF $25 AS A PENALTY].

* Sec. 14. AS 10.05.747 is amended to read:

Sec. 10.05.747. FILING FEES FOR INSTRUMENTS NOT OTHERWISE PROVIDED FOR. The filing fee for an instrument not otherwise provided for is $10 [$5].

* Sec. 15. AS 10.05.771 is amended to read:

Sec. 10.05.771. PENALTY FOR FAILURE TO FILE ANNUAL REPORT. Each domestic or foreign corporation that fails or refuses to file its annual report within the time set [PRESCRIBED] by this chapter is

subject to a penalty of 10 per cent of the amount of the franchise tax [ASSESSED AGAINST IT FOR THE PERIOD BEGINNING JULY 1 OF THE YEAR IN WHICH THE REPORT SHOULD HAVE BEEN FILED. THE COMMISSIONER SHALL ASSESS THE PENALTY AT THE TIME OF THE ASSESSMENT OF THE FRANCHISE TAX]. If the amount of the franchise tax as originally assessed is adjusted in accordance with this chapter, the amount of the penalty shall also be adjusted to 10 per cent of the amount of the adjusted franchise tax. The amount of the franchise tax and the amount of the penalty shall be separately stated in a notice to the corporation.

~~* Sec. 16. AS 10.05.825(21) is repealed.~~ Def. of Rectgan

* Sec. 17. ~~AS 10.10.040~~(8) is amended to read:

(8) to cooperate with and avail itself of the facilities of the United States Department of Commerce, the state Department of Commerce and Economic Development, and any other state or federal governmental agencies; and to cooperate with and assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of such communities or of this state or of any part of the state;

* Sec. 18. AS 10.10.150 is amended to read:

Sec. 10.10.150. EXAMINATIONS. The corporation shall be examined at least once annually by the commissioner of administration and shall make reports of its condition not less than annually to the commissioner of administration and more frequently upon call of the commissioner of administration, who in turn shall make copies of the reports available to the commissioner of commerce and economic development and the governor. The corporation shall also furnish other information which may from time to time be required by the commissioner of administration. The corporation shall pay the actual cost of the examinations.

* Sec. 19. AS 10.15.020(b) is amended to read:

(b) The bylaws of the cooperative shall set forth the qualifications for membership and method of acceptance of members; however, the bylaws may not deny membership privileges or votes to any owner or holder of a producer's certificate of equity if they own or hold payable or past due certificates of $2,500 or more.

* Sec. 20. AS 10.15.325 is amended to read:

Sec. 10.15.325. FORM OF ANNUAL REPORT. The annual report shall be made on forms furnished by the department. The information contained in the annual report shall be given as of June 30 [OF THE PRECEDING YEAR].

* Sec. 21. AS 10.15.475 is amended by adding a new paragraph to read:

(3) any cooperative which has filed a statement of intent to dissolve that does not, within two years from the date of filing, carry the dissolution to a conclusion shall be involuntarily dissolved as provided in the Alaska Business Corporation Act (AS 10.06).

* Sec. 22. AS 10.15.535 is amended to read:

Sec. 10.15.535. DETERMINATION OF LICENSE FEE FOR COOPERATIVE AUTHORIZED TO ISSUE CAPITAL STOCK. The license fee of each cooperative authorized by its articles to issue capital stock shall be graduated in accordance with the amount of capital stock authorized in its articles, as follows:

Amount of Authorized Capital Stock		
Over	But not over	Fee
$ 0	$ 5,000	$ 10.00 [5.00]
5,000	10,000	15.00 [7.50]
10,000	25,000	20.00 [10.00]
25,000	50,000	30.00 [15.00]
50,000	100,000	40.00 [25.00]

100,000	250,000	50.00	[35.00]
250,000	500,000	60.00	[50.00]
500,000	1,000,000	75.00	[62.50]
1,000,000	2,000,000	100.00	[87.50]
2,000,000		125.00	[100.00]

* Sec. 23. AS 10.15.545 is amended to read:

Sec. 10.15.545. LICENSE FEE FOR COOPERATIVE WITHOUT CAPITAL STOCK. The license fee of each cooperative having no authorized shares of capital stock is $25 [$5].

* Sec. 24. AS 10.15.550 is amended to read:

Sec. 10.15.550. PENALTY [INTEREST]. A cooperative which fails to pay the annual license fee before August 15 shall pay a penalty of $10 for each year or part of a year of delinquency. [IF THE LICENSE FEE IS NOT PAID PRIOR TO AUGUST 15, THE DEPARTMENT SHALL COLLECT INTEREST AT THE RATE OF SIX PER CENT A YEAR.]

* Sec. 25. AS 10.15.555 is amended to read:

Sec. 10.15.555. MISCELLANEOUS FEES AND CHARGES. The department shall charge and collect from a cooperative for filing

(1) articles of incorporation or articles of consolidation for a new cooperative, $15 [$10] together with the proportionate part of the annual license fee payable for the succeeding fraction of the fiscal year;

(2) articles of amendment, restated articles, or articles of merger, $10 [$5], and if the articles provide for an increase of the amount of authorized capital stock of the cooperative, the filing cooperative shall also pay the proportionate part of the annual license fee for the succeeding fraction of the fiscal year, payable by a cooperative whose authorized shares equal the newly increased authorized shares of the filing cooperative, less the annual license fee

already paid for the succeeding fraction of the fiscal year by the filing cooperative; but filing articles decreasing the authorized shares does not reduce the annual license fee of the filing cooperative until the beginning of the fiscal year following that in which the articles were filed;

(3) statement of intent to dissolve, $5 [$1];

(4) statement of revocation of voluntary dissolution proceedings, $5 [$1];

(5) articles of dissolution, $10 [$5];

(6) all other statements, except an annual statement, $5 [$1].

* Sec. 26. AS 10.20.021 is amended to read:

Sec. 10.20.021. CORPORATE NAME. The corporate name may not

(1) contain a word or phrase which indicates or implies that it is organized for a purpose other than one or more of the purposes contained in its articles of incorporation;

(2) be the same as, or deceptively similar to, the name of a corporation, whether for profit or not for profit, existing under the law of the state, or a foreign corporation, whether for a profit or not for profit, authorized to transact business in the state, or a corporate or business name reserved or registered as permitted by the laws of the state.

* Sec. 27. AS 10.20.101 is amended to read:

Sec. 10.20.101. VACANCIES. A vacancy occurring in the board of directors and a directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in

some other manner. A director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. A directorship to be filled by reason of an increase in the number of directors shall be filled by the board of directors for a term of office which continues only until the next election of directors. In no case may a vacancy continue for longer than six months or until the next annual meeting of the members, whichever occurs first.

* Sec. 28. AS 10.20.290 is amended by adding new subsections to read:

(c) Following the adoption of a resolution to dissolve, a copy of it executed by the corporation's president or vice-president and a secretary or assistant secretary and verified by one of the officers signing shall be immediately filed with the commissioner. The resolution shall state the number of members and the number of directors voting for and against it.

(d) A corporation, which has filed a resolution of voluntary dissolution, which has not concluded its affairs and received a certificate of dissolution, within two years after the date of filing the resolution, shall be involuntarily dissolved by the commissioner.

* Sec. 29. AS 10.20.300 is amended by adding a new paragraph to read:

(3) A plan of distribution shall be immediately filed with the commissioner. The plan of distribution shall state the number of members and the number of directors voting for and against it.

* Sec. 30. AS 10.20.305 is amended by adding a new paragraph to read:

(4) Upon the adoption of the resolution, a copy shall immediately be filed with the commissioner. The resolution shall state the number of members and the number of directors voting for and against it.

* Sec. 31. AS 10.20.325 is amended to read:

Sec. 10.20.325. GROUNDS FOR INVOLUNTARY DISSOLUTION. A corporation may be dissolved involuntarily by the commissioner [A DECREE OF THE SUPERIOR COURT IN AN ACTION FILED BY THE ATTORNEY GENERAL] when it is established that

(1) the corporation has failed to file its annual report within the time required by this chapter;

(2) the corporation procured its articles of incorporation through fraud;

(3) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(4) the corporation has failed for 30 days to appoint and maintain a registered agent in the state; [OR]

(5) the corporation has filed for 30 days after change of its registered office or registered agent to file in the office of the commissioner a statement of the change; or

(6) the corporation has failed, within the time required by this chapter, to revoke or complete a plan of voluntary dissolution.

* Sec. 32. AS 10.20.330 is repealed.

