

ALASKA LEGISLATURE COMMITTEE FILES 1901-1902 00/2

1669 SJ SB 78 (file 1) - SB 78 (file 2)

recorded and by which any interest in such leases or in the production thereunder is conveyed or quitclaimed, certified by the Commissioner of the General Land Office.

"When a copy of any documents so certified is recorded, the record has the same

force and effect as though it were of the original instrument."

Derivation: Stats. 1850, c. 101, p. 251, § 18; Civ.C. § 1160, amended by Code Am. 1877-78, c. 615, p. 85; Stats. 1945, c. 834, p. 1532.

Cross References

Evidence, proof of public record, see Evidence Code §§ 1451, 1453, 1507, 1520-1532, 1600.

Proof and acknowledgment of instruments, generally, see Civil Code § 1150 et seq.

Record of patents, see § 27264.

Library References

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C.J.S. Records § 10.

Notes of Decisions

1. In general

Every instrument required to be recorded, with the exception of those belonging to the class mentioned in Civ.C. §§ 1159, 1160 (repealed. See, now, §§ 27282-27284 and this section), cannot be recorded, unless execution is acknowledged by the person executing it, and an acknowledgment taken before a grantee or one standing in the position of a beneficiary under a conveyance or other instrument is void. *Ramsey v. California Packing Corp.* (1921) 201 P. 481, 51 C.A. 517.

A patent from the United States for land may be recorded without acknowledgment and consequently the record thereof is evidence of its contents. *Saecker v. Cohn* (1919) 179 P. 893, 180 C. 151.

A receipt although constituting a certificate of purchase of land from the United States is not a patent within the rule that a patent from the United States for land may be recorded without acknowledgment. *Id.*

Where a copy of a patent to land certified by the commissioner of the general

land office was recorded in the county where the land was located, a certified copy of such record was admissible without a showing that the original patent could not be produced. *Preston v. Hirsch* (1907) 90 P. 985, 5 C.A. 485.

In the case of *People v. Harrold* (1890) 24 P. 100, 84 C. 557, the court said: "Section 1160, Civil Code [repealed. Now this section], cited by respondent, has no application. It relates only to the recording of letters patent affecting the title or possession of real property."

Under Pol.C. § 4237 (repealed) sheriff's certificate of sale of real estate, filed and recorded, imparts notice although unacknowledged. *Foorman v. Wallace* (1888) 17 P. 680, 75 C. 552.

A patent for land, issued by the United States, could be proved by producing from the recorder's office the book in which it is recorded, without proof of loss of the original. *Vance v. Kohlberg* (1875) 50 C. 340.

§ 27286. Transcript of letters patent; effect of recording

If letters patent have been lost or are beyond the control of any party deraining title from them, or if for any reason they remain unrecorded, any person claiming title thereunder may cause a transcript of the copy of such letters patent kept by the government issuing them, duly certified by the officer or individual having lawful custody of the copy, to be recorded in lieu of the original, and the recorded copy has prima facie the same force and effect as the original for title or for evidence, until the original letters patent are recorded. (Added Stats. 1947, c. 424, p. 1160, § 1.)

Historical Note

Derivation: Stats.1850, c. 101, p. 251, § 18; Civ.C. § 1160, amended by Code Am. 1877-78, c. 615, p. 85; Stats.1945, c. 834, p. 1532.

Cross References

Evidence, proof of public record, see Evidence Code §§ 1451, 1453, 1507, 1530-1532, 1600. Record of patents, see § 27264.

Notes of Decisions

1. In general

Since a patent from the United States for land may be recorded without acknowledgment under Civ.C. § 1160 (repealed. Now, this section), the record thereof is evidence of its contents, under C.C.P. §§ 1910, 1951 (repealed). *Saecker v. Cohn* (1919) 179 P. 890, 180 C. 151.

Where a copy of a patent to land certified by the Commissioner of the General Land Office was recorded in the county where the land was located, a certified copy of such record was admissible without a showing that the original patent could not be produced. *Preston v. Hirsch* (1907) 90 P. 965, 5 C.A. 435.

§ 27287. Acknowledgment of execution or proof by subscribing witness required before recording

Unless it belongs to the class provided for in either Sections 27282 to 27286, inclusive, or Sections 1202 or 1203, of the Civil Code, or is a fictitious mortgage or deed of trust as provided in Sections 2952, or 2963, of the Civil Code, or is a fictitious oil and gas lease as provided in Section 1219 of the Civil Code, before an instrument can be recorded its execution shall be acknowledged by the person executing it, or if executed by a corporation, by its president or secretary or other person executing it on behalf of the corporation, or proved by subscribing witness or as provided in Sections 1198 and 1199 of the Civil Code, and the acknowledgment or proof certified as prescribed by law. (Added Stats.1947, c. 424, p. 1160, § 1, as amended Stats.1947, c. 1497, p. 3098, § 2; Stats.1951, c. 512, p. 1660, § 1; Stats.1955, c. 1541, p. 2825, § 2.)

Historical Note

The words "or is a fictitious mortgage or deed of trust as provided in Section 2952 of the Civil Code" were inserted by the 1947 amendment.

The 1951 amendment substituted "instrument" in lieu of "document."

The 1955 amendment inserted "or 2963" referring to the Civil Code and "or is a

fictitious oil and gas lease as provided in Section 1219 of the Civil Code."

Derivation: Civ.C. § 1141, amended by Code Am. 1873-74, c. 612, p. 226, § 136; Stats.1901, c. 157, p. 396, § 279; Stats. 1905, c. 444, p. 602, § 1; Stats.1941, c. 1013, p. 2649, § 1; Stats.1945, c. 292, p. 750, § 1.

Cross References

Certificate of acknowledgment, corporation, see Civil Code § 1190, 1190.1. Proof and acknowledgment of instruments, see Civil Code § 1180 et seq. Subscribing witness, establishment of identity of, see Civil Code § 1190.

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1. In general

Actual effect of forged deed on record title of land registered under Torrens Title Law was immaterial in prosecution for forgery; gist of offense being offering forged deed for record. *People v. Standley* (1932) 15 P.2d 180, 126 C.A. 759.

Deed of conveyance cannot be held to give grantees notice of contents of any instrument not entitled to record. *Du Ross v. Trainor* (1932) 10 P.2d 763, 122 C.A. 732.

Plaintiff's notice of defendant's land contract or of facts sufficient to provoke inquiry after recordation of conveyance to plaintiff cannot affect plaintiff's rights. *Mayhew v. Burke* (1929) 274 P. 517, 206 C. 396.

A chattel mortgage is deemed of record when it is properly executed and accompanied by the affidavit required and deposited in recorder's office, and error in recording did not affect its validity nor prevent its operation as a lien. *Meherin v. Oaks* (1885) 7 P. 47, 67 C. 57.

Mortgages and conveyances which are not under seal, are not entitled to be recorded. *Racoullat v. Sansonain* (1867) 32 C. 376, 1 P.L.M., pt. 2, 195.

2. Instrument defined

A copy of a water appropriation notice, required to be recorded by Civ.C. § 1415, was not an instrument within § 1101 (repealed. Now this section), providing that before an instrument can be recorded, unless it belongs to certain excepted classes, not including such a notice, it must be acknowledged, and hence no acknowledgment is necessary in order to entitle a copy of such a notice to record. *Wolfskill v. Smith* (1907) 89 P. 1001, 5 C.A. 175.

The word instrument, as used in the Codes, invariably means some written paper or instrument signed and delivered by one person to another, transferring the title to, or giving a lien on, property, or giving a right to debt or duty. *Hoag v. Howard* (1880) 33 C. 564.

3. Purpose of acknowledgment

Acknowledgment of a deed is not essential to its validity, but is merely evidentiary in character and is required only to entitle it to be recorded so as to render it competent evidence of conveyance without further proof. *Kirsch v. Barnes* (D.C. 1957) 153 F.Supp. 260; *Osterberg v. Osterberg* (1945) 156 P.2d 40, 63 C.A.2d 254.

Deed is not invalid between parties merely because not acknowledged by grantor; purpose of acknowledgment being evidentiary in character and required to entitle instrument to record or to render it competent evidence without further proof. *Williston v. Yuba City* (1934) 30 P.2d 445, 1 C.A.2d 166.

Purpose of an acknowledgment to a mortgage on real estate is merely to obviate proof of its execution when it is offered in evidence and to entitle it to be recorded. *Williams v. Nieto* (1929) 277 P. 513, 99 C.A. 615.

The only object of an acknowledgment is that the instrument may be recorded unless the acknowledgment is by statute made essential to the validity of the instrument. *Farmers' Exchange Bank of San Bernardino v. Purdy* (1900) 62 P. 733, 130 C. 455.

The object of an acknowledgment is to entitle the instrument to be used as evidence without further proof and to enable it to be recorded. *Gordon v. City of San Diego* (1895) 41 P. 301, 103 C. 264.

4. Acknowledgment, generally

Under California law, an acknowledgment certified by a notary is a prerequisite to recordation of underlying instrument. *Kirsch v. Barnes* (D.C.1957) 153 F.Supp. 260.

No acknowledgment was involved where purported subscribing witness sought recordation of purportedly sworn deed of trust. *People v. Walker* (1907) 55 Cal. Rptr. 726, 217 C.A.2d 554, certiorari denied 88 S.Ct. 60, 389 U.S. 824, 19 L.Ed.2d 77.

In quiet title suit wherein plaintiff attacked validity of deed from her husband to husband's son by former marriage, evidence was insufficient to sustain finding that husband had not acknowledged the deed, but disclosed an affirmative acknowledgment. *Goldman v. Goldman* (1953) 253 P.2d 474, 116 C.A.2d 227.

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patent to land certifier of the General located in the county was admissible with the original patent *L. Preston v. Hirsch* A. 485.

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er Sections 27282 Civil Code, or is a Sections 2952, or lease as provided t can be recorded uting it, or if ex- or other person subscribing wit- vil Code, and the y law. (Added , c. 1497, p. 3098, 1, p. 2825, § 2.)

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§ 1101, amended by 612, p. 226, § 130; 396, § 230; Stats. § 1; Stats.1941, c. Stats.1945, c. 292, p.

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To "acknowledge" is to admit, affirm, declare, testify, avow, confess, or own as genuine an execution of a document. *Favello v. Bank of America Nat. Trust & Savings Ass'n* (1938) 74 P.2d 1057, 24 C.A.2d 342.

Record of instrument acknowledged by two of 23 signers constituted constructive notice of its execution by such two only. *Du Ross v. Trainor* (1932) 10 P.2d 763, 122 C.A. 732.

Under Civ.C. § 1161 (repealed. Now this section), as to acknowledgment as condition precedent to recording, recordation of a contract of sale was not constructive notice thereof to grantees and mortgagees of the vendor, unless acknowledged by him, and acknowledgment by the vendee was insufficient. *Keese v. Beardley* (1923) 213 P. 500, 190 C. 435, 23 A.L.R. 1538.

Under Civ.C. § 1161, (repealed. Now this section), requiring that the execution of an instrument be acknowledged by the person executing it before recording it, the record of a chattel mortgage acknowledged by only one of two or more mortgagors was constructive notice of its execution by him only. *Bell v. Sage* (1923) 212 P. 464, 60 C.A. 149.

Affidavit of good faith required by chattel mortgagor is not a due acknowledgment of execution entitling the mortgagor to be recorded. *Id.*

Contract to furnish water, covenanted to run with the land, was only required to be acknowledged by the incumbrances of the land to render it capable of recordation, and the record thereof was sufficient notice to subsequent purchasers of the land. *Fresno Canal & Irr. Co. v. Rowell* (1889) 22 P. 53, 80 C. 114, 13 Am.St.Rep. 112.