* Sec. 33. AS 10.20.335 is amended to read:

Sec. 10.20.335. NOTICE TO CORPORATION. When the commissioner determines that [CERTIFIES] a corporation has [TO THE ATTORNEY GENERAL AS HAVING] given any cause for involuntary dissolution, the commissioner shall [AT THE SAME TIME] mail to the corporation, by certified mail, at its registered office a notice, setting out the grounds for involuntary dissolution, 60 days before a certificate of dissolution is issued [THAT THE CERTIFICATION HAS BEEN MADE].

* Sec. 34. AS 10.20.340 is repealed.

* Sec. 35. AS 10.20.345 is amended to read:

Sec. 10.20.345. REMOVAL OF GROUND FOR DISSOLUTION. [(a)] If [,

BEFORE ACTION IS FILED,] the corporation, withi.. the time required by this chapter, files its annual report or appoints or maintains a registered agent as provided in this chapter, or files with the commissioner the required statement of change of registered office or registered agent, or revokes or concludes a plan of voluntary dissolution, the commissioner's authority to involuntarily dissolve the corporation ceases [THE COMMISSIONER SHALL CERTIFY THAT FACT TO THE ATTORNEY GENERAL AND AN ACTION AGAINST THE CORPORATION MAY NOT BE FILED].

(b) [IF, AFTER THE ACTION IS FILED, THE CORPORATION FILES ITS ANNUAL REPORT OR APPOINTS OR MAINTAINS A REGISTERED AGENT AS PROVIDED IN THIS CHAPTER, OR FILES WITH THE COMMISSIONER THE REQUIRED STATEMENT OF CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT, AND PAYS THE COST OF THE ACTION, THE ACTION ABATES.]

Court procedure

* Sec. 36. AS 10.20.350 is repealed.

* Sec. 37. AS 10.20.355 is amended to read:

Sec. 10.20.355. JURISDICTION OF COURT TO LIQUIDATE ASSETS AND BUSINESS OF CORPORATION. The superior court may liquidate the assets and business of a corporation in the cases provided in secs. 360 - 370 [375] of this chapter.

* Sec. 38. AS 10.20.375 is repealed.

* Sec. 39. AS 10.20.470 is amended to read:

Sec. 10.20.470. CORPORATE NAME OF FOREIGN CORPORATION. No certificate of authority may be issued to a foreign corporation unless the corporate name of the corporation

(1) does not contain a word or phrase which indicates or implies that it is organized for any purpose other than the purpose contained in its articles of incorporation;

(2) is not the same as, or deceptively similar to, the name

of a corporation, whether for profit or not for profit, existing under the laws of this state, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, or a corporate or business name reserved or registered as permitted by the laws of this state.

* Sec. 40. AS 10.20 is amended by adding a new section to read:

Sec. 10.20.471. ASSUMED CORPORATE NAME. When a foreign corporation, applying for a certificate of authority, has a name the same as or deceptively similar to that of a corporation operating under this chapter, it shall

(1) select a name under which it elects to do business in the state;

(2) clearly identify on all advertising, contracts and other legal documents its true corporate name as well as its assumed name.

* Sec. 41. AS 10.20.530 is amended to read:

Sec. 10.20.530. SERVICE ON COMMISSIONER [OF COMMERCE]. When a foreign corporation authorized to transact business in the state, or not authorized to transact business in the state but doing so, fails to appoint or maintain a registered agent in the state, or when a registered agent cannot with reasonable diligence be found at the registered office, or when the certificate of authority of a foreign corporation is suspended or revoked, the commissioner is an agent upon whom process, notice, or demand may be served. Service on the commissioner shall be made by delivering to and leaving with him, or with a person designated by him in the corporation division [DEPARTMENT] of his office, duplicate copies of the process, notice or demand, accompanied by a fee of $10. The commissioner shall immediately have one copy forwarded by registered or certified mail, addressed to the

corporation at its principal office in the state or country under whose laws it is incorporated. Service on the commissioner is returnable in not less than 30 days.

* Sec. 42. AS 10.20.615 is amended to read:

Sec. 10.20.615. LIABILITY TO STATE FOR TRANSACTING BUSINESS WITHOUT CERTIFICATE OF AUTHORITY. A foreign corporation which transacts business in the state without a certificate of authority is liable to the state, for the years or portions of years during which it transacted business in the state without a certificate of authority, in an amount equal to all fees [AND FRANCHISE TAXES] which would have been imposed by this chapter on the corporation if it had applied for and received a certificate of authority to transact business in the state as required by this chapter and filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay the fees and a penalty ~~of~~ up to $5,000 per year or fraction of a year of operating without a certificate of authority. The attorney general shall bring proceedings to recover amounts due the state under this section.

* Sec. 43. AS 10.20.630 is amended to read:

Sec. 10.20.630. FILING OF ANNUAL REPORT OF DOMESTIC AND FOREIGN CORPORATIONS. (a) The annual report of a domestic or foreign corporation shall be delivered to the commissioner between June 1 and August 1 [JANUARY 1 AND MARCH 1] of each year. The [HOWEVER, THE] first annual report of a domestic or foreign corporation shall be filed between June 1 and August 1 [JANUARY 1 AND MARCH 1] of the year succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the commissioner.

(b) [A CORPORATION ORGANIZED UNDER THIS CHAPTER WHOSE FISCAL YEAR ENDS AT A TIME OTHER THAN AT THE END OF THE CALENDAR YEAR SHALL

BE ALLOWED 60 DAYS FROM THE DATE ON WHICH THE FISCAL YEAR ENDS WITHIN WHICH TO FILE THE ANNUAL REPORT.]

(c) Proof to the satisfaction of the commissioner that before August 1 [MARCH 1] the report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, is compliance with (a) of this section.

(d) If the commissioner finds that the report conforms to the requirements of this chapter, he shall file it. If he finds that it does not conform to the requirements of this chapter, he shall promptly return it to the corporation for necessary corrections. If the report is corrected to conform to the requirements of this chapter and returned to the commissioner in sufficient time to be filed before October 1 [APRIL 1] of the year in which it is due, the penalties for failure to file the report provided in sec. 645 of this chapter do not apply.

* Sec. 44. AS 10.20.635 is amended to read:

Sec. 10.20.635. FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES. The commissioner shall charge and collect for

(1) filing articles of incorporation and issuing a certificate of incorporation, $30 [$25];

(2) filing articles of amendment and issuing a certificate of amendment, $15 [$10];

(3) filing restated articles of incorporation and issuing restated certificate of incorporation, $15 [$10];

(4) filing articles of merger or consolidation and issuing a certificate of merger or consolidation, $15 [$10];

(5) filing a statement of change of address of registered office or change of registered agent, or both, $10 [$5];

(6) filing articles of dissolution, $10 [$5];

(7) filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, $30 [$25];

(8) filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state and issuing an amended certificate of authority, $15 [$10];

(9) filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this state, $15 [$10];

(10) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in this state, $15 [$10];

(11) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, $10 [$5];

(12) filing any other statement or report, including an annual report, of a domestic or foreign corporation, $5 [$2.50].

* Sec. 45. AS 10.20.645(a) is amended to read:

(a) A domestic or foreign corporation that fails or refuses to file its annual report for any year within the time prescribed by this chapter is subject to a penalty of $5 [$2.50] to be assessed by the commissioner.

* Sec. 46. AS 10.25.330 is amended to read:

Sec. 10.25.330. EFFECT OF CERTIFICATE OF DISSOLUTION. (a) Upon the filing of the certificate and affidavit by the commissioner, the cooperative shall cease to carry on its business except to the extent necessary for the winding up of business. However, its corporate existence continues until articles of dissolution have been filed by the commissioner.

(b) A cooperative that does not file its articles of dissolution

within two years after the date of filing the certificate mentioned in (a) of this section, shall be involuntarily dissolved by the commissioner.

* Sec. 47. AS 10.25.530 is amended to read:

Sec. 10.25.530. FEES. The commissioner shall charge and collect for

(1) filing articles of incorporation, $15 [$10];

(2) filing articles of amendment, $10 [$5];

(3) filing articles of consolidation or merger, $10 [$5];

(4) filing articles of conversion, $15 [$10];

(5) filing certificate of election to dissolve, $5 [$1];

(6) filing articles of dissolution, $10 [$5];

(7) filing certificate of change of principal office and designation or change of registered office and registered agent, $5 [$1]; and

(8) acting as agent for service of process, $10.