Under Pol.C. § 4237 (repealed) sheriff's certificate of sale of real estate, filed and recorded, imparts notice although unacknowledged. *Footman v. Wallace* (1888) 17 P. 680, 75 C. 552.

The statute required the seal of the officer taking the acknowledgment as a preliminary to the fitness of the deed for registration, and without conforming strictly to the statute the registration would not be constructive notice. *Hastings v. Vaughn* (1855) 5 C. 315.

In an action to recover possession of real property, where defendant relied on a deed so defectively acknowledged as not to entitle it to registration, it was properly admissible in evidence, with an instruction as to its effect in giving notice to third persons. *Id.*

County recorder should refuse to receive for record an improper and defective acknowledgment. *Fogarty v. Finlay* (1857) 1 Lab. 59.

5. Certificate of acknowledgment

Certificate of acknowledgment of chattel mortgage executed by a partnership in the general form provided by statute for certificates of acknowledgment unless otherwise provided, was not substantially in the form provided by Civ.C. § 1190a for certificate of acknowledgment of an instrument executed by a partnership and hence chattel mortgage was not entitled to recordation and, though recorded it, it did not constitute notice to attaching creditors. *Rolando v. Everett* (1946) 165 P.2d 33, 72 C.A.2d 629.

Where chattel mortgage executed by partnership, though recorded, lacked valid certificate of acknowledgment by partnership, judgment creditor purchasing chattels included in mortgage at execution sale on judgment against partnership based on indebtedness owing judgment creditor before mortgage was executed, became owner of such chattels unencumbered by lien of mortgage, regardless of whether judgment creditor had actual notice of mortgage and even though mortgagee in action to foreclose mortgage had caused a keeper to be placed in charge of mortgaged chattels before execution sale. *Id.*

Certificate of acknowledgment which identified the persons who made the acknowledgment as being the persons whose names were subscribed to the instrument was not sufficient, under Civ.C. § 1159, to entitle instrument to be recorded under § 1161 (repealed. Now this section). *People v. Webber* (1920) 186 P. 406, 44 C.A. 120.

The record of a deed defectively acknowledged does not impart constructive notice, under Civ.C. § 1161 (repealed. Now this section), providing that before it can be recorded, an instrument must be acknowledged, and the acknowledgment certified, as required by law. *Emeric v. Alvarado* (1891) 27 P. 356, 90 C. 444.

6. Execution

Although an instrument charging a trust upon lands in California be unacknowledged, yet it may be recorded upon proof of its execution. *Whittle v. Vanderbilt Mining & Milling Co.* (C.C.1897) 83 F. 48.

Every instrument required to be recorded, with the exception of those belonging to the class mentioned in Civ.C. §§ 1159, 1160 (repealed. See, now, §§ 27282-27284 and this section), and Civ.C. §§ 1202, 1203, cannot be recorded unless ex-

should refuse to receive proper and defective acknowledgment. *Fogarty v. Finlay* (1857)

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acknowledgment of chattel by a partnership is provided by statute for acknowledgment unless otherwise not substantially in the Civ.C. § 1190a for acknowledgment of an instrument a partnership and hence was not entitled to record. If recorded it, it did notice to attaching creditors. *Everett* (1946) 105 P.2d

1 mortgage executed by which recorded, lacked valid acknowledgment by partner-creditor purchasing chattel mortgage at execution sale trust partnership based on judgment creditor because executed, became owners unencumbered by lien regardless of whether judgment actual notice of mortgage had caused a keeper change of mortgaged chattel sale. *Id.*

of acknowledgment which persons who made the instrument being the persons whose described to the instrument instrument, under Civ.C. § 1180, to not to be recorded under § (Now this section). *Peo.* (1920) 186 P. 406, 44 C.A.

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instrument charging a trust in California be unacknowledged may be recorded upon proof of. *Whittle v. Vanderbilt* (C.C.1907) 83 F. 48. instrument required to be recorded-exception of those belonging mentioned in Civ.C. §§ 1159, ed. See, now, §§ 27282-27283 (his section), and Civ.C. §§ cannot be recorded unless exe-

ution is acknowledged by the person executing it, and an acknowledgment taken before a grantee or one standing in the position of a beneficiary under a conveyance or other instrument is void, and does not entitle an instrument to be recorded. *Ramsey v. California Packing Corporation* (1921) 201 P. 481, 51 C.A. 517.

A person not claiming under a grantor cannot object that deeds from him were not properly acknowledged or recorded, there being no question as to their due execution. *Rick v. Reed* (1862) 19 C. 551.

County recorder must see that acknowledgments are properly executed before putting them on record. *Fogarty v. Finlay* (1857) 1 Lab. 59.

7. Defectively acknowledged instruments

A defectively acknowledged instrument, although not entitled to record, and thus

not capable of imparting constructive notice, is valid as between parties to instrument and all those having actual notice of its existence. *Kirsch v. Barnes* (D.C. 1957) 153 F.Supp. 280.

Irregular acknowledgment of deed out of presence of grantors was immaterial except for purpose of determining whether grantors intended presently to convey title to land therein described when deed was handed to grantee's attorney for delivery to grantee. *Williston v. Yuba City* (1934) 36 P.2d 445, 1 C.A.2d 166.

Where a deed has two acknowledgments, one of which is good, and the other defective, and only the defective one is recorded, subsequent judgment creditors of the vendor cannot take advantage of the defect in the record, as the registry act was not intended to protect them. *Pixley v. Huggins* (1860) 15 C. 127.

§ 27288. Execution, acknowledgment and proof of agreements affecting realty

If the instrument is an agreement for sale, lease, option agreement, deposit receipt, commission receipt, or affidavit which quotes or refers to an agreement for sale, lease, option agreement, deposit receipt, commission receipt, or lease and such instrument claims to, or affects any interest in real property, it shall be executed and acknowledged or proved as provided in Section 27287 by the party who appears by the instrument to be the party whose real property is affected or alienated thereby. (Added Stats.1947, c. 424, p. 1161, § 1, as amended Stats. 1949, c. 289, p. 567, § 1.)

Historical Note

The 1949 amendment inserted, the first time it appears, the word "lease." Derivation: See Derivation under § 27287.

Cross References

Proof and acknowledgment of instruments, see Civil Code § 1180 et seq.

Notes of Decisions

C. In general

Where transfer is of an interest in realty, assignment is entitled to recordation, which is constructive notice to subsequent assignee. *Central Const. Co. v. Hartman* (1935) 47 P.2d 484, 7 C.A.2d 703.

Record of acknowledgment of instrument excluding colored occupancy of premises acknowledged by two of the twenty-three signers thereof constituted

constructive notice of execution by such two persons only. *Du Rosa v. Trainor* (1932) 10 P.2d 763, 122 C.A. 732.

Since on acknowledged instrument carries with it the proof of its due execution by persons acknowledging it, it must be acknowledged by the person whose rights in the property are alienated or encumbered thereby, such as the grantor, mortgagor or vendor. *Keenan v. Leadsley*



TITLE INSURANCE AND TRUST
PIONEER NATIONAL TITLE INSURANCE

February 8, 1980

Mr. Robert J. Whisman
Senior Vice President
Alaska Title Guaranty Company
500 Sixth Avenue
Anchorage, Alaska 99501

RE: Alaska Code Revisions

Dear Mr. Whisman:

The Alaska proposal to revise the recording laws appears to be one of many studies being made in the various states. The National Conference of Commissioners on uniform state laws in 1977 drafted a proposal to modernize and unify legislation in all states in regard to land titles. As of this date no state has adopted any of the provisions thereof.

The above proposal was closely followed in the background study in California prepared by James L. Blawie of Santa Clara Law School. The intention of his study was to chart out the specific matters that might be covered in the project and suggest the approach the California Code Revision Commission should take. They are proceeding slowly on this study and are considering a "marketable title act" as their first area of interest. On January 21, 1980, this proposal was forwarded to all title company counsel for their suggestions as to alternate approaches in dealing with the various matters discussed in the background study.

The proposals all seem to recommend the use of a system located in a central place with facilities for a tract index system with computer access points in each county recorder's office. It is assumed they will transmit the documents by means of a tele-copier or something similar thereto. At the present time our company is unaware of any system that would transfer documents satisfactorily and in volume and that could be relied upon to operate on a day-to-day basis without breakdowns. If a system is available at present or in the immediate future it might prove successful in Alaska because of the low volume of recordings and the remoteness of some recording districts. We are not totally convinced as to the reliability of such a system or the need for it at the present

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time in Alaska. If, however, the documents can be recorded in the local recording office as is the practice now, the fact that they will be transferred by telecopier to a central office should have no damaging effect as long as the local recording office has a copy thereof.

This system does not seem too practical in a high volume county like Los Angeles as it would necessitate transmitting 1300 documents to the central office daily. This figure added to the recordings of other California counties would entail a lot of daily transmissions. It appears to be a duplication having all documents in one central place and these same documents stored in the various recording districts also.

Paragraph 5, Section 40.17.030 of the Alaska proposal requires the name of the person who presents the document for recording and the name of the person in whose behalf it is to be recorded. It would seem that the information "recorded at the request of" would be sufficient.

Section 40.17.050

Paragraph 6 requires the mailing addresses for all parties who require an interest under the conveyance document. This could prove cumbersome if there are a number of grantees and would necessitate the adding of an additional page to the document. It is assumed that paragraph (6) requires that the mailing addresses be recorded with and be part of the conveyance document. The statements printed on the document "after recording mail to" and "send tax statements to" would accomplish more.

No attempt has been made to determine if the list of Class "A" documents in Section 40.17.110 is complete but deeds of trust, mortgages, release of mortgages and reconveyance do not appear to be listed therein. The necessity of listing Class "A" documents should be re-evaluated.

Section 40.17.120 contains the information necessary for a memorandum of lease to be recorded but it did not mention the necessary operative words to create a lease. The following matters should be in the memorandum of lease:

1. The names of the lessor and the lessee and addresses
2. Operative words of lease from lessor to lessee
3. A description of the property leased
4. A recital indicating the transfer from lessor to lessee is made subject to the terms, covenants and conditions of:
 - a. A lease of specified date existing between the parties

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The other items listed therein relating to commencement, termination, right to extend, renew, right to purchase or right to purchase the property, would all appear in the unrecorded lease and would defeat the purpose of the memorandum. It would seem that the rental is as necessary a requisite as the term of the lease and that if the memorandum must contain one it must also include the other. The apparent intent of the lessee in a memorandum of lease is to disclose as little as possible of record to their competitor and is entirely logical.

These are the only comments we wish to make at the present time and would only suggest that Alaska proceed slowly on such an encompassing change. As mentioned above, most of the states are considering change but not in such a drastic fashion.

Very truly yours,

John Weir

John Weir
Assistant Vice President
Underwriting Practices

JW/bhb

cc:JSW 3-12-80



PIONEER NATIONAL
TITLE INSURANCE

Richard C. Mohler
Senior Vice President
Manager Northwest Region

February 8, 1980

Mr. Dickerson Regan, Consultant
Code Revision Commission
Alaska State Legislature
Pouch Y - State Capitol
Juneau, Alaska 99811

Dear Mr. Regan:

We have previously conversed by phone, concerning the revision of the Alaska recording laws as proposed by the Alaska Code Revision Commission. As I indicated in that conversation, I have primarily two comments, the first relating to the deletion of the requirement that instruments or conveyances be acknowledged to be eligible for recording and second, the desirability of including a specific provision that no instruments or conveyances shall impart, constructive notice with respect to land in Alaska, unless recorded as a Class A document, as provided by the new Chapter 17.