* Sec. 48. AS 10.35.020 is amended to read:

Sec. 10.35.020. APPLICATION TO RESERVE NAME. Reservation of a business name is made by filing an application with the commissioner. If the commissioner finds that the name is available for business use, he shall reserve it for the exclusive use of the applicant for a period of 120 days. A name is not available which is the same as, or deceptively similar to, the name of a domestic corporation or a foreign corporation authorized to transact business in the state, or a name reserved or registered under this title [AS 10.05] or gives the impression that the business is incorporated.

* Sec. 49. AS 10.35.040 is amended to read:

Sec. 10.35.040. REGISTRATION OF NAME. A person conducting a business may register its name if the name is not the same as, or

deceptively similar to, the name of a domestic corporation or a foreign corporation authorized to transact business in the state, or a name reserved or registered under this title [AS 10.05]. Registration of the name gives the exclusive right to the use of the name and the person who has registered the name may enjoin the use of the same name or a deceptively similar name and has a cause of action for damages against anyone who uses the same name or a deceptively similar name.

* Sec. 50. AS 10.35.060 is amended to read:

Sec. 10.35.060. FEE FOR AND DURATION OF REGISTERED NAME. The fee for the initial registration of a business name is $20 [$10]. The year in which the registration becomes effective is considered a full year of registration and the registration is effective until the close of the fifth calendar year beginning with the year of initial registration.

* Sec. 51. AS 10.35.070 is amended to read:

Sec. 10.35.070. RENEWAL OF REGISTERED NAME. A registered business name may be renewed every five years if an application for renewal is filed. An application for renewal must set out the facts required in an original application for registration and be accompanied by a renewal fee of $20 [$10]. An application for renewal may be filed between October 1 and December 31 of any year. The renewal of the registration extends the registration for the following five calendar years.

* Sec. 52. AS 10.40.040 is amended to read:

Sec. 10.40.040. CONTENTS OF ARTICLES OF INCORPORATION. The articles of incorporation shall specify

(1) the name of the corporation;

(2) the purpose of the corporation;

(3) the estimated value of its property at the time of

executing the articles of incorporation;

(4) the title of the person executing the articles; and

(5) the name and address of the person upon whom process may be served.

* Sec. 53. AS 10.40 is amended by adding new sections to read:

Sec. 10.40.130. SERVICE OF PROCESS. (a) A corporation organized under this chapter shall continuously maintain on file with the department the name and address of a person designated to act as agent for the purpose of accepting service of process.

(b) When a corporation fails to designate such a person and maintain this information on file, the commissioner is the agent upon whom process may be served. Service on the commissioner shall be made in the same manner as provided in ch. 5 of this title.

(c) Corporations organized under this chapter have 30 days after the effective date of this section within which to comply.

Sec. 10.40.140. FEES AND PENALTIES. (a) Any document required to be filed with the commissioner under this chapter shall be accompanied by a fee of $10.

(b) The commissioner shall collect a penalty of $5 a year or fraction of a year of the amount due from any corporation that fails to file any document or pay any fee within the time prescribed by this chapter.

Sec. 10.40.150. INVOLUNTARY DISSOLUTION. The commissioner, upon 60 days notice, ~~shall~~ may to the corporation involuntarily dissolve a corporation formed under this chapter, for

(1) failure to file within 60 days of the close of the calendar year the report mentioned in sec. 105 of this chapter;

(2) failure to comply with sec. 130(a) of this chapter; and

(3) failure for six months to pay any fee or penalty

required by this chapter.

* Sec. 54. This Act takes effect January 1, 1978.
1977

AMENDMENT # 1

OFFERED IN THE HOUSE: BY: Commerce Committee

To: _____ HOUSE BILL No. _____

SENATE BILL No. SB 490 am

PAGE: 2 LINE: 15

Delete Sec. 4. and renumber sections

& Sec. 16

~~Sect 45~~

Change effective date Jan 1, 1977

Gardiner Amend

Cowper Amend

Gardiner Adopted

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.

Re: SB 490

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

M E M O R A N D U M

May 13, 1976

SUBJECT: Amendment to AS 10.05.237 (WO #2625)

TO: Representative Cowper

FROM: David T. Walker, Legislative Counsel

Attached is an amendment to AS 10.05.237 which I believe would have the effect you desire.

You should also take a look at AS 42.05.491 relating to the records kept by public utilities. It contains some options you might want to include.

DTW/sm

Cowper

AS 10.05.237 is amended to read:

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.

(b) A corporation shall make these books and records, or certified copies of them, available for inspection at the registered office or principal place of business in Alaska.

AMENDMENT 1

OFFERED IN THE HOUSE: BY: Commerce Committee

To: _____ HOUSE BILL No. _____

SENATE BILL No. SB 490 am

PAGE: 2 LINE: 15

Delete Sec. 4. and renumber sections

Re: SB 490

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

M E M O R A N D U M

May 13, 1976

SUBJECT: Amendment to AS 10.05.237 (WO #2625)

TO: Representative Cowper

FROM: David T. Walker, Legislative Counsel

Attached is an amendment to AS 10.05.237 which I believe would have the effect you desire.

You should also take a look at AS 42.05.491 relating to the records kept by public utilities. It contains some options you might want to include.

DTW/sm

AS 10.05.237 is amended to read:

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.

(b) A corporation shall make these books and records, or certified copies of them, available for inspection at the registered office or principal place of business in Alaska.

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.

SB

494

"An Act providing for the temporary suspension of certain civil liabilities of National Guardsmen called into active service for the state."

COMMITTEE REPORT

2/22/7[illegible]

HOUSE

Mr. Speaker: Date May 5, 1976

The Committee on JUDICIARY has had SB 494 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:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends.

_____ recommends:

_____ recommends:

_____ Chairman

members

SB 494 SENATE BILL NO. 494 by the Rules Committee by request of the Governor, entitled:

"An Act providing for the temporary suspension of certain civil liabilities of National Guardsmen called into active service for the state."

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

January 14, 1976

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

Dear Mr. President:

In accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill adopting by reference the federal "Soldier's and Sailor's Civil Relief Act" and applying its provisions to members of the Alaska National Guard and Naval Militia while they are on active duty for the State by order of the Governor.

Essentially this bill provides for the suspension of certain civil liabilities, particularly of financial obligations which might come due, of persons in the service of the State during emergency active duty periods, and provision is made for the temporary suspension of legal proceedings and transactions which may prejudice their civil rights.

Sincerely,

Jay S. Hammond
Governor

SB 495 SENATE BILL NO. 495 by the Rules Committee by request of the Governor, entitled:

"An Act relating to Alaska National Guard pay and the Alaska Employment Security Act."

was read the first time and referred to the Labor and Management Committee.

Jan. 14

CIVIL LIABILITIES

PROPOSAL WILL CORRECT THE FOLLOWING PROBLEMS:

1. Current law does not provide any relief to members of the Alaska National Guard or Naval Militia from civil liabilities when in the service of the state during emergency active duty periods.

2. Members called to active duty for emergency service find their personal income reduced substantially (1/20th of normal in some cases) when placed on state active duty pay scales. Personal and family financial obligations such as mortgage or rent payments, car payments, food and utility bills, etc., continue at the same rate as before the active duty callups.

3. Members on state active duty for over one week find themselves torn between the desire to complete their emergency duties and the necessity for meeting personal financial obligations. This is especially true as the duty periods become protracted and we use units from other locations of the state, i.e. Anchorage units in the Fairbanks Flood, etc.

4. Unit Commanders find themselves deciding between mission and manpower requirements and the real personal needs of his unit members for early release from state active duty.

5. Fortunately, past experience has involved less than total committment of troops for relatively short periods of time. We cannot always guarantee this to be the case.

PROPOSAL IS DESIGNED TO:

1. Implement the provisions of the federal Soldiers and Sailors Civil Relief Act to members of the Alaska National Guard and Naval Militia while on state active duty.

2. The federal act is a proven worthwhile and necessary protective law for federal servicemen. Implementation will do likewise for our own Guardsmen/women.

Introduced: 1/14/76
Referred: Judiciary

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 494

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act providing for the temporary suspension of certain civil liabilities of National Guardsmen called into active service for the state."

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

* Section 1. AS 26.05 is amended by adding a new section to read:

Sec. 26.05.135. SUSPENSION OF ENFORCEMENT OF CIVIL LIABILITIES. Secs. 501 -- 590 of Title 50 U.S.C., pertaining to the temporary suspension of enforcement of civil liabilities of persons in the military service of the United States, apply to members of the Alaska National Guard and Alaska Naval Militia while on active duty for the state by order of the governor.