As to the elimination of the requirement that conveyances be acknowledged, I think that all title companies will be dismayed at the prospect of insuring titles through documents that are not acknowledged or proved in some manner. As you know, a title insurance policy covers numerous off record risks including forgery and impersonation. The notary's certificate of acknowledgment is about the only assurance we have that the signature or execution of any conveyance is authentic. We have no practical way of determining the authenticity of documents which have been recorded prior to our examination of title. Our policy also insures against incompetency of parties and while the notary's certificate and acknowledgment by the grantor are no proof of competency, they do provide some safeguard

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against physical or mental disabilities which would prevent a grantor from appearing before the notary. Presumably, most notaries and other officers taking acknowledgments would be reluctant to certify the acknowledgment of a person who was obviously mentally incompetent.

The presumptions in 40.17.090 are valuable but will be of little assistance to any title insurer defending an insured title once evidence has been presented that execution of a conveyance is invalid or defective. As we read the statute, the presumptions cannot be relied upon by a bona fide purchaser.

The acknowledgment of the execution of a deed or other conveyance before a notary public or other official adds solemnity to a transaction that should not be entered into lightly or casually. A homeowner engaged in a poker game will find it difficult to execute a deed to his home and throw it into the pot if an acknowledgment of his signature is necessary. The requirement of an acknowledgment makes it much more difficult to procure signatures by fraud or coercion, especially where the party is sick, elderly, or under the influence of alcohol.

We concede that in many cases certificates of acknowledgment have not been the protection that they should be, and on occasion, notaries have been particularly careless about establishing the identity of the person acknowledging a signature. We have had many forgery losses where the acknowledgment was in proper form, but where the notary was negligent. There are, of course, a few cases where the notary's signature has been forged, as well as that of the party executing the document.

It is our opinion that the proper solution to the problem is to increase the responsibilities of the officers taking acknowledgments in order that third persons, as well as title insurance companies, may have some reasonable assurance that the execution of the document is authentic. In Alaska, especially in the remote areas, there are numerous transactions where a purchaser does not have the protection of title insurance. We therefore believe it desirable, as a

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protection to the citizens of the state, that they be able to deal in real property with some assurance that documents of record are genuine. It seems to us that one of the best ways to accomplish this is to require a certificate of acknowledgment and make the notaries and other officers responsible for proper performance of their duties, either by bonding requirements, civil or criminal penalties, or otherwise. A number of states, including California, have in the past few years passed laws increasing the duties and responsibilities of officers taking acknowledgments. We therefore strongly recommend that the acknowledgment requirement be retained in the law and that the function and responsibility of the notary public be increased rather than eliminated.

It appears to me, from reading the statute, especially Sec. 40.17.080, that the underlying theory and purpose of the statute is to require all conveyances to be recorded in accordance with the statute, if they are to provide constructive notice as to third parties. I had previously suggested a provision to make it clear that no instrument would be constructive notice as to third parties, unless recorded in accordance with the provisions of the statute. At that time, I of course, had in mind the Federal Register problem where unrecorded public land orders and other documents published in the Federal Register apparently provide constructive notice as to Alaska real estate. For a number of reasons, which I will not go into here, I believe that such a result is neither logical nor desirable. It must be remembered that, while we are talking about the Federal Register, there might well be other publications, under state or federal law, which might be held to be constructive notice under the same reasoning as used in the Hahn case which held the Federal Register was a public record giving notice. We are therefore presented with a situation where no one in Alaska can be sure that he can identify all records or publications which impart constructive notice with respect to Alaska land. I therefore strongly recommend that the new Act contain a clearer definition and enumeration of all documents and conveyances which impart constructive notice and recommend that they be limited to those documents and instruments recorded pursuant to the new Act. It seems to me that the new Act with its very broad definition of the term "conveyance", is very close to that position, as presently written.

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Again, let me point out the fact that many transactions in Alaska do not have the protection of title insurance. It seems inconceivable to me that a bona fide purchaser of land in Alaska can lose his title even though the records maintained by the State do not disclose the adverse interest. In my view this makes a mockery of Section 40.17.080.

We appreciate the opportunity to comment on the proposed legislation and hope our comments will be of assistance.

Very truly yours,



John S. Williamson
Vice President and
Senior Title Counsel

JSW/mm

cc: Bob Whisman, Anchorage ✓

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SECURITY TITLE AND TRUST BUILDING

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Anchorage, Alaska 99501

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(907) 272-6474
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Called 2-26-82

February 19, 1982

Kevin Bruce
Senate Judiciary Committee
Capitol Office Building,
Room 125
Juneau, Alaska

Dear Mr. Bruce:

I spoke with you over the telephone on Friday regarding Senate Bill 78. This letter is to confirm our understanding that you will inform me when any hearings are scheduled on this bill. Please write or telephone me if anything is scheduled on this bill.

Thank you for your assistance in the matter.

Yours very truly,

GROH, EGGERS, ROBINSON,
PRICE & JOHNSON

David W. Carney
David W. Carney

DWC:sg

*Let them know
its interest &*

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MEMORANDUM
DEPARTMENT OF NATURAL RESOURCES
Division of Technical Services

CC
State of Alaska

TO: Joe Burch, Deputy Director
Division of Technical Services
Department of Natural Resources

DATE: February 4, 1981

FILE NO:

TELEPHONE NO: 264-0595

FROM: Javan M. Beitinger *JB*
State Recorder
941 4th Avenue
Anchorage, Alaska 99501

SUBJECT: Multiple Recordings

Present Law

AS 34.15.260 Recording conveyances and conveyances as evidence. (a) A conveyance that is acknowledged, proved, or certified in the manner prescribed in 150 - 250 of this chapter (1) may be read in evidence without further proof of the conveyance, (2) may be recorded in the recording district in which the land is located, and (3) from the time it is filed with the recorder for record, it is constructive notice of the contents of the conveyance to subsequent purchasers and mortgagees of the same property or any part of it.

(b) A certified copy of a recorded conveyance may be recorded in any other recording district and when so recorded has the same force and effect, from the time it is filed for recording, as though it were the original conveyance.

(c) Where an original conveyance is recorded in a recording district in which the property is not located, a certified copy of the recorded conveyance may be recorded in the recording district where the property is located with the same force and effect, from the time it is filed for recording, as though the original conveyance had been recorded.

THIS STATUTE IS OF THE "race-notice type"

AS 34.15.280 Certificate of reception and recording of conveyance. The recorder shall certify upon each conveyance recorded by him the time when it was received and the reference to the book and page where it is recorded. A conveyance is considered as recorded when it is acknowledged, or proved or certified and filed in the recorder's office for record.

The exact time when a document is officially recorded can be very important. As it is possible that a number of documents can be put on the same minute, sometimes the consecutive serial number and/or book and page can be the determining factor. Even with modern technology, I don't know how a document recorded in Anchorage could take precedence over a document being submitted in another place of recording at the same time. There would be no way to determine whose document was presented first.

MEMORANDUM
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF TECHNICAL SERVICES

State of Alaska

TO: MARK WITTOW

TO: Jim Anderson, Director
Div. of Technical Services

DATE: January 26, 1982

FILE NO:

TELEPHONE NO: 274-0142

FROM: Javan M. Beitingen
State Recorder



SUBJECT: SB 78 Revisions

I still have problems with the bill, as cost, implementation and integrity of the system are factors.

Areas of concern and suggestions:

Put in bill, where appropriate, that where record/recorded/recording is used in reference to plats on pages 1 through 6 line 15, it means when technology permits.

Page 4, Lines 5 & 6, why was shall changed to may?

Page 8, AS 40.17.030(c) - As mentioned before, I hope this will not be a problem. It seems all documents should require something.

Page 9 AS 40.17.040(c) and all areas where B type documents are mentioned. B type documents will still remain expensive to implement in each recording office, in time, programming, additional employees, equipment and space, and clutter the records with documents that do not provide constructive notice. From the P.S. in Dick Regan's memo to Kevin Bruce, dated 1-4-82, I do not believe he understood Joe Burch's proposal to have only one place within the recording system where B type documents could be recorded. This concept would cut down on the cost and problems.

Page 12, line 9, If I interpret the meaning correctly, should read A signed, acknowledged and recorded

Page 13, line 4, And should be used instead of or.

Page 15, lines 15 & 16 is covered in #53 on page 19 in a different manner.

Page 15, beginning with line 27 # (10) and continuing on page 16. Previous statute read, "An exactly conformed copy of a lease or contract or option to purchase real property when the party certifies under oath that the exactly conformed copy was received by him in the course of the transaction, that the original is not in his possession and that the instrument offered for recordation is an exact duplicate". If the law is to become so flexible as to include any class A document in this manner it should be at least as binding as the previous law. See recommended changes in draft.

Page 17, line 25 #(35), add filed and recorded when technology permits.

Page 18, line 25 #(50), I still have a problem with this, see attached memos from and to Dick Regan.

Page 2 - SB 78 Revisions

Page 21, beginning with line 11 - This will require changing the program and cost should be considered. Research and Development have problems adding abbreviations to present program, which should be a minor endeavor.

AS 09.40.050; AS 09.55.370; AS 10.30.020; AS 13.26.265; AS 23.10.047;
AS 23.20.200; AS 23.30.165; AS 27.10.020; 27.10.050; 27.10.060; 27.10.070
27.10.160; 27.10.190; AS 27.15.010; AS 32.10.010; 32.10.240; AS 34.35.065;
34.35.160; 34.35.185; 34.35.240; 34.35.250; 34.35.305; 34.35.330; 34.35.405;
34.35.440; 38.05.195; 38.05.200; 38.05.205; 38.05.210; 38.05.220; 38.05.245
are fine for changing filed to recording.

27.10.170; 27.10.210; 27.10.230; 38.05.230 should be added to above list.

AS 34.07.020; 34.07.040; 34.07.050 should remain as is or revised to add when technology permits.

AS 34.07.070; AS 34.20.080; AS 46.15.160 need no change.

AS 10.15.230 - AS 10.15.260 should be reviewed and amended to fit recording procedures for processing and fees.

AS 34.15.210 - AS 34.15.250, Why is this being repealed. It is sometimes a useful tool where there is no notary and in court cases.

AS 34.15.300 and AS 34.15.330 seem to be useful statutes.

If the bill passes in the present form which will require new programming, equipment, space, employees etc., I cannot see how it would be possible to be ready for enactment by January 1, 1983.

MEMORANDUM
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF TECHNICAL SERVICES

State of Alaska

TO: David Rogers
Special Assistant
Dept. of Natural Resources

DATE: April 4, 1981

FILE NO: 1150 (1981 Fiscal Notes)

TELEPHONE NO: 263-2213

FROM: Joseph C. Burch *JCB*
Deputy Director
Division of Technical Services

SUBJECT: SB 78 Fiscal Analysis

1) Fiscal impact with no change in existing technology:

<u>10-48-8-808</u>	<u>Recorder's Office</u>
\$20.0	Contractual funds to rewrite and publish amended and new recording procedures.
\$10.0	RSA funds to Department of Law to resolve change over problems.
\$20.0	Adveritizing funds to inform the general public through newspapers and electronic media.

\$50.0	TOTAL

2) Fiscal impact with no change in exiting technology:

Assumption:

- a) Replace Court System assistance in Glennallen, Valdez, Kodiak, Sitka and Seward with district recording office employees.
- b) # 1 costs above are appropriate.