SB

511

"An Act relating to the administration and enforcement of state revenue laws; and providing for an effective date."

COMMITTEE REPORT

2/2/79 FINANCE

HOUSE

Mr. Speaker: Date _____

The Committee on JUDICIARY has had SB 511 under consideration. A Majority of the members of the Committee

(X) 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:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

Terry
SB511

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S – JUNEAU 99811

Febraury 3, 1976

Honorable Terry Gardiner
Chairman
House Judiciary Committee
Alaska State Legislature
State Capitol Building
Juneau, AK 99811

Re: Senate Bill No. 511

Dear Mr. Gardiner:

Senate Bill No. 511, an Act relating to the administration and enforcement of state revenue laws was introduced in the House of February 2, 1976 and was referred to the House Judiciary and Finance Committees.

For the consideration of the Judiciary Committee, I am enclosing a copy of a fiscal note and a memorandum from Frederick P. Boetsch, Deputy Commissioner, Department of Revenue to Sterling Gallagher, Commissioner of Revenue advising of the administrative need of the proposed legislation.

If you or any members of the Judiciary Committee have any questions on the material submitted, please telephone me at 465-2397 and I will contact Mr. Boetsch for further material or testimony at a hearing.

Very truly yours,

R. D. Stevenson
Special Assistant

Enclosures

cc: Honorable Hugh Malone
Chairman
House Finance Committee

Frederick P. Boetsch
Deputy Commissioner
Department of Revenue

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

I. REQUEST
Bill No. Senate Bill No. 511
Title: Administration and Enforcement of State Revenue Laws
Requested by: Senate Finance Committee Date: 1/26/76
Return Date Requested: 1/21/76
Agency: Revenue Program: Enforcement

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						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	None	None	None	None	None	None

B. FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

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

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

IV. ATTACHMENTS
See memorandum dated January 8, 1976 from Frederick P. Boetsch, Deputy Commissioner to Sterling Gallagher, Commissioner of Revenue.

V. DATE: 1/26/76 PREPARED BY: Frederick P. Boetsch
FREDERICK P. BOETSCH

MEMORANDUM State of Alaska

TO: Sterling Gallagher
Commissioner
Department of Revenue

DATE: January 12, 1976

FILE NO:

TELEPHONE NO:

FROM: Frederick P. Boetsch
Deputy Commissioner, Taxation
Department of Revenue

SUBJECT: Governor's Bill for Administrative Uniformity in the Tax Laws

This bill continues the move that we started with HB 211 in last year's session to provide for Administrative Uniformity of all the State's tax laws. In this measure, the subjects of assessment and collection procedures are covered. The purpose of the bill is to eliminate the multiplicity of procedures that are followed presently by having separate and different procedures for each of the different tax types that we administer. This bill will repeal those common sections of the various tax laws and place one consistent and uniform set of rules under the Administrative Chapter of Title 43. There is no budgetary or treasury effect of this measure that can be measured directly although easier compliance by taxpayers and smoother administration should result from this uniformity.

cc: Ralph Kimlinger, Director
Enforcement Division

SB

515

"An Act relating to referendum procedures."

COMMITTEE REPORT

1/26/76

HOUSE

Mr. Speaker: Date May 20, 1976

The Committee on JUDICIARY has had SB 515 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:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Terry Sanford
_____ Chairman

AMENDMENT #1

OFFERED IN THE HOUSE: BY: Judiciary Committee

To: _____ HOUSE BILL No. _____

SENATE BILL No. 515 tee

PAGE: _____ LINE: _____

Page 1, line 12:

Delete "15" and insert "10".

Introduced: 1/15/76
Referred: Judiciary

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 515

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to referendum procedures."

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

* Section 1. AS 15.45.320 is amended to read:

Sec. 15.45.320. PREPARATION OF PETITION. If the application is certified, the lieutenant governor shall, within 10 ~~14~~ [SEVEN] calendar days after the date of certification, prescribe the form of, and prepare, a petition containing (1) a copy of the act to be referred, if the number of words included in both the formal and substantive provisions of the bill is 500 or less, (2) an impartial summary of the subject matter of the act, (3) the warning prescribed in sec. 330 of this chapter, (4) sufficient space for signatures and addresses, and (5) other specifications prescribed by the lieutenant governor to assure proper handling and control. Petitions, for purposes of circulation, shall be prepared by the lieutenant governor in a number reasonably calculated to allow full circulation throughout the state. The lieutenant governor shall number each petition and shall keep a record of the petitions delivered to each sponsor. Upon request of the referendum committee, the lieutenant governor shall specify the number of persons who voted in the preceding general election.

Introduced: 1/15/76
Referred: Judiciary

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 515

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to referendum procedures."

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

* Section 1. AS 15.45.320 is amended to read:

Sec. 15.45.320. PREPARATION OF PETITION. If the application is certified, the lieutenant governor shall, within 10 [SEVEN] calendar days after the date of certification, prescribe the form of, and prepare, a petition containing (1) a copy of the act to be referred, if the number of words included in both the formal and substantive provisions of the bill is 500 or less, (2) an impartial summary of the subject matter of the act, (3) the warning prescribed in sec. 330 of this chapter, (4) sufficient space for signatures and addresses, and (5) other specifications prescribed by the lieutenant governor to assure proper handling and control. Petitions, for purposes of circulation, shall be prepared by the lieutenant governor in a number reasonably calculated to allow full circulation throughout the state. The lieutenant governor shall number each petition and shall keep a record of the petitions delivered to each sponsor. Upon request of the referendum committee, the lieutenant governor shall specify the number of persons who voted in the preceding general election.

SB
546

"An Act relating to the power of eminent domain."

COMMITTEE REPORT

3/3/76 HOUSE

Mr. Speaker: Date 3/16/76

The Committee on JUDICIARY has had SB 696 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:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

BISS AND HOLMES
ATTORNEYS AT LAW
AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

BURTON C. BISS
ROGER F. HOLMES

FIRST NATIONAL BUILDING
425 G STREET
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 277-8564

WASILLA OFFICE
SR BOX 428X
WASILLA, ALASKA 99687
TELEPHONE (907) 376-5318

August 29, 1975

Senator Chancy Croft
425 G Street, Seventh Floor
Anchorage, AK 99501

Dear Senator:

I just read Arco Pipeline Company, et al. v. 3.60 Acres, More or Less, etc.; Jackie J. Stewart, et al., Opinion No. 1177 dated August 1, 1975. It holds that when a declaration of taking is utilized, the court is not authorized to inquire into the necessity of the taking.

I have been on both sides of the condemnation procedures repeatedly, and I believe this opinion is incorrect and will produce unjust results. Specifically, I believe A.S. §09.55.280 requiring that the project be located in a manner which will be most compatible with the greatest public good and the least private injury, etc., should be made applicable to all takings including those through the exercise of a declaration of taking by the so-called "quick take" method.

Historically, the State of Alaska and all other agencies to my knowledge utilizing the quick take declaration of taking procedures have always scheduled a "A and N" hearing as soon as possible following the filing of the declaration and taking and deposit of estimated just compensation. This hearing on authority and necessity always entailed testimony by the condemning agency's engineers that it was necessary to locate the project in this particular place, and take this amount of land, etc. We all seem to have been able to function with proving this requirement in the past.

Incidentally, although the engineers have testified as to the absolute necessity of a particular take location and area in proceedings in which I have participated, on several occasions I have later found that they have changed their mind and requested an amended declaration of taking because they desired for one reason or another to relocate the particular project. I only mention this because the condemning agency has engineers who will invariably testify to justify their work product even under the past procedures where necessity had to be proven in connection with the declaration

of taking. The landowner is then forced to employ an engineer to review and analyze the project location at considerable expense in order to combat this testimony. However, the option of combating it at least prevents that type of abuse which seems to sometimes flow from minds trained in engineering principles without regard to broader considerations than the construction of a particular project.

While our Supreme Court has distinguished between the powers exercised through a declaration of necessity and a regular slow take proceeding, the fact of the matter is the impact on a property owner is the same. He loses his property whether he wants to or not. Why should there be a distinction requiring the condemning agency to prove necessity on the one hand, and not have to prove it on the other hand, when the property owner who is the object of the safeguard bleeds the same color and quantity of blood regardless of which knife is used.