<u>10-48-8-808</u>	<u>Recorder's Office</u>
\$ 50.0	# 1 above
108.3	5 positions - Recording Clerk 1, range 8
5.0	travel
37.5	space, telephones, copier, etc.
60.0	general office supplies
9.0	equipment

\$269.8	TOTAL

MEMORANDUM

State of Alaska

TO: Kevin Bruce, Committee Aid
Senate Judiciary Committee
Alaska State Legislature

DATE: 2/18/81

FILE NO: 1150

TELEPHONE NO: 263-2213

FROM: Joseph C. Burch, Deputy Director
Division of Technical Services
Department of Natural Resources

SUBJECT: Bill Analysis of SB 78

The comments you requested clarification on I have responded to by utilizing the same numbers as accompanied Dickerson Regan's memo dated January 29, 1981. They are as follows:

- 1) As noted in your letter I will refrain from making any comments at this time.
- 2) I don't know how to make the point much clearer but there is a definite distinction between recorded documents which are returned to the originator and filed documents which are retained by the Recording Office. This Division which deals with platting strongly feels that plats should be filed and retained by the Recording Office in the original form. Some of my personal concern comes from a court case I was involved with where I was unable to prove alterations of a plat that had taken place by my client between the time it was submitted for Borough approval and the time it was ultimately recorded in the Recording Office. Because of this I have a strong objection to plats being recorded in a Recording Office and returned to an originator. The question of who the originator is, is questionable since the client paid for it but it is a surveyor's seal on there purporting that the information as portrayed is true and correct. Mylars can be erased and corrected without the knowledge of other people involved. The Municipality of Anchorage presently has a system for analyzing corrections to be made to plats and determining whether or not they are technical corrections or legal professional corrections. Technical corrections are allowed to be corrected on a plat with a note of revision and an affidavit filed, explaining the technical correction. The plat is then refiled so it is still a part of the public record with one document showing both times of filing. A legal or professional error is not allowed to be refiled. A new plat must be filed for this. The Municipalities attempt is to protect the public which they have a responsibility for. Therefore, I strongly urge that plats continue to be filed in the Recording Offices.
- 3) No comment.
- 4) No comment.
- 5) The majority of documents listed as class A to be recorded in the Recording Office of SB 78 are presently recordable documents in the Recorder's Office. The two items which are not recorded, but are filed, are plats and tax liens.
- 6) If the recorded document is to stand alone, it should be so written and not require supporting documentation for recording. "Dead" has nothing to do with recording requirements today - I don't see how it fits as an analogy by Mr. Regan. With today's

facsimile copying capabilities, leaving "accompanied by" opens a Pandora's box.

- 7) The concern was allowing a document as admissible evidence of conveyance with no acknowledgement.
- 8) In my rush to analyze the bill, I think that this was a mistake on my part. I was thinking of the Uniform Commercial Code, and the Centralized Index that is separate from the Recording Office. However, this deals with real property and I believe is proper and correct.
- 9) My objection to #9 is that we seem to be abrogating the system as presently established to address concerns that I believe are presently taken care of under the existing system. If the Uniform Commercial Code for centralized filings does not cover this item satisfactorily, then I would suggest that this remain. However, I do feel that the present Centralized Uniform Commercial Code does cover this satisfactorily and I question the duplication of effort by this statement.
- 10) We presently have on file complaints, including the Ombudsman's Office, of the public dealing with the court system employees for performing services in connection with Recording. The Department over the past year has tried to come up with some approach in which the Department could administratively be responsible for the Recording. We have gone to the extent of working up a profile of making DNR offices in these small outlying areas to help the Recording Office, rather than using the court system employees. We strongly object to this, and hope to include in the fiscal note, five new employees to handle recording in the offices that are presently served by the court system in Glenallen, Valdez, Kodiak, Sitka, and Seward. We feel that the public will be better served by doing this.
- 11) No comment.
- 12) The comments that I will make here tie into #10 of Mr. Regan's comments. This Division and Department is excited about the capabilities that this bill brings forth by addressing modern technology for handling paper documents. However, realistically, I am not sure if all of this could be implemented presently in Alaska, and would be cost justified to serve the public. Additionally, technology may exist in other states and countries where maintenance and service is of a high caliber. Our personal experience in this Division is that some products of vendors are excellent, but the maintenance and servicing are problems when it is located at some distance from their service centers. A possible profile of what I am attempting to say would help clarify my meaning and as noted previously by Mr. Regan the mechanics of implementation could be left to the Legislature and the Department of Natural Resources management and budgeting processes through regulations as technology becomes available. The recommended section to be rewritten would be Section 40.17.010.

PLACE OF RECORDING AND ACCESS TO RECORDS. (a) The Department of Natural Resources shall provide at each public office designated by the Department the documents and indices or an alternative document retrieval system of the Recording District or Districts served by that public office.

(b) The Recorder shall provide reasonable public access during business hours to recorded documents, indices, and fa-

cilities.

- 13) An example of why I expressed concern in the draft bill is better illustrated I believe by sharing a problem this Division presently faces today with an original conveyance that was recorded. This problem is in Ketchikan and deals with a National Forest Service Selection patent received by the State, and further disposed of in part to third party interests, i.e. the public. U.S.S. 813 appeared to have a good clean chain of title, even though it at one time had passed through the hands of the public and then was returned to the Forest Service. Somewhere along the line an original document conveying title was recorded after the State had received title to the property. The State was unaware of this and passed title to third party interests. The third parties could not obtain financing from lending institutions to make improvements on their property in order to live there peaceably. The Department through the Attorney General's Office is now pursuing a quiet title action in the court, and has spent an exorbitant number of hours to date researching and documenting the case for the Attorney General's Office; so that the action for quiet title hopefully will move along quickly and easily for the benefit of the State's citizens. In addition to this, future dollars will be expended processing this case and ultimately doing all of the backup documentation and correction of documents originally given to the third parties presently occupying the land.

The concern on our part is that copies of the original documents may have affidavits attached to them purporting something and in fact, may create more problems with title than is presently the case today. There are other avenues available to the public and agencies to resolve title issues other than filing pieces of paper in the Recording Office which do nothing in my estimation except confuse the general public. An oversimplification and sarcastic comment on my part would be to allow rubber stamps of signatures to be utilized on documents for original signatures.

Sorry about the delay in responding to you on your request, however, I have been working on two other requests that came out of the Senate Hearing in which I attended, dealing with dual filing and addressing the question of whether or not technology exists today that could be utilized in Alaska to better serve the public with obtaining recorded information. I asked Javan Beitinger to comment on the possibility of doing dual filings in the State. The response from Javan was neither negative nor positive but only gave me information on our present system. Our present system is the "Race Notice Type". Because of this I have great concerns of proposing a multiple dual filing system that would abrogate the system we presently operate under. Instead I believe that as technology becomes available and the cost benefit is appropriate then the Recording Office can be centralized to one location with multi-telecommunications systems available that, at that moment in time, dual filing is a real possibility. Programs can be written on computer terminals creating boundary files in which automatically information could be updated and indexed instantaneously for the public. Until this technology was implemented and available in every Recording Office in Alaska I hesitate to propose something of this magnitude.

Attached for your information is a copy of the analysis that this Division performed on establishing a distribution system for information in the Recording Offices under SB 78. This proposal is tied into a CIP Budget request of this Division for automated drafting and microfilming.

As mentioned to you on the phone last week I met with a private Systems Consultant from Teknekron Controls Inc. The discussion was very brief and general in nature, and it is possible (from the information they furnished me) to institute a telecommunications network at reasonably the same cost as we might be proposing through an aperture card computerized reproduction and distribution system. However, their time frame to be able to answer this is approximately 2 to 4 months just for the systems design and analysis. The cost would be around \$100,000. I am not sure whether time is available and definitely the money is not available in our budget to perform this now. Ultimately they felt that if the system was feasible after their systems analysis (which they were highly positive of) there would be an additional 6 to 8 months prior to implementation and operation. I am just sharing this as food for thought for yourself and have attached a brochure that they gave me along with the card for the Vice-President for Project Operations. This system we generally discussed would be a centralized system that could have substations in other areas and possibly could address and meet some of the problems that have generally been discussed previously on dual filings and instantaneous information in all areas of the State Recording Office system.

If you have any further questions concerning this please contact David Rogers or myself directly. I would be happy to help. The fiscal note you had indicated has gone to David Rogers for review, and I have requested that he transmit this to you as soon as possible. Thank you.

JCB:kl

ALASKA CODE REVISION COMMISSION



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ALASKA STATE LEGISLATURE
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JUNEAU, ALASKA 99811
(907) 465-4878

EXECUTIVE SECRETARY
BILLY G. BERRIER

MEMORANDUM

TO: Kevin Bruce, Committee Aide
Senate Judiciary Committee
Alaska State Legislature

FROM: Dickerson Regan, Consultant *Dickerson Regan*
Alaska Code Revision Commission

DATE: January 4, 1982

RE: SB 78--Recording and Recordable Documents

Since Legal Services in the Legislative Affairs Agency puts draft committee substitute bills behind all new pre-file bills in priority for staff time, I was informed the marked up SB 78 would not be typed until perhaps the first week of the session. However, Linn Asper, the legal staff person assigned to the bill, tells me he is in good shape now and should be getting to it. Attached is the way the bill went to him. Legislative Affairs has the mag cards for the bill so the retyping will be relatively uncomplicated.

I have made two changes from my notes at our meeting of November 23, 1981, in Anchorage. (1) In proposed AS 40.17.020(b) I struck out ", or in the state division of forest, land and water management," and did not substitute ", in the Department of Natural Resources,". The reason for this change is that I thought in our recent meeting I was the voice against the simple deletion and I now conclude deletion is the better choice. For one thing, proposed AS 40.17.110(c) takes care of the matter adequately. (2) On page 3 I used "accompanied by or include" in proposed AS 40.17.030(a)(4), (a)(5), (a)(6) and (b) and added a (d) which provides that if the information required by (a)(4), (a)(6) or (b) is not included in the document it must be recorded with the document. I think that will meet Javan's objection. As I see it, the information will be marked on, or otherwise included in, the document in almost every instance. The terminology just adds some flexibility that the commission believed would be needed if (1) documents in forms other than paper are recorded, and (2) complete tract indexing is to be required in one or more recording districts by regulation, a possibility the commission wised to provide for.

Kevin Bruce, Committee Aide
January 4, 1982
Page 2

Since I do not know how you wish to handle communication at this point, I did not send copies of this memorandum to anybody in Natural Resources, leaving it to you whether you wished to continue dialogue at this point.

DR:chw

Enclosure: Marked up SB 78, as provided to
Legislative Affairs

P.S. At our meeting in November, Joe Burch mentioned a concept just then occurring to him of meshing class B documents with the system of Uniform Commercial Code filings. The concept was neither accepted nor rejected, to the best of my recollection. I believe it was thought that it might be something to handle internally in Natural Resources and, in any case, that it would be left for Natural Resources to pursue should it seem practical and desirable when studied. The marked-up draft does not treat the concept. I believe it would require a major change in the UCC, so it probably will not be followed up.