The Court's decision finds a conflict between the provisions of A.S. §09.55.280 and the declaration of taking provisions. I strongly disagree with the Court's reasoning but even more strongly object to the result which prevents a property owner from even enlisting the court's aid in curbing an abuse. Recent years have seen the United States Supreme Court severely restrict the right of one party to interfere with another party's property prior to the court review of the claimant's rights, particularly in the prejudgment attachment cases. Yet here, our State Supreme Court capitulates to any condemning authority the absolute right to take another person's property without any provision for review as to the necessity of the taking.

It may be that our condemnation laws are in need of wholesale revision. I fear that such revision would be strongly influenced by the State's Attorneys to the detriment of property owners. It seems to me that attorneys representing government agencies in condemnation somehow develop a paranoia and want the scales tilted far in their favor. Because of that, I would suggest that any revision be carefully reviewed. I would also suggest that steps be taken to neutralize the effect of the Arco Pipeline Company case decision.

Very truly yours,

Burton C. Biss

House Judiciary Committee
March 26, 1976

The meeting was called to order by Chairman Gardiner at 3:00 p.m. Members present were Cr ten, Specking, Bradley and Gardiner.

SB 546 EMINENT DOMAIN

SB 546

Richard Kerns, AG' office (Highways):

Determination for right of way must be made before can go to contract. The court room is not the place to decide right of way, that is for the agency (dept. of highways) to decide. Eminent domain and "quick take" is a proper authority for dept. of highways to have but nor for private corporations, like Alyeska or ARCO. State wants exemption from court room determination. Agency wants to make decision of what route to take before court room appearance. Expensive and time consuming. Department of Highways can make a better decision of right of way than a judge.

Richard Winning, Anchorage municipal attorney:

Suggests deletion of "greatest public good" as any public project could be scrutinized after completion as not being in the greatest public good and therefore must pay back the original owner.

The meeting was adjourned at 4:30 p.m.

House Judiciary Committee
April 7, 1976

The meeting was called to order by Chairman Gardiner at 1:25. Present were Cotten, Bradley, Parr and Gardiner.

HB 823 CREDIT UNIONS HB 823

Joe McKinnon, sponsor

Went through Humphrey's amendments and Motley's amendments as changes from Commerce CS to Judiciary Cs.

Mr. Parr moved that charter conversion be approved by members like merger. No objection.adopted.

Deleted any reference of wages as collateral for loan.

Bradley moved new CS by Judiciary out of committee.

SB 546 EMINENT DOMAIN SB 546

Mr. Brown moved am to sec 2(a) on line 20-21. No objection, adopted.

Mr. Brown moved page 1, line 25 add "or possession". No objection, adopted.

Mr. Brown moved CS out of committee.

HB 634 EMPLOYMENT OF MINORS HB 634

Page 2, line 14-15 reads as if minor should give notice. Drafting error. Rewrite so that employer must give notice.

Sec. 6 should read "and 23.10 340(b).

Mr. Specking moved CS out. No objection.

HB 600 DETERMINATE SENTENCING HB 600

A new CS by Pat Conheady of Dept. of Law.

2(a) and 3(a) are specific minimum terms of confinement.

Sec. 5: Good time is vested after accumulation of 30 days.

Page 5, line 16 to read: "shall inquire of the accused person whether or not he is..."

The meeting was adjourned at 3:20.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER / POUCH M — JUNEAU 99811

January 5, 1976

The Honorable Chancy Croft
Suite 710
425 G Street
Anchorage, Alaska 99501

Dear Chancy:

Earlier, Bill McQuire sent along a copy of your proposed Senate Bill relating to the power of eminent domain, along with a request that we take a look at it here.

I have circulated the draft for comments, and have found no general problems with the legislation. I should point out that this Department has far less to do with eminent domain than does the Department of Highways, and therefore probably does not appreciate the complexities regarding the use of this law.

Generally speaking, the intent of the bill seems to be good, and the only change that anyone recommended in our Department is that in Section 460(b) the words "or purpose" be substituted for the words "for a project located." The thought here is that project tends to be associated with development and it may be that the eminent domain power may be exercised for a public use that may not require development. I would be interested in seeing comments of the Department of Highways on this.

Best regards,

Guy R. Martin
Commissioner

THE SUPREME COURT OF THE STATE OF ALASKA

ARCO PIPELINE COMPANY, et al., Petitioners, v. 3.60 Acres, more or less, etc.; JACKIE J. STEWART, et al., Respondents.	File No. 2419
	O P I N I O N
	[No.1177 - August 1, 1975]

Petition for Review from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Warren W. Taylor, Judge.

Appearances: Karl L. Walter, Jr., of Groh, Benkert & Walter, Anchorage, for Petitioners. Jackie J. Stewart, Delta Junction, Respondent, in propria persona.

Before: Rabinowitz, Chief Justice, Connor, Erwin, and Burke, Justices. (Boochever, Justice, not participating.)

ERWIN, Justice.

Petitioners are the owners and constructors of the Trans-Alaska Pipeline. In order to facilitate the prompt completion of this monumental and historic project, the State of Alaska in AS 38.35.130 authorized a delegation of its power of eminent domain and permitted thereby the use by petitioners of a declaration of taking to condemn real

property in the state for right-of-way purposes.[1] Pursuant to this grant, on July 15th, 1974, petitioners filed an eminent domain complaint and a declaration of taking seeking to condemn a 3.6 acre right-of-way and easement -- 100 feet wide and approximately 1400 feet long -- across the 80 acre homestead of respondent Stewart in the area of Delta Junction. The sum of $700.00 was deposited in the court as estimated compensation for the taking. Respondent Stewart answered and asserted that condemnation of the respondent's property was not necessary since petitioners had public lands available to them which were suitable for the pipeline construction.

A consolidated hearing concerning this as well as other parcels in the same area was conducted on September 20 and November 1, 1974. At the hearing petitioners offered expert testimony on the subjects of route selection and design criteria and the necessity of the taking of respondent's property. The testimony revealed that in the opinion of the pipeline company the route selected was optimal in satisfying design and construction criteria and maintained

---

1. AS 38.35.130 of the Right-of-Way Leasing Act provides in part:

> (a) The lessee may, if the commissioner delegates the function to it, condemn, by declaration of taking, under AS 09.55.420-09.55.450, real property and acquire leases of or easements or rights-of-way on lands in the state required for right-of-way purposes for a pipeline subject to the lease on behalf of and as agent for the state in which title to or interest in the land shall vest.

the straightest line possible, one having the fewest number of angles detrimental to the proper flow of crude oil. The expert testimony further indicated that core drilling of the property had revealed that the soil was suitable for burying the pipeline. Respondent, on the other hand, offered no testimony questioning the efficacy of the route selected, but provided instead evidence that there were state and university lands north of respondent's property over which the pipeline could be constructed.

After hearing the testimony and after additional briefing the trial court denied the taking, concluding that petitioners had failed to demonstrate that they had considered routing the line over public lands and thereby avoid private injury. The court ruled that where the option of alternative routing over public land exists petitioners have the burden of submitting convincing evidence that they have at least considered the alternative routing across state land to avoid private injury, and that they must give cogent reasons for their ultimate selection.

Following the decision a petititon for review was filed in the Supreme Court and an order granting such review was entered on February 18, 1975.

Before discussing the issues raised in this review, it should be pointed out that the trial court specifically found that petitioners have been given statutory authority by the state of Alaska to take property for

the construction of the Trans-Alaska Pipeline; it also apparently found that petitioners had been properly delegated this power and had otherwise complied with the applicable statutes governing the exercise of the power of condemnation by way of declaration of taking. These conclusions are supported on the record[2] and have not been contested herein by respondent. They are therefore not at issue in this Petition for Review.

The specific issue presented here for review is whether or not the trial court was correct in its determination that for purposes of the exercise of the power of condemnation by way of a declaration of taking petitioners have the burden of showing consideration of possible alternate pipeline routes and of providing sufficient proof of the necessity of the particular route selected. The resolution of this question necessarily entails an analysis of the statutes governing the use of a declaration of taking by petitioners and, correlatively, an inquiry into the question of the proper scope of judicial review in such proceedings.

AS 09.55.420-09.55.450,[3] governing the use of a

---

2. We note that the record reveals that on July 2, 1974, the Commissioner of the Department of Natural Resources executed a Delegation of Authority under the statute and specifically authorized thereby petitioners' use of a declaration of taking to condemn the Stewart property.

3. The pertinent provisions of these statutes read as follows:

Sec. 09.55.420. Declaration of taking by state or municipality. (a) Where a

declaration of taking in this state, constitute the authority

3. Cont'd

proceeding is instituted under §§ 240-460 of this chapter by the state, it may file a declaration of taking with the complaint or at any time after the filing of the complaint, but before judgment. . . .