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF TECHNICAL SERVICES

State of Alaska

TO: Jim Anderson, Director
Division of Technical Services
Dept. of Natural Resources

DATE: October 12, 1981

FILE NO: 1290/1150

TELEPHONE NO: 274-0142

FROM: Javan M. Beitinge
State Recorder

SUBJECT: SB 78

1. Effects of Bill: SB 78 incorporates some new concepts that make recording laws simpler for the public. However, the overall impact will require a higher degree of judgement call on the part of the recording office, will require re-writing the data entry program at considerable cost, will require additional employees and equipment, and lower the integrity of the system.
2. Comments: With no acknowledgement required on documents and affidavits attached to copies, the potential for fraud is increased over today's present system. The system is now in line with court cases and present court administrative rules that were developed for the recording office in past years. By recording plats, instead of filing, would place a land title document in the hands of private individuals and would not provide the public with adequate information so vital to the land records system. Tax Liens could be recorded, but would require some changes in 40.19.040(b). Recording Class B documents would be a great expense to the state in time, programming, additional employees, equipment and space, and would clutter the records with documents that do not provide constructive notice for any purpose. This concept would only cause public indignation.
3. Proposed amendments: On page 2, Section 40.17.020(b) delete "in the state division of forest, land and water management" and insert "Department of Natural Resources" (this does not include plats). Page 3, Section 40.17.030(a)(4) delete the words "accompanied by or". Page 3, Section 40.17.030(a)(6) delete "accompanied by" and insert "include"; delete "grant or". Page 3, Section 40.17.030(c) delete the entire statement. (Some type of signature, acknowledgement or verification should be on each document). Page 6, Section 40.17.090(a) insert "and acknowledged" after signed. Page 6, Section 40.17.090(b) insert "and acknowledged" after signed. Page 8, Section 40.17.090(10)(d) delete first "or" and insert "and". Page 9, Section 40.17.110(a) insert "and acknowledged" after signed. Page 10, Section 40.17.110(b)(10) delete in its entirety(see present statute). Page 11, Section 40.17.110(b)(18) needs clarification. Page 12, Section 40.17.110(b)(35) delete in its entirety, (this should be a document that is filed in the recording office). Page 13, Section 40.17.110(b)(47) delete in its entirety. (As there is no state tax and reference documents should be filed in present system). Page 13, Section 40.17.110(b)(48) could be recorded, but Section 40.19.040(b) would need to be revised. Page 13, Section 40.17.110(b)(50) delete in its entirety, (this is covered under the Uniform Commercial Code filings and should not be a recording document under the recording office in this bill). Page 17, Section 40.19.040(b) add "which must be noted in the contents of the document".

Page 17, Section 3 amending AS 34.15.010(a), delete in its entirety.
Page 18, Section 5 amending AS 34.15.150, delete in its entirety.
Page 19, Section 6 amending AS 44.37.025(c), consideration should be given to the Division of Technical Services assuming the responsibilities now assumed by the courts. All the ramifications should be addressed prior to making changes. Besides Glennallen, Valdez, Seward, Kodiak and Sitka where recording is done by the court, records are kept and made available to the public in Haines, Skagway, Petersburg, Wrangell, Cold Bay, Aniak, Nenana, Cordova, Dillingham and Naknek.

*

Alternative to SB 78 is to contract with someone to revise present statutes and write regulations.

I have no idea what the fiscal impact would be but enclosed herewith is an analysis prepared by Joe Burch April 4, 1981.

*

Page 19, Section 7, the following statutes should be deleted from the proposed changes.

34.07.020, 34.07.030, 34.07.040, 34.07.050 (these reference the survey maps and floor plans under the Horizontal Property Regimes Act. These documents should be filed as plats as they have been in the past).

40.15.010, 40.15.020, 40.15.040, 40.15.050, 40.15.070 (these reference subdivision plats which should be filed).

34.07.070 and 34.20.080 appear to be correct as written.

Page 19, Section 8, if acknowledgements are required 34.15.210 - 34.15.350 should not be repealed. 43.10.090 - 43.10.150 (Federal Tax Liens should be reviewed before repealing these statutes).

Page 19, Section 9, If bill is passed in its present form effective date should be extended at least until 1983.

July 1

SENATE JUDICIARY COMMITTEE

Bill Number SB 78 Original Sponsor(s) RULES FOR LEGISLATIVE

Title RELATIVE TO RECORDING AND RECORDABLE DOCUMENTS AND COUNCIL
PROVIDING AN EFFECTIVE DATE.

Originally Received From KERTOLLA

Contact JOHN ABBOTT / KATIE WALKER Date 1-14-81

Committee Recommendation (MAJORITY) _____

Report Attached yes no) Supporters _____

MINORITY _____

Report Attached yes no) Supporters _____

Object of Bill _____

Committee Amendments _____

Fiscal Impact _____

LAA Legal/Research Contact _____

Research/Information _____

ON FILE

Concerned Parties:	
Supporting	Opposing

CODE REVISION COMMISSION
JOHN ABBOTT / KATIE WALKER

COMMISSIONER KURTZ WILL
PRESENT AT HEARINGS

DEPT NR -> PORTLAND

Supporting

Opposing

Additional Remarks:

- (2400) ← NOTE
- (UNCONTACTED) JEFF HAINES 1-21-81 RE: FISCHER NOTE AND DEPARTMENT COMMENTS. (DANE RODGERS)
- 1-21-81 CONTACTED ROBERT BERRY, EXEC. OFFICER, ALASKA ASS. OF REACTORS 272-8016 WILL RETURN CALL
- 1-22-81 WROTE PETER HEKISCH (BIL COMMITTEE ON REAL ESTATE) FOR COMMENTS
- 1-25-81 CONTACTED JOHN (REDA'S) SEC. RE: POSSIBLE INTEREST IN BILL (AT SECURITY TITLE)
- 2-3-81 CONTACTED ~~BOB WAIN~~ GLEN PRINCE TITLE INSURANCE AGENCY 586-6443 RE: POSSIBLE TESTIFYING
- 2-3-81 CONTACTED ROBERT WHISMANED H. TITLE GUARANTY COMPANY RE: POSSIBLE TESTIFYING 277-8501
- 2-17-81 JOE BURCH (263-2200) RE memo 2213

CODE REVISION COMMISSION



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ALASKA STATE LEGISLATURE

POUCH Y - STATE CAPITOL

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EXECUTIVE SECRETARY

BILLY G. BARRIER

James Bartholomew

January 19, 1981

The Honorable Patrick M. Rodey
Chairman, Judiciary Committee
Alaska State Senate
Pouch V, State Capitol
Juneau, Alaska 99811

Re: SB 78--Recording and recordable documents

Dear Chairman Rodey:

The Alaska Code Revision Commission has submitted SB 78 regarding recording and recordable documents. The commission is extremely interested in securing passage of the bill during this legislative session, if possible. Further, a member of the commission will be available to present testimony on behalf of the bill upon notification.

In an effort to be of assistance, I am enclosing a copy of the commission's transmittal memorandum which briefly sets out the need for this revision along with a copy of the commentary outlining the differences between existing law and proposed changes.

Commission secretary, Catherine Walsh, can be contacted at extension 4878 in order to coordinate testimony in the event hearings are scheduled in the near future.

We appreciate your attention to this matter and any assistance you can provide in securing SB 78's passage.

Very truly yours,

John W. Abbott *by chw*

John W. Abbott, Chairman
Alaska Code Revision Commission

JWA:chw

Enclosures

ALASKA STATE LEGISLATURE
BOUCH Y. STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 455-4875

ALASKA STATE LEGISLATURE
BOUCH Y. STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 455-4875

EXECUTIVE SECRETARY
BILLY G. BERRIER

MEMORANDUM

TO: Chairman, Alaska Legislative Council

FROM: John W. Abbott, Chairman *John W. Abbott*
Alaska Code Revision Commission

DATE: January 9, 1981

RE: Bill on recording and recorded documents

Pursuant to authority granted in AS 24.20.075(c), the Alaska Code Revision Commission has prepared the attached bill on recording and recorded documents and asks that it be introduced in the legislature.

The bill was transmitted previously near the end of the 1980 session. Although the review process was completed in the Legislative Affairs Agency, the bill was not introduced. Apparently it was not practical to introduce it in the last legislature, since there was not enough time remaining for committee work and passage. It is offered now for submission to the new legislature.

Although many provisions in the bill come from, or are based upon, the Uniform Simplification of Land Transfers Act, that Act has not been adopted in any state and is not suitable for adoption as a whole.

As noted in the attached commentary, the bill gathers together and clarifies provisions on recording that are scattered throughout Alaska Statutes, and lays a suitable framework for future use of technological advances in a centralized recording system.

The state recorder, title companies, banks and bar association representatives have participated in meetings with the commission while the bill was being drafted. Many of the suggestions of these participants have been incorporated in the draft bill.

JWA/cz/chw

Enclosures

cc: Hon. Jay S. Hammond, Governor
Hon. Jay A. Rabinowitz, Chief Justice
Myrton R. Channey, Executive Director
Legislative Affairs Agency

Recording/
Recordable
Documents

SENATE BILL NO. 78, by the Rules Committee by request of the Legislative Council (For the Code Revision Commission). Makes substantial revisions of the law with regard to the recording of documents. Adds chapter to AS 40 entitled "Recording in Public Records." Sections include: Place of Recording and Access to Records; Recording Conveyances; Formal Requisites for Recording; Indexing; Incorporation of Master Form; Documents Executed under Former Law; Duties of Recorder; Effect of Recording on Title and Rights; Conveyances and Recorded Documents as Evidence; Recording a Reconveyance; Classes of Documents Eligible for Recording; Recording Memorandum of Lease; Actions Against Recorder and State; Definitions.

Adds another new chapter to AS 40 entitled "Recording of Federal Liens." Sections include: Scope; Place of Recording; Execution of Notices and Certificates; Duties of Recorder; Uniformity of Application and Construction.

Amends AS 34.15.010(a) (manner of executing conveyances), 34.15-.150 (Acknowledgment and Proof--Execution of Conveyance) and AS 44.37.025 (duties of Dept. of Natural Resources with respect to recording). Adds new section to AS 34.15 (Property) regarding use of recorded master form. States: "If reference is made in a document to a recorded master form, a copy of the form, or so much of it as is incorporated by reference, must be provided to each party to the transaction by the party that furnished the document." Repeals: AS 34.15, Art. 3 (Recording of Conveyances) and AS 43.10.090-150 (Uniform Federal Tax Lien Registration Act). Provides Act effective January 1, 1982.

Introduced Jan. 14 and referred to State Affairs and Judiciary. Jan. 16, State Affairs referral waived. To Judiciary.

AMENDMENTS REQUIRING THAT SUBDIVISION
PLATS BE BOTH FILED AND RECORDED

Page 1, line 9:

Following the enacting clause insert the following sections and renumber the sections accordingly.

* Section 1. AS 19.10.260(2) is amended to read:

(2) file and record in the local recording district, after completion of highway construction, an accurate right-of-way map that will contain sufficient engineering and survey information designating where the resulting boundary lines are located on private or municipal property along the highway.

* Sec. 2. AS 29.33.160(b) is amended to read:

(b) The platting board shall file and record [SUBMIT] an approved plat [TO THE DISTRICT RECORDER] in compliance with AS 40.15.010--40.15.020.

* Sec. 3. AS 29.33.170 is amended to read:

Sec. 29.33.170. WAIVER IN CERTAIN CASES. (a) The platting authority shall, in individual cases, waive the preparation, submission for approval, and filing and recording of a plat upon satisfactory evidence that

(1) each tract or parcel of land will have adequate access to a public highway or street;

(2) each parcel created is five acres in size or larger and that the land is divided into four or fewer parcels;

(3) the conveyance is not made for the purpose of, or in connection with, a present or projected subdivision development;

(4) no dedication of a street, alley, thoroughfare or other public area is involved or required.

(b) In other cases the platting authority may waive the preparation, submission for approval, and filing and recording of a plat, if the transaction involved does not fall within the general intent of AS 29.33.150--29.33.240 of this chapter and AS 40.15 if it is not made for the purpose of, or in connection with, a present or projected subdivision development and no dedication of a street, alley, thoroughfare, park or other public area is involved or required.

* Sec. 4. AS 29.33.190 is amended to read:

Sec. 29.33.190. PENALTIES. (a) The owner or agent of the owner of land located within a subdivision who transfers, sells, or enters into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved, filed, and recorded, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$500 for each lot or parcel transferred, sold, or included in a contract to be sold. The platting board may enjoin a transfer, sale, or contract to sell, and may recover the penalty by appropriate legal action.

(b) A [NO] person may not file or record a plat or seek to have a plat filed or recorded unless it bears the approval of the platting board. A person who knowingly violates this requirement is punishable upon conviction by a fine of not more than \$500.

* Sec. 5. AS 29.33.200 is amended to read:

Sec. 29.33.200. ALTERATION OF REPLAT PETITION. No filed or recorded plat may be altered or replatted except upon petition of the owners of a majority of the land affected by the alteration or

replat or by the platting board. No platted street may be vacated, except upon petition of the municipality or owners of the majority of the front feet of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting board. It shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

* Sec. 5. AS 29.33.230 is amended to read:

Sec. 29.33.230. RECORDING. If the alteration or replat is approved, the revised plat must be filed and recorded by the platting board and is thereafter the lawful plat.

* Sec. 6. AS 34.07.030 is amended to read:

Sec. 34.07.030. FILING AND RECORDING OF SURVEY MAP AND FLOOR PLANS WITH VERIFIED STATEMENT. There shall be filed and recorded simultaneously with the recording of the declaration in the recording district in which the property is located

(1) a survey map of the surface of the land submitted to the provisions of this chapter showing the location of the building on it;

(2) a set of the floor plans of the building showing the layout, apartment numbers and dimensions of the apartments in sufficient detail to identify and locate each apartment with certainty, stating the name of the building or that it has no name, and bearing the verified statement of a registered architect or registered professional engineer certifying that it is an accurate copy of portions of the plans of the building as filed with and approved by the governmental entity having jurisdiction over the approval or

issuance of permits for the construction of the building, or a statement that no approval or permit is required.

* Sec. 7. AS 40.15.010 is amended to read:

Sec. 40.15.010. APPROVAL AND RECORDING OF SUBDIVISIONS.

Before the lots or tracts of any subdivision or dedication may be sold or offered for sale, the subdivision or dedication shall be submitted for approval to the authority having jurisdiction, as prescribed in this chapter. The regular approval of the authority shall be shown on it or attached to it and the subdivision or dedication shall be filed and recorded [FOR RECORD] in the office of the recorder. The recorder shall not accept a subdivision or dedication for filing and recording unless it shows this approval. If no platting authority exists as provided in secs. 70--130 of this chapter, lands may be sold without approval.

* Sec. 8. AS 40.15.020 is amended to read:

Sec. 40.15.020. PLATS TO BE ACKNOWLEDGED AND CONTAIN CERTIFICATE THAT TAXES AND ASSESSMENTS ARE PAID. Every plat shall be acknowledged before an officer authorized to take acknowledgment of deeds. A certificate of acknowledgment shall be endorsed on or annexed to the plat and recorded with it. A person filing and recording a plat, map, subdivision, or replat of property, or vacating the whole or any portion of an existing plat, map, subdivision, or replat shall [AT THE TIME OF FILING IT FOR RECORD OR FILING THE PETITION TO VACATE,] file and record with it a certificate from the tax-collecting official or officials of the area in which the land is located that all taxes levied against the property at that date are paid.

* Sec. 9. AS 45.15.030 is amended to read:

Sec. 40.15.030. DEDICATION OF STREETS, ALLEYS AND THOROUGHFARES. When an area is subdivided and a plat of the subdivision is approved, filed and recorded, all streets, alleys, thoroughfares, parks and other public areas shown on the plat are considered [DEEMED TO HAVE BEEN] dedicated to public use.

* Sec. 10. AS 45.15.040 is amended to read:

Sec. 40.15.040. CERTIFIED COPY OF PLAT AS [IS] EVIDENCE. A copy of a plat certified by the recorder of the recording district in which it is filed or recorded as a true and complete copy of the original on file or recorded in his office is admissible in evidence in all courts in the state with the same effect as the original.

* Sec. 11. AS 40.15.050 is amended to read:

Sec. 40.15.050. PLATS [RECORDED PLATS] LEGALIZED. All plats filed with the recorder [RECORDED] before March 30, 1953, whether executed and acknowledged in accordance with this chapter or not, are validated and all streets, alleys or public thoroughfares shown on these plats are considered [AS HAVING BEEN] dedicated to public use. [THIS SECTION DOES NOT PROHIBIT THE ABANDONMENT OF A PLAT RECORDED BEFORE MARCH 30, 1953, IF A SUBSEQUENT PLAT IS FILED INDICATING ABANDONMENT.] The last plat of the area on file with the recorder [OF RECORD] on March 30, 1953, is the official plat of the area as of that date, and the streets, alleys, or thoroughfares shown on it are considered [DEEMED TO BE THE STREETS, ALLEYS OR THOROUGHFARES] dedicated to public use. The streets, alleys or

thoroughfares shown on an earlier plat of the same area or any part of it which is in conflict with those shown on the official plat are considered [IS DEEMED TO HAVE BEEN] abandoned and vacated.

* Sec. 12. AS 40.15.060 is amended to read:

Sec. 40.15.060. MISSING PLATS. When a filed or recorded plat is missing and no present record is available except by reference to the missing plat, a counter part copy, approved by the platting authority, may be filed and recorded as of the original date of the missing plat and after filing and recordation has the same legal effect and notice as the original missing plat.

* Sec. 13. AS 40.15.070 is amended to read:

Sec. 40.15.070. PLATTING AUTHORITY. If land proposed to be subdivided or dedicated is situated within a first or second class borough the proposed subdivision or dedication shall be submitted to the borough planning commission for approval. If the land is situated within a city in the unorganized borough or the third class borough the proposed subdivision or dedication shall be submitted to the city planning commission for approval. The borough planning commission is the platting authority for the first or second class borough, the city planning commission is the platting authority for the city, and the division of lands is the platting authority in the remaining areas of the state and third class borough for the change or vacation of existing plats or a portion of such plats, as provided in AS 40.15.075 [SEC. 75 OF THIS CHAPTER]. If the borough or the city does not have a planning commission, the borough assembly or the city governing body, respectively, is the

platting authority and the proposed subdivision or dedication shall be submitted to it. No subdivision may be filed and recorded [FOR RECORD] until it is approved by the platting authority.

Page 19, line 19:

Delete "34.07.030."

Page 19, lines 22 and 23:

Delete "AS 40.15.010, 45.15.020, 40.15.040, 40.15.050, 40.15.070;".



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99511

MEMORANDUM

TO: Betty L. Michael
Notary Commissions Clerk

FROM: Kevin K. Bruce
Committee Aide

SUBJECT: S.B. 78: An Act relating to recording and recordable documents; and providing for an effective date.

DATE: February 13, 1981

Enclosed please find a copy of the above-referenced Bill, and one copy of the Alaska Code Revision Commission's "Supplement to Commission Transmittal Statement and Draft on Revising Alaska's Law on Recording and Recorded Documents."

As we discussed recently, I would appreciate any information you have on complaints received against notaries. Any additional information you deem helpful would be very much appreciated.

KKB/ods
Enclosures

MEMORANDUM

State of Alaska

TO: The Hon. Terry Miller
Lieutenant Governor

DATE: September 16, 1980

ATTN: Betty L. Michael *3509*
Notary Commissions Clerk

FILE NO: J-66-537-80

TELEPHONE NO: 465-3666

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Complaint by Paul R. Troeh
over notaries public
(Maier and Pettitt)

By: Rodger W. Pegues *RWP*
Assistant Attorney General

Mr. Troeh recites conduct which, if true, constitutes technical misconduct on the part of the notaries public, i.e., one witnessed the signature while the other notarized the document. However, under AS 44.50.010 - 190, notaries public are not subject to the supervision or control of the Lieutenant Governor. They are responsible to the persons whom they serve, and they can be held liable should someone be damaged financially as a result of their misconduct or negligence. AS 44.50.160.

You might, if you wish, send the miscreants a note to the effect that a complaint was received and that they really should notarize only those signatures made in their presence. Otherwise, you can let it go.

RWP/lfm

S.F. AND S.B. 78
AND
COPY OF
COMMENTS RE U
CODE REVISION

ALASKA CODE REVISION COMMISSION




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ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

EXECUTIVE SECRETARY
BILLY G. BERRIER

MEMORANDUM

TO: Kevin Bruce, Committee Aide
Senate Judiciary Committee
Alaska State Legislature

FROM: Dickerson Regan, Consultant 
Alaska Code Revision Commission

DATE: February 13, 1981

RE: SB 78--Recording and Recordable Documents

Glen Prince has provided me a copy of two letters he left with the Senate Judiciary Committee when he testified concerning SB 78. Since one of the letters (John S. Williamson's February 8, 1980) was addressed to me, the committee may also wish to have a copy of my reply dated March 4, 1980. It is attached.

The first part of Mr. Williamson's letter is about requiring an acknowledgment on "instruments or conveyances" before they can be recorded. Your committee discussed this.

You asked if I could supply statistics to back up the assertion on page 17 of the commentary on SB 78 that "an acknowledgment is no longer reliable proof that a document was executed by the person named in it" I have been unable to find statistics on the subject. I think there is general agreement that acknowledgments are not as reliable as they should be. (See, for example, the next-to-last paragraph on the second page of Williamson's letter.) Perhaps the title industry has some statistics, but I could find none in the sources here.

The latter part of the Williamson letter deals with a different question. Mr. Williamson is urging that by making a change in the draft bill the commission endorse the overruling, by legislation, of the Alaska Supreme Court's decision in Hahn v. Alaska Title Guaranty Company, 557 P.2d 143 (Alaska 1976). In fact, the commission considered the proposal sympathetically but finally concluded the commission's draft bill should not contain the language that would overrule Hahn. The reasons are set out in my attached reply to Mr. Williamson.

Kevin Bruce, Committee Aide
February 13, 1981
Page 2

An attempt to overrule Hahn is the subject of SB 251 of last legislature, a copy of which is attached. An attempt to get the state supreme court to reverse the Hahn holding in another case is now before the supreme court in a consolidated case, State v Alaska Land Title Ass'n, et al. & Theodore M. Pease & Claire V. Pease, File No. 5407 and Transamerica Title Ins. Co., et al. v. Pease, File No. 5408. The impassioned last paragraph of Mr. Williamson's letter is a last effort to get into the commission's draft bill language which would negate the effect of U.S. Public Land Orders (section line easements for future roads, etc.) except when the person taking title had actual notice of the land order (as opposed to constructive notice by publication in the Federal Register).

The question is not a simple one. If the committee wants to get into it, surely the Attorney General should be heard from and briefs in the supreme court should be studied. The bill as drafted permits the recording of U.S. Public Land Orders in the recorder's office, but that does not meet Mr. Williamson's suggestion that Hahn be overruled.

The second letter Mr. Prince provided the committee was not addressed to me. I will be glad to respond to it if you or the committee wish. The only generalized response is that the commission was grateful for critiques by the title industry but put together its bill based on its understanding of the public interest as seen through the eyes of the various commission members.

DR:chw

Attachments

March 4, 1980

John S. Williamson
Vice President and Senior
Title Counsel
Pioneer National Title Insurance
719 Second Avenue
Seattle, Washington 98104

Dear Mr. Williamson:

The thorough analysis in your letter dated February 8, 1980 was much appreciated. The letter, with those of other title people expressing similar views, occupied the Code Revision Commission for most of a morning in its recent meeting.

The commission was provided various alternative forms in which the suggestion in your first paragraph could appear in the bill, including the form you offered in the Seattle meeting. However, although the commission is sympathetic to the problems left from the Hahn decision, it chose not to include in the draft an attempted negation of that decision by legislating the recording office to be the exclusive place for constructive notice documents. Mainly the feeling was that a public land order affecting public land in Alaska will have the same effect on land titles whether or not state law declares that it affords constructive notice under the state's recording law. In other words, it was felt that the Federal Register will create a cloud on title even if state law declares that recording with the state recorder is the exclusive way to give constructive notice.