Sec. 09.55.430. Contents of declaration of taking. The declaration of taking shall contain

(1) a statement of the authority under which the property or an interest in it is taken;

(2) a statement of the public use for which the property or an interest in it is taken;

(3) a description of the property sufficient for the identification of it;

(4) a statement of the estate or interest in the property;

(5) a map or plat showing the location of the property;

(6) a statement of the amount of money estimated by the plaintiff to be just compensation for the property or the interest in it.

Sec. 09.55.440. Vesting of title and compensation. (a) Upon the filing of the declaration of taking and the deposit with the court of the amount of the estimated compensation stated in the declaration, title to the estate as specified in the declaration vests in the plaintiff, and that property is condemned and taken for the use of the plaintiff, and the right to just compensation for it vests in the persons entitled to it. The compensation shall be ascertained and awarded in the proceeding and established by judgment. . . .

Sec. 09.55.450. Right of entry and possession. (a) Upon the filing of the

for petitioners' taking in this case.[4] In Bridges v. Alaska Housing Authority, 349 P.2d 149 (Alaska 1959), the only case in which this court has engaged in a comprehensive analysis of the general import of these provisions in the context of the exercise of eminent domain in this state, it was observed that

> [a] declaration of taking enlarges the rights of the condemning authority and reduces those of the landowner. Upon the filing of the declaration and a deposit of the amount of compensation estimated to be due, title to the real property vests in the condemning agency and "such real property * * * shall be deemed to be condemned and taken for the use of the condemning agency * * *." And then, without the necessity of awaiting the report of the commissioners and assessment of damages, the court is given the power "to fix the time within which and the terms upon which

---

3. Cont'd

> declaration of taking and the deposit of the estimated compensation, the court may, upon motion, fix the time during which and the terms upon which the parties in possession are required to surrender possession to the petitioner. However, the right of entry shall not be granted the plaintiff until after the running of the time for the defendant to file an objection to the declaration of taking. . . .
>
> . . .
>
> (c) The right to take possession and title in advance of final judgment where a declaration of taking is filed is in addition to any other rights to take possession provided in §§ 240-460 of this chapter.

4. Note 1 supra.

> the parties in possession shall be required to surrender possession" to the condemning authority. 5

The Court further concluded that

> [i]t apparently was not intended that the declaration of taking power should merely supplement the procedural aspects of the then existing statutory provisions on eminent domain. . . . The declaration of taking is a power of eminent domain, and not only a manner of exercising a power otherwise conferred. More than procedure is involved; substantive rights are affected. 6

We take this opportunity to observe that changes in the language of the declaratic of taking provisions since Bridges have been -- at least for purposes of this review -- minor, and we consequently recognize the applicability of the Bridges analysis to the case at hand. In Bridges, however, we were not called upon to consider the effect of the declaration of taking provisions in light of other statutes which govern eminent domain proceedings in general. It is this interrelationship which is at the crux of this review.

The trial court, in holding that petitioners were obliged to demonstrate in convincing terms the necessity of selecting one route as opposed to other alternatives which might arguably minimize private injury, premised its ruling upon the conclusion that the petitioners' action was governed by the same rules which apply to any governmental exercise

---

5. 349 P.2d at 153-54 (footnote omitted).

6. Id. at 153.

of the power of eminent domain. Obviously looking to such statutes as AS 09 55.260 through 09.55.280, and 09.55.300,[7]

---

7. These sections provide in pertintent part:

Sec. 09.55.260. Private property subject to be taken. The private property which may be taken under §§ 240-460 of this chapter includes

. . .

(5) all rights-of-way for any of the purposes mentioned in § 240 of this chapter, and the structures and improvements on the rights-of-way, and the lands held and used in connection with them shall be subject to be connected with, crossed, or intersected by another right-of-way or improvements or structures on them; they shall also be subject to a limited use, in common with the owner, when necessary; but the uses, crossings, intersections, and connections shall be made in the manner most compatible with the greatest public benefit and least private injury;

. . .

Sec. 09.55.270. Prerequisites. Before property can be taken, it shall appear that

. . .

(2) the taking is necessary to the use;

. . .

Sec. 09.55.280. Entry upon land. In all cases where land is required for public use, the state, the public entity, or persons having the authority to condemn, or its agents in charge of the use may enter upon the land and make examination, surveys, and maps and locate the boundaries; but it shall be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of § 300 of this chapter. . . .

Sec. 09.55.300. Powers of court. (a) The

the court quite reasonably concluded that it was therefore

> the province of the court to require the condemnor to prove to the satisfaction of the court that the selected route is consistent with the greatest public benefit and to the least private injury.

However, a consideration of the clear legislative intent that the prompt completion of the pipeline be facilitated under the Right-of-Way Leasing Act,[8] our reading and analysis of certain critical provisions governing the effect of the use of a declaration of taking, and the continued recognition and validation of the approach we adopted in Bridges lead us to the conclusion that the court erred in concluding

---

7. Cont'd

> court has power
>
> (1) to regulate and determine the place and manner of making the connections and crossings or of enjoying the common uses mentioned in § 260(5) of this chapter . . . .
>
> (2) to limit the amount of property sought to be condemned if, in its opinion, the quantity sought to be condemned is not necessary.
>
> . . .

8. AS 38.35.010 et seq. See, for example, the October 17, 1973, letter from Governor William A. Egan to Hon. Terry Miller, President of the Senate, which accompanied the bill which (as later modified and adopted) substantially amended the original Right-of-Way Leasing Act of 1972. With respect to the subject of condemnation, the Governor observed that

> . . . a modified form of eminent domain has been restored so that construction of pipelines may proceed promptly.

House Journal and Senate Journal of Alaska, Special Session 1973, at 8.

that in a proceeding for condemnation by way of a declaration of taking the court is empowered to require the condemnor to prove the necessity of a given taking.

Our declaration of taking statutes were patterned upon the language of 40 U.S.C. §258a[9] which governs "quick take" eminent domain proceedings by the United States. Decisions interpreting this federal statute may consequently be considered persuasive for purposes of construing the analogous provisions of our own statutes.[10]

A review of such decisions reveals that it has been consistently recognized that the effect of the language of §258a is that once a declaration of taking is filed title to the property is transferred to the condemning authority subject only to the right of the property owner to challenge the validity of the taking as not being for an authorized public purpose or as having been made capriciously or in bad faith.[11] It has, for example, been held that absent bad

---

9. There is, regrettably, a dearth of legislative history available concerning the adoption of our declaration of taking statutes. To the effect that they were originally taken almost word for word from 40 U.S.C. § 258a, however, see 1960 Op. Alaska Att'y Gen., No. 15.

10. See Russian Orth. Greek Cath. Church of N. America v. Alaska State Housing Auth., 498 P.2d 737 (Alaska 1972), where this Court looked to decisions under the federal act for guidance in construing the effect of AS 09.55.420 to 09.55.440. See also Alaska Transp. Comm'n v. Alaska Airlines, Inc., 431 P.2d 510, 512 (Alaska 1967).

11. Wilson v. United States, 350 F.2d 901, 906-07 (10th Cir. 1965); United States v. Threlkeld, 72 F.2d 464, 465 (10th Cir. 1934); see Berman v. Parker, 348 U.S. 26, 99 L. Ed. 27 (1954); United States ex rel T.V.A. v. Welch, 327

faith, if the use is a public one the necessity of a given taking is not a question for judicial determination;[12] that once the declaration of taking is filed and the estimated compensation is deposited, neither the condemnee nor the court has the power to question the condemnor's determination of the necessity of a particular taking;[13] and that as the judicial role in examining such condemnation proceedings does not extend to determining whether the land sought is actually necessary to the project, the court's review power is limited to those cases where there has been some clear abuse of administrative discretion -- where the officials making the administrative decisions have acted in bad faith or so capriciously and arbitrarily that their action was

---

11. Cont'd

U.S. 546, 90 L. Ed. 843 (1946); United States v. Carmack, 329 U.S. 230, 91 L. Ed. 209 (1946); United States v. New York, 160 F.2d 479 (2d Cir. 1947); United States v. 1,278.83 Acres of Land, 12 F.R.D. 320 (E.D. Va. 1952). See also 6A J. Sackman, Nichols' The Law of Eminent Domain § 27.26, at 27-80 (rev. 3d ed. 1974) where it is stated that

> [s]ince the wisdom and expediency of a condemnation are not matters for judicial review, defenses relating to the necessity for acquisition of property, the necessity for resorting to eminent domain to acquire it, the extent or amount of property to be taken, the choice of the tract, the wisdom or feasibility of the project, the kind of property or the nature of the estate to be acquired, are not proper. (footnote omitted)

12. Wilson v. United States, 350 F.2d 901, 907 (10th Cir. 1965).

13. United States v. Mischke, 285 F.2d 628 (8th Cir. 1961); United States v. 6.74 Acres of Land, 148 F.2d 618 (5th Cir. 1945).

without adequate determining principle or was unreasoned.[14]

Such an approach is in keeping with what would appear to be the general rule that the scope of review of any taking in eminent domain is extremely limited; that questions of necessity and expediency are largely beyond the reach of the court, which ought generally to limit its inquiry to the question of the existence of a proper public purpose and the absence of any abuse of the power of condemnation.[15] It is consequently recognized that it is no defense in a condemnation proceeding that some other location for the taking might reasonably have been selected or some other suitable property obtained.[16]

As against this proposition, however, Alaska is among the minority of jurisdictions which statutorily call

---

14. United States v. Certain Land in Borough of Manhattan, 233 F. Supp. 899 (S.D.N.Y. 1964), aff'd, 336 F.2d 1021. See also United States v. 80.5 Acres of Land, 448 F.2d 980 (9th Cir. 1971); United States v. 2,606.84 Acres of Land, 432 F.2d 1286 (5th Cir. 1970), cert. denied, 402 U.S. 916, 28 L. Ed. 2d 658, reh. denied, 403 U.S. 912, 29 L. Ed. 2d 690.

15.

> The overwhelming weight of authority makes clear beyond any possibility of doubt that the question of the necessity or expediency of a taking in eminent domain lies within the discretion of the legislature and is not a proper subject of judicial review. (footnote omitted)

1 J. Sackman, Nichols' The Law of Eminent Domain §4.11, at 4-138 (rev. 3d ed. 1974).

16. 6A id. §27.26, at 27-80.

for judicial inquiry into the question of necessity in eminent domain proceedings.[17] AS 09.55.270, for example, specifically requires for a showing that the taking "is necessary to the use" before property can be taken. The resultant conflict between this provision and the concept of judicial review developed under the language of 40 U.S.C. § 258a -- which may be presumed to have been intended to apply to our declaration of taking provisions[18] -- seems clear. Recognizing our duty to construe statutes covering the same subject matter in pari materia,[19] and to adopt where possible a reasonable construction of each which realizes leglislative intent and avoids conflict or inconsistency with the other,[20] we

---

17. See Ariz. Rev. Stat. §12-1112 (1956); Smith-Hurd Ill. Ann. Stat. ch. 47, §2.2(c) (1969); 7 Rev. Codes Mont. 1947, §93-9905 (1964).

We note that though we could find no explicit legislative recognition of this fact, the editors of our own Alaska Statutes 1962 have indicated in their annotations to AS 09.55.270 that this section was derived from an almost identical provision in the Montana Statutes. See 7 Rev. Codes Mont. 1947, § 93-9905 (1964). This fact would appear to offer much in the way of explanation for the trial court's reliance upon Montana precedent when it concluded that "when the condemnor fails to consider the question of the least private injury between alternate routes, its action is arbitrary and amounts to an abuse of discretion." Citing Montana Power Co. v. Bokma, 457 P.2d 769, 775 (Mont. 1969).

18. Cf. Nicholson v. Sorensen, 517 P.2d 766, 770 (Alaska 1973); Gray v. State, 463 P.2d 897, 902 (Alaska 1970). See also p. 10 & note 10 supra.

19. See, e.g., Stewart & Grindle, Inc. v. State 524 P.2d 1242 (Alaska 1974); Smalley v. Juneau Clinic Bldg. Corp., 493 P.2d 1296 (Alaska 1972); United States v. Hardcastle, 10 Alaska 254 (1942).

20. Gordon v. Burgess Const. Co., 425 P.2d 602 (Alaska 1967).

nevertheless find the concept of judicial review embodied in our general eminent domain statutes to be inconsistent with and inappropriate to proceedings under a declaration of taking.

The conclusion seems inescapable that there exists a clear functional distinction between proceedings in condemnation under a declaration of taking and those under a complaint seeking condemnation and an order for possession. Under the former title passes immediately upon filing and deposit -- at which time, under AS 09.55.440, the property is deemed to be "condemned and taken for the use of the plaintiff."[21] Under the latter no such vesting occurs; title does not vest, nor does "condemnation" actually occur until the final award is determined and an order and judgment of condemnation is entered by the court.

As recognized in Bridges,[22] as well as later cases, the difference in the nature of these two proceedings is not merely procedural; the almost summary quality of the former bespeaks the grant of an additional substantive power of condemnation which considerably reduces the rights of the landowner to contest the taking.[23] Consequently, reading AS 09.55.420 to 09.55.450 in this light, we are lead to the

---

21. See note 3 supra.

22. See City of Anchorage v. Lot 1 in Block 68 of Orig. Town., 409 P.2d 609 (Alaska 1966).

23. See p.6-7 & note 5 supra.

conclusion that the intent of these provisions was to bring, in summary fashion, statutory finality to the questions of title and right to possession even though litigation continues with respect to the ultimate amount of compensation to be paid. If such finality is to be given any meaningful effect, we conclude that such vesting must be subject only to the rather limited right of the owner to contest the validity of the taking as not being statutorily authorized or as having been capriciously or arbitrarily exercised.[24] To permit the owner to challenge the necessity of the particular taking without an initial showing on his part that it is the result of some clear abuse of discretion is to give the concept of a declaration of taking no more effect than that of a complaint in any condemnation proceeding; such an interpretation would render the language of AS 09.55.440 noted above essentially meaningless.

We would note at this juncture that although the enabling legislation under which petitioners are empowered to use a declaration of taking does not refer to or incorporate it -- and we consequently do not find it wholly dispositive of the case at hand -- AS 09.55.460(b) provides in part that

> [t]he plaintiff may not be divested of a title acquired except where the court finds that the property was not taken for a public use.

We find that this express declaration of legislative intent

---

24. Cf. 6A J. Sackman, Nichols' The Law of Eminent Domain § 27.25, at 27-61 to -62 (rev. 3d ed. 1974).

as to the scope of judicial review in such proceedings lends considerable support for the conclusion we reach today.

Our decision that the question of necessity under a declaration of taking is not one for initial judicial consideration as in the case of other condemnation proceedings is also buttressed by several other factors. There is evidence, for example, that the legislature was at least well aware of the substantive differences in the two types of proceedings when it considered the use of eminent domain powers for pipeline right-of-way acquisition. Prior to the adoption of the present AS 38.35.130 an amendment was offered to the bill which would have authorized for pipeline purposes the exercise of eminent domain powers only under AS 09.55.240-09.55.410, the general eminent domain provisions.[25] Such an approach was rejected, however, and the present version allowing the use of a declaration of taking was adopted instead.

It must next be recognized that the Montana case law upon which the trial court apparently founded at least part of its decision[26] is from a statutory scheme which

---

25. See the amendment offered by Senator Croft to the committee substitute for the original senate bill amending AS 38.35.130 which would have inserted after "condemn" the words "by eminent domain under AS 09.55.240-09.55.410." House Journal and Senate Journal of Alaska, Special Session 1973, at 99. Although this amendment passed the senate, the failure of both houses to concur on this as well as other amendments to the Right-of-Way Leasing Act resulted in a Free Conference Committee substitute which, as finally approved, provided the present version.

26. See discussion, note 17 supra.

does not recognize at all the concept of a declaration of taking or any other such "quick take" proceeding.[27] Moreover, there is evidence that the courts of Montana have themselves not been entirely consistent on the subject of judicial review of administrative determinations of necessity. In State Highway Commission v. Crossen-Nissen Co., 410 P.2d 283, 285 (Mont. 1965), for example, it was held that although (in a normal eminent domain action) the plaintiff has the initial burden of making some sort of prima facie showing of necessity, it is

> incumbent upon the defendant to show fraud, abuse of discretion or arbitrary action in order to defeat the action of the [plaintiff].

The court went on to hold that

> even when necessity has been challenged on the ground of arbitrariness or excessiveness of the taking, there is left largely to the discretion of the condemnor the location, route, and area of the land to be taken. There rests upon the shoulders of one seeking to show that the taking has been excessive or abritrary, a heavy burden of proof in the attempt to persuade the court to substitute its judgment for that of the condemnor. . . . "[Such] proof should be made clear and convincing; otherwise no location could ever be made."