Perhaps more important is that the Hahn decision is being dealt with in what the commission believes to be the appropriate forums, that is, the court in the ALTA v. State case, and the legislature in SB 251, the special purpose bill now in the legislature. Briefing and argument in the court, and the public hearing process in the legislature, can focus on the isolated problem. So although your suggestion was not lightly passed over, neither was it adopted.

John W. Williamson
Page Two
March 4, 1980

Also, although your views on acknowledgment were carefully considered, your suggestion on acknowledgment in the conveyance form was not adopted. Commission members had individually considered the various responses regarding deletion of the acknowledgment requirement for conveyances. In the meeting they expressed their continued opinion that an acknowledgment is an anachronism with little continuing meaning. The view was expressed that public policy should be against reliance on forms that have little meaning, and that eliminating the need for an acknowledgment would eliminate a part of the conveyance that now is a source for errors that invalidate many documents otherwise in proper form.

Title people have uniformly supported retention of the acknowledgment requirement. If the commission's bill is introduced, I would expect that the legislative committees to which the bill is referred will hold hearings and will seek opinions from the title industry. So this difference of opinion between the title industry and the commission will be pointed out.

Again, thanks for your response and your continued help.

Very truly yours,

Dickerson Regan, Consultant
Code Revision Commission

DR/jmsr

cc: Robert Whisman

To Kevin Bruce

Re SB 80 - Oaths & acknowledgments

After the Code Revision Commission submitted its bill somebody editorialized changes in proposed AS 09.63.50⁽⁴⁾ and (5), changing "any other" to "a".

It reads awkwardly. Pat Rodey might wish to be aware of it. But if any change is made I certainly think it should be over in the House.

Dick Regan

1 (2) a justice, judge, magistrate, clerk, or deputy clerk of
2 a court of record in the place in which the notarial act is performed;

3 (3) an officer of the foreign service of the United States,
4 a consular agent, or a person authorized by regulation of the United
5 States Department of State to perform notarial acts in the place in
6 which the act is performed;

7 (4) a commissioned officer in active service with the armed
8 forces of the United States or a person authorized by regulation of the
9 armed forces to perform notarial acts if the notarial act is performed
10 for a merchant seaman of the United States, a member of the armed
11 forces of the United States, ~~any other~~ [a] person serving with or accompanying the
12 armed forces of the United States, or his dependents; or

13 (5) ~~any other~~ [a] person authorized to perform notarial acts in the
14 place in which the act is performed.

15 Sec. 09.63.060. AUTHENTICATION OF AUTHORITY OF OFFICER. (a)
16 If the notarial act is performed by a person described in AS 09.63.-
17 050(1) - (4) other than a person authorized to perform notarial acts
18 by the laws or regulations of a foreign country, the signature, rank or
19 title and, if appropriate, the serial number of the person are suffi-
20 cient proof of the authority of a person to perform the act.

21 (b) If the notarial act is performed by a person authorized by
22 the laws or regulations of a foreign country to perform the act, there
23 is sufficient proof of the authority of that person to act if

24 (1) either a foreign service officer of the United States
25 resident in the country in which the act is performed or a diplomatic
26 or consular officer of the foreign country resident in the United
27 States certifies that a person holding that office is authorized to
28 perform the act;

29 (2) the official seal of the person performing the notarial

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

March 31, 1981

Honorable Bill Ray
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: SB 78 (recording and
recordable documents)

Dear Senator Ray:

Some time ago, you requested that the Department of Law prepare a position paper on the above-captioned bill. With sincere apologies for the delay, here it is.

We have not found any provisions of the bill which are unconstitutional or present other direct legal problems. However, in discussions with the Division of Technical Services in the Department of Natural Resources, we have discovered one area of some concern which we would like to bring to your attention. Joe Burch of the Division of Technical Services already has spoken with Kevin Bruce, Administrative Assistant to the Senate Judiciary Committee, about this matter. Mr. Burch is in a much better position to explain the details of the problem. However, we will attempt to summarize it.

The concern relates to Section 7 of the bill, which (according to the commentary prepared by the Alaska Code Revision Commission) abolishes the distinction between "filing" and "recording," and the effect that abolition would have on the filing and recording of subdivision plats. Current practice in most of the state (as well as the rest of the country) is that a proposed subdivision plat is submitted to the municipality for approval. The municipality either approves or disapproves the plat as submitted. If approved, the municipality conveys the original to the state recorder for recording. After recording, the recorder returns the original to the municipality for permanent filing. Under this system, the original of the subdivision plat is retained by the municipality and is always available for public inspection. If the filing requirement is eliminated,

and all that remains is the requirement for recording, the original will never be retained in public hands. While a copy will be available at the recorder's office, Mr. Burch indicates that, as a technical matter, copies do not always possess the detail that the original does. Moreover, because originals frequently are done on mylar, the opportunity always exists for unauthorized changes to be made to the plat after it has been submitted, approved, and recorded. This possibility is precluded if the original is permanently filed with a public agency such as a municipality. A question also would arise regarding disposition of original plats currently on file. Finally, a procedure exist by which technical errors can be corrected under the current system without replatting; under the system which would result if the distinction between filing and recording is abolished, either the errors would not be corrected or replatting would be required at significant cost to the individual.

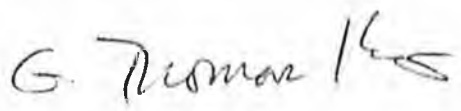
Again, there are technical and practical considerations with which we are not intimately familiar. However, legal problems certainly could arise if unauthorized alterations could be made to an original plat after submission, approval and recording because the original plat was not permanently filed with a public agency.

If we can be of further assistance, do not hesitate to contact us at your convenience.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By:


G. Thomas Koester
Assistant Attorney General

GTK:d1m

cc: John W. Abbott, Chairman
Alaska Code Revision Commission

Dickerson Reagan
Keith Specking
Arthur H. Peterson
Joe Burch

AMENDMENT TO RETAIN THE EXISTING LAW
REQUIREMENT THAT CONVEYANCES BE ACKNOWLEDGED

TO: SB 78--Recording and Recorded Documents

Page 6, line 25:

Delete "signed and recorded as a class A document" and insert "acknowledged, proven or certified in the manner provided in AS 34.15.150--34.15.250" in its place.

Page 6, line 27:

Delete "A recorded signed" and substitute "An acknowledged and recorded".

Page 9, line 16:

Insert after (first) "conveyance", "acknowledged or proven as required by AS 34.15.150--34.15.250 or validated by AS 40.17.060". Delete "a" before (second) "conveyance" and insert "the" in its place.

Page 9, line 18:

Delete "a" and insert "an acknowledged or proven" in its place.

Page 9, line 21:

Delete "signed" and insert "acknowledged or proven" in its place.

Page 9, line 23:

Delete "signed" and insert "acknowledged" in its place.

Page 17, line 24 and page 18, line 1:

Delete Sec. 3 in its entirety and renumber the remaining sections as appropriate.

Page 18, lines 8 - 27:

Delete (old) Sec. 5 in its entirety and renumber the remaining sections as appropriate.

Page 19, line 24:

Delete "AS 34.15.210--34.15.350" and insert "AS 34.15.-
260--34.15.350" in its place.

ALASKA CODE REVISION COMMISSION



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EXECUTIVE SECRETARY
BILLY G. BERRIER

MEMORANDUM

TO: Kevin Bruce, Committee Aide
Senate Judiciary Committee
Alaska State Legislature

FROM: Dickerson Regan, Consultant
Alaska Code Revision Commission

DATE: May 6, 1981

RE: SB 78--Recording and Recordable Documents

Dickerson

When SB 78 was reviewed in the Senate Judiciary Committee and when it was reviewed by you, Joe Burch and David Rogers of the Department of Natural Resources and me after written exchange of comment on the bill, certain things seemed to become clear:

1. The committee was not going to accept the Alaska Code Revision Commission's proposal that an acknowledgment be required on conveyances;

2. The DNR's strong feeling that subdivision plats should be permanently filed could readily be accommodated by amendments consistent with the general intent of the bill;

3. The balance of DNR's questions about the bill seemed to have been either answered or accommodated; and

4. The DNR fiscal note as originally submitted on the bill is in need of drastic revision, perhaps to reflect zero fiscal impact.

The bill is written to accommodate continuation of the existing system and a phased move into centralized recording. The terminology on page 1, line 21 is intended to create this needed flexibility. Although the technology for the central recording system exists, DNR needs a chance to try alternative equipment and procedures to meet different conditions in different recording districts. In order to state ultimate legislative intent but also to include the concept that DNR should seek appropriations in any fiscal year for only the money it needs for orderly development, the following amendment is suggested:

P. 1, l. 21: Delete "when available money and technology permit" and insert in its place "to the extent appropriations are made for the purpose."

The amendments I believe are needed to make the change referred to in 1 above are attached as Appendix A to this memorandum. They were also sent with my memorandum to you dated February 6, 1981.

The amendments I believe are needed to make the change referred to in 2 above are attached as Appendix B to this memorandum. The idea of the amendments is that a plat of subdivision be kept on file as at present, but that it also be copied into the record ("recorded") like other land documents so it will be accessible in the final system of remote terminals. I think this meets all the DNR problems that had to do with return of the original plat to the one who filed it. The plat would not be returned. Please note that Appendix B is the change the Attorney General appears to be proposing by the memorandum of March 31, 1981, from Tom Koester to Senator Ray. But even if the Judiciary Committee chooses some other treatment of plats, it would not be of major importance to the rest of the bill.

The second sentence in AS 40.15.050 is deleted in Appendix B because it is both unnecessary and misleading: If a subdivision with streets or other dedications has been filed, it requires more than filing of a new plat to vacate the dedications. Reference, for instance, AS 29.33.200, et seq.

All of the amendments in Appendix B are simple and straightforward when one notes that existing law uses the terms "file" and "record" interchangeably when it deals with subdivision plats. In practice, plats have been filed and not recorded.

I missed seeing Joe Burch when he was in Juneau recently so did not review with him the specific amendments I am proposing regarding subdivision plats. Because of timing problems I am passing these suggestions on to you now. However, I will discuss the specifics of the amendments with Mr. Burch by telephone and let you know if he sees problems.

In a committee hearing, a suggestion was made by Senators Parr and Bennett that DNR look into treatment of recordings where the property described spans the borderline between two recording districts. I am not suggesting drafting on the subject, since the matter was addressed to DNR and any adjustment of the recording fees involved is within its regulatory authority under AS 44.37.025(b).

Memorandum
May 6, 1981
Page 3

To me it seems very desirable that the bill be moved during this session. I offer to look over with you any problems you see.

DR:chw

Attachments

cc: Joe Burch
David Rogers

MEMORANDUM
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF TECHNICAL SERVICES

State of Alaska

TO: David Rogers
Special Assistant
Dept. of Natural Resources

DATE: April 4, 1981

FILE NO: 1150 (1981 Fiscal Notes)

TELEPHONE NO: 263-2213

FROM: Joseph C. Burch *JCB*
Deputy Director
Division of Technical Services

SUBJECT: SB 78 Fiscal Analysis

1) Fiscal impact with no change in existing technology:

<u>10-48-8-808</u>	<u>Recorder's Office</u>
\$20.0	Contractual funds to rewrite and publish amended and new recording procedures.
\$10.0	RSA funds to Department of Law to resolve charge over problems.
\$20.0	Adveritizing funds to inform the general public through newspapers and electronic media.

\$50.0	TOTAL

2) Fiscal impact with no change in exiting technology:

Assumption:

- a) Replace Court System assistance in Glennallen, Valdez, Kodiak, Sitka and Seward with district recording office employees.
- b) # 1 costs above are appropriate.