Assuming arguendo that such an evidentiary rule is wholly appropriate for proceedings under the same general eminent domain provisions in this state (a question we need not reach in this case), we find it difficult to square this

---

27. See 7 Rev. Codes Mont. 1947, §§ 93-9901 et seq. (1964).

analysis of burdens of proof with the ruling upon which the trial court based its decision -- that the condemnor is under a burden of demonstrating ab initio its consideration of alternative routes and of justifying the ultimate route selected. The mandate of a prima facie showing of "necessity," even in Montana, has been held to require only a showing that the particular property taken is "reasonably requisite and proper for the accomplishment of the purpose for which it is sought."[28] Notwithstanding the difficulty involved in reconciling these positions, or Montana case law, we are persuaded that no such burden of proof as was imposed by the trial court was ever intended to apply to proceedings under a declaration of taking in this state.

The final touchstone leading us to the conclusion that AS 09.55.420-09.55.450 were clearly intended to authorize a more summary and less judicially dependent exercise of the power of eminent domain is found in the original act under which the declaration of taking proceeding was authorized.

Sections 1 through 8 of chapter 90, SLA 1953, authorized the use of a declaration of taking as a special supplemental proceeding "to provide for obtaining possession of lands taken for public highway purposes by eminent domain." Prior to 1953 no such proceeding was recognized under Alaskan

---

28. State Highway Comm'n v. Crossen-Nissen Co., 400 P.2d 283, 284 (Mont. 1965); accord, State Highway Comm'n v. Yost Farm Co., 384 P.2d 277, 279 (Mont. 1963); State ex rel. Livingston v. District Court, 300 P. 916 (Mont. 1931).

law. Although now no longer limited to public highway purposes, the state being authorized to use the proceeding for any purpose for which the right of eminent domain may be exercised,[29] the original 1953 Act is otherwise in almost every respect identical to the present provisions. The 1953 Act, however, contained a severability clause which specifically provided in addition that

> [a]ll laws or portions of laws inconsistent with the policy and provisions of this Act are hereby repealed to the extent of such inconsistency in their application to the declaration of taking procedure authorized by this Act.[30]

This provision, though not incorporated in the original 1962 codification of the Alaska Code of Civil Procedure,[31] not only clearly reflects a legislative recognition of the substantive difference between the use of this special power and that of eminent domain in general, but it also evidences in its express repealer language an intent that the exercise of this power should not be

---

29. We note that the historical development of these provisions reflects the adoption of increasingly less restrictive limitations on the use of this power. See § 1, ch. 90, SLA 1953 (use by the Territory for public highway purposes); § 1, ch. 138, SLA 1955 (use by the Territory "for any purpose for which the Territory is authorized the power of eminent domain"); §§ 1-5, ch. 146, SLA 1959 (extending the use of the declaration to the state, public utility and school districts); §§ 13.19-13.23, ch. 101, SLA 1962 (extending the power to first-class cities); § 2, ch. 122, SLA 1966 (adopting the language presently appearing in AS 09.55.420).

30. Section 7, ch. 90, SLA 1953.

31. Sections 13.19-13.23, ch. 101, SLA 1962.

restricted by limitations, otherwise applicable to eminent domain, which are inconsistent with the policies of immediate vestiture of title and the limited power of the court to divest such title once acquired (as is reflected in the present AS 09.55.460 noted supra). A judicial recognition of these policies appears at least by implication in our opinion in Bridges.

After consideration of the foregoing, we are of the opinion that in proceedings in eminent domain by way of a declaration of taking under AS 09.55.420-09.55.450, the court is without authority, either by virture of the express mandate of AS 09.55.460(b) or by implication from the legislative history and policy evidenced in AS 09.55.440, to review the question of the necessity of a particular taking absent a clear showing of fraud, bad faith, arbitrariness or an abuse of discretion in exercise of the power of condemnation by the condemning authority. Once an authorized public use for the taking is established by the condemnor, and statutory and procedural requirements are otherwise satisfied,[32] that the particular taking is reasonably requisite to the realization of that use shall be presumed. Notwithstanding such provisions as AS 09.55.270(2), judicial

---

32. It is clear, for example, that the failure of a declaration of taking to satisfy the specific requirements of AS 09.55.430 would constitute a proper defense to the condemnation. See note 3 supra. It is also manifest that a taking may properly be challenged on the ground that the condemnor's action is not in compliance with such specific restrictions on the exercise of the power as may appear in the commissioner's delegation of authority or the lease itself.

inquiry into such necessity or the condemnor's determinations with respect thereto is not appropriate unless and until the condemnee has presented clear and convincing evidence that the condemnor has acted in bad faith or so capriciously and arbitrarily as to indicate the absence of any reasonable determining principle.

In this case it is clear that the use intended is public and statutorily authorized. Petitioners have, moreover, presented unrebutted evidence to the effect that the design and construction criteria for the pipeline are most feasibly satisfied by the route across the property of respondent. The fact that some other available routing might suffice or even be more desirable in some respects is not sufficient in this case to raise a proper defense to the declaration of taking. Consequently, it cannot be said that petitioner is under any duty to initially submit evidence that it has considered such alternate routing; nor can the failure to make such showing under the circumstances justify a finding of arbitrariness or an abuse of discretion. Only specific allegations of fraud, bad faith, or some gross abuse of discretion in locating the pipeline can raise issues sufficient to permit judicial review of the necessity of the taking.[33] No such allegations haye been made herein. The determination of the location of the pipeline must

---

33. No challenge on constitutional grounds has been raised in this case and we do not reach such issue in this review.

therefore be left to the agency charged with carrying out its completion.[34]

The order of the superior court is vacated and the case is remanded for further proceedings in conformity with this opinion.

VACATED and REMANDED.

---

34. See Williams v. Transcontinental Gas Pipe Line Corp., 89 F. Supp. 485, 488-89 (W.D.S.C. 1950).

CHAIRMAN'S REPORT
FOR
HCS SB 546

The House Judiciary Committee received testimony that the addition of the proposed new language in AS 09.55.460 (b) would allow for an interpretation of that statute enabling a person to bring a collateral action for damages as a result of the taking after the normal time for a hearing on "just compensation" and "necessity compatable with the greatest public good and the least private harm."

It is the Committee's opinion, relying on the opinion of counsel at the Legislative Affairs Agency, that such a construction of AS 09.55.460 (b) would be extremely strained. It is the intent of the Judiciary Committee that the aforementioned language not be utilized in a manner which would allow an individual to bring a collateral action in a court of law other than to defend a taking as set out in AS 09.55.450 (a).

Terry Gardiner

Terry Gardiner, Chairman
House Judiciary Committee

Wiring Amendments

Introduced: 1/19/76
Referred: Resources

IN THE SENATE BY CROFT

SENATE BILL NO. 546

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the power of eminent domain."

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

* Section 1. AS 09.55.430 is amended by adding a new paragraph to read:

(7) a statement that the property is taken by necessity for a project located in a manner which is most compatible with the greatest public good and the least private injury.

* Sec. 2. AS 09.55.450(a) is amended to read:

(a) Upon the filing of the declaration of taking and the deposit of the estimated compensation, the court may, upon motion, fix the time during which and the terms upon which the parties in possession are required to surrender possession to the petitioner. However, the right of entry shall not be granted the plaintiff until after ~~the hearing of any objection to the declaration of taking made by the defendant, or~~ the running of the time for the defendant to file an objection to the declaration of taking (or until after the hearing on any objection to the declaration of taking if the objection is made in the time allowed by law). Where the party in possession withdraws any part of the award and remains in possession, the court may fix a reasonable rental for the premises to be paid by that party to the plaintiff during such possession.

* Sec. 3. AS 09.55.460(b) is amended to read:

(b) The plaintiff may not be divested of a title (or possession) acquired except where the court finds that the property was not taken ~~by necessity~~ for a public use ~~or purpose in a manner compatible with the greatest public good and the least private injury~~ or purpose. In the event of that finding, the court shall enter the judgment necessary to (1) compensate the persons

entitled to it for the period during which the property was in the possession of the plaintiff, [and] (2) recover for the plaintiff any award paid to any person, and (3) order the plaintiff to restore the property to the condition in which it existed at the time of the filing of the declaration of taking unless such restoration is impossible, in which case the court shall award damages to the proper persons as compensation for any diminution in the value of the property caused by the plaintiff's wrongful possession.