<u>10-48-8-808</u>	<u>Recorder's Office</u>
\$ 50.0	# 1 above
108.3	5 positions - Recording Clerk 1, range 8
5.0	travel
37.5	space, telephones, copier, etc.
60.0	general office supplies
9.0	equipment

\$269.8	TOTAL

FISCAL ANALYSIS

DEPARTMENT	SPONSOR (PRINCIPAL RULES COMMITTEE (FOR CODE REVISION COMMISSION))	BILL NO. SB 78								
DIVISION POSITION	CO-SPONSORS OR COMMITTEE SPONSORS	DATE LAST AMENDED								
DIVISION DIRECTOR Claud M. Hoffman	DATE 2/18/81	COMMISSIONER Robert E. LeResche								
FISCAL EFFECTS OF BILL										
(1) CHANGES IN PERSONNEL										
<ul style="list-style-type: none"> 1 Programmer III for ALARS 5 positions to replace Court System offices 3 positions to maintain Centralized information centers 										
(2) CHANGES IN GOVERNOR'S BUDGET										
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">increase 10-48-8-800 Oper. request</td> <td style="width: 40%; text-align: right;">\$412,513</td> </tr> <tr> <td>*increase 10-48-8-613 Oper. request</td> <td style="text-align: right;">\$936,900</td> </tr> <tr> <td>*onetime expenditure for equipment</td> <td style="text-align: right;">\$1,451,250</td> </tr> <tr> <td></td> <td style="text-align: right; border-top: 1px solid black;">\$2,800,663 TOTAL</td> </tr> </table> <p style="margin-left: 40px;"><i>Set employees.</i></p>			increase 10-48-8-800 Oper. request	\$412,513	*increase 10-48-8-613 Oper. request	\$936,900	*onetime expenditure for equipment	\$1,451,250		\$2,800,663 TOTAL
increase 10-48-8-800 Oper. request	\$412,513									
*increase 10-48-8-613 Oper. request	\$936,900									
*onetime expenditure for equipment	\$1,451,250									
	\$2,800,663 TOTAL									
(3) CAN COSTS BE ABSORBED										
no										
(4) REVENUE/EXPENDITURE CLASSIFICATION AND FUND --- SOURCE (GENERAL FUND/BUDGET, FEDERAL FUNDS, BONDS, SPECIAL APPROPRIATIONS)										
General Fund										

COMMENTS:

*10-48-8-613: If ALARS CIP is app'd then \$300,000 could be deleted.
 equipment: If Automated Drafting/Microfilm Distribution System CIP is app'd then 980,000 could be deleted.

MEMORANDUM
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF TECHNICAL SERVICES

State of Alaska

TO: Geoffrey Haynes
Deputy Commissioner

DATE: February 11, 1981

All Directors
(See Below)

FILE NO:

TELEPHONE NO: 263-2200

FROM: Claud M. Hoffman, Director
Division of Technical Services

SUBJECT: Executive Summary Capital
Project Microfilm/Automated
Drafting System

The Capital Project for Microfilming/Automated Drafting System interfaced with the ALARS Record System will provide for reference indexing of graphic and textual resource materials to supply the public and land managers with an electronic filing system for the manipulation of data and elimination of the gathering of data more than one time. The Department of Natural Resource's District and area offices along with some State Recorder District Offices will be included in the automated retrieval system thus providing the public with even better service in outlying areas of the State. The district recording offices would act as additional information centers for the Department of Natural Resource's ongoing projects dealing with land disposals and acquisition of title.

Legislative mandates impacting the Department of Natural Resources over the past three years have placed great stress upon the existing manual system. This means nothing less than an enormous increase in case files for each individual action of the Department of Natural Resources which subsequently generates additional paperwork necessary to properly affect successful disposal and managing of State lands. This project will provide increased production of land record information, with easier access, storage and retrieval for the public and the land manager in a usable form.

The interest of the public in easier and more rapid access to land record graphic and textual information, plus the expressed requirements for sophisticated state of the art electronic transmission of recording data as outlined in the proposed Senate Bill No. 78, requires the Department of Natural Resources to modify its proposed Capital Project for Microfilming/Automated Drafting Systems to include a total Land Information/Distribution System, providing land record graphic and textual information to the general public and all other users in the most cost effective and timely manner possible. The initial one year \$1,265,000 project has been expanded to a three year outreach project at a total cost of \$2,814,750.

The following is a suggested cost and schedule for implementing the new Capital Project production, distribution, and reproduction system.

Phase I. Install in the Division of Technical Services in 1981 at a total cost of \$1,220,000: A.) Computer Aided Drafting System with six work stations; B.) an Automated Aperture Card System; C.) a high speed printer, and an Automated Aperture Card Retrieval and Filing System, (See Figure 1).

Phase II. Install in 1982 at a total cost of \$994,000; A.) an Automated Aperture Card Retrieval and Filing System including a high speed printer in the Anchorage, Fairbanks and Juneau District Offices; B.) expand aperture card file capacity in the Division of Technical Services production center, (See Figure 2).

Geoffrey Haynes
February 11, 1981
Page #2

Phase III. Install in 1983 at a total cost of \$600,750 in six Department of Natural Resources area offices and seven State Recorder's Offices: A.) a manual aperture card filing system; B.) a reader/printer for aperture card copies; and C.) an information clerk for each office, (See Figure 3).

Since forecasts indicate that the maximum impact on workload will start in January 1984, this schedule provides for the Department a system that will meet the projected DTS production, distribution and reproduction requirements. The system would also be the vehicle for distributing other DNR land related information for which the requirements will certainly increase.

Senate Bill No. 78 if implemented in parallel with the Capital Project for Microfilming/Automated Drafting System would increase the overall implementation cost by \$471,250 for a total Land Information/Distribution Centers cost of \$3,286,000. This would include establishing the State Recorder district offices as extensions of the Land Information/Distribution Centers and replace all the DNR area offices, except Haines, Alaska. The recording district offices would provide reproduction and recording services to the local users (see Figure 4). Each recording office would include; 16mm microfilming; automated recording; aperture card; and 16mm reproduction; and ALARS Master Indexing systems. All recording offices would be interconnected to the Division of Technical Services (DTS) via ALARS Computer terminals for the transmission of Recording Data and the display of ALARS Master Record Index file. The Division of Technical Services would have the capability to process the 16mm microfilm store recording data, merge recording data and microfilm, duplicate and distribute the 16mm film, keyed to the master record index, back to the recording district offices, (See Figure 5).

Should the Legislature pass Senate Bill No. 78 without the Capital Project for Microfilming/Automated Drafting System included, the total fiscal effect of the Bill will be \$1,451,250. Without the Capital Project, the State Recorder Offices would have equipment and capability of displaying textual record data only.

The combination of Senate Bill No. 78 and the Capital Project provides a data management and distribution system within the State for recording and disseminating land record information. Integrating the statewide Orthophoto Mapping and Resource inventory, Capital Projects with the Land Records Projects provides the framework for a land information system to improve land conveyance procedures, furnish a basis for equitable taxation and provide much needed information for resource and environmental management.

DISTRIBUTION-DIRECTORS

Tom Bergstrom, Div. of Admin. & Mgt	Nick Carney, Div. of Agriculture
Glenn Harrison, Div. of Min. & Engery Mgt	Chip Dennerlein, Div. of Parks
Charles Behlke, Div. of Pipeline Surveillance	Reed Stoops, Div. of Res. & Develop
Theodore Smith, Div. of Forest, Land & Water Mgt	
Ross Schaff Div. of Geological & Geophysical Surveys	

LAND INFORMATION REPRODUCTION AND DISTRIBUTION CENTER
DIVISION OF TECHNICAL SERVICES
REPRODUCTION DISTRIBUTION CENTER
DISTRICT OFFICES

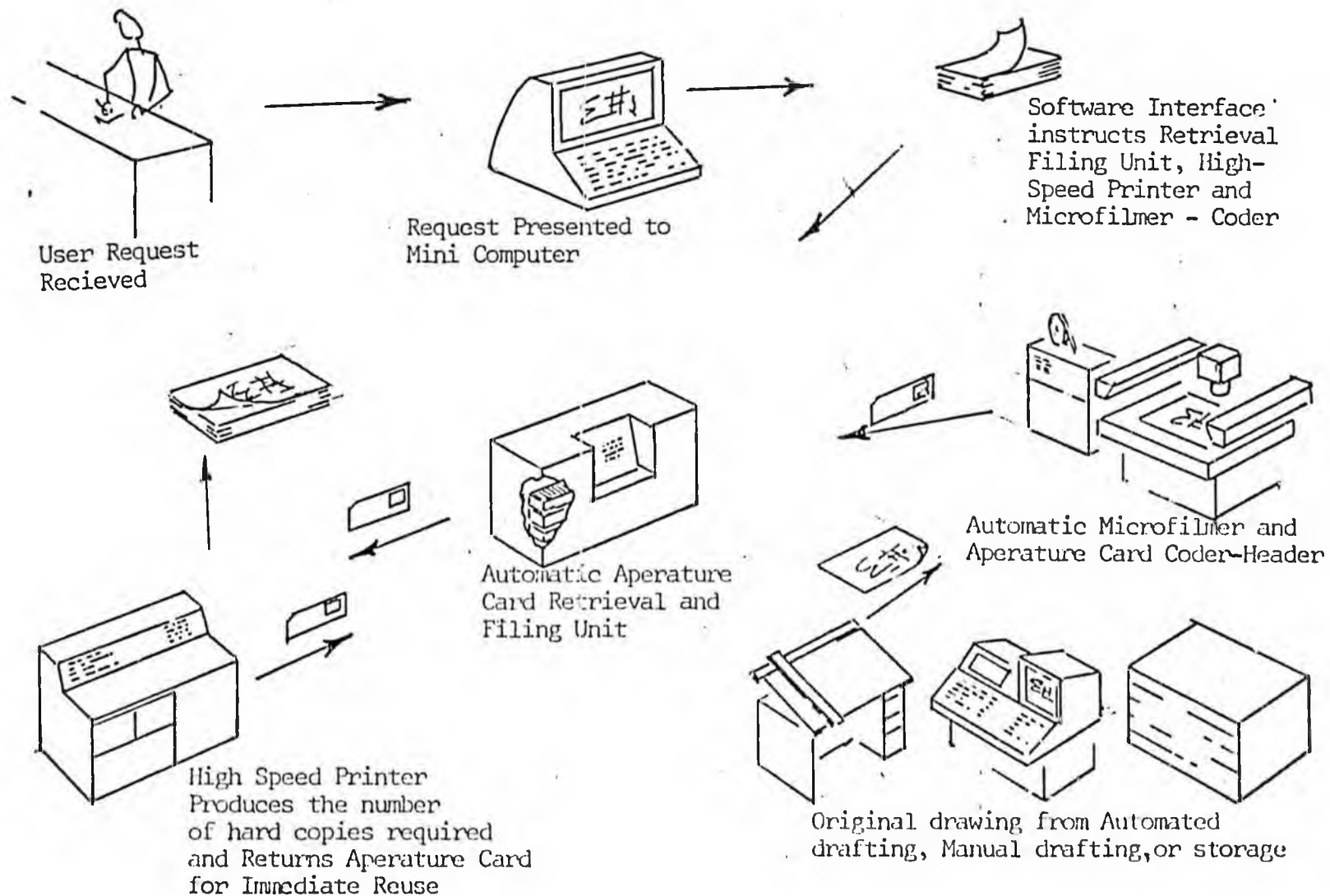


Figure 1

REPRODUCTION DISTRIBUTION CENTER

3 DISTRICT OFFICES

TOTAL COST = \$924,000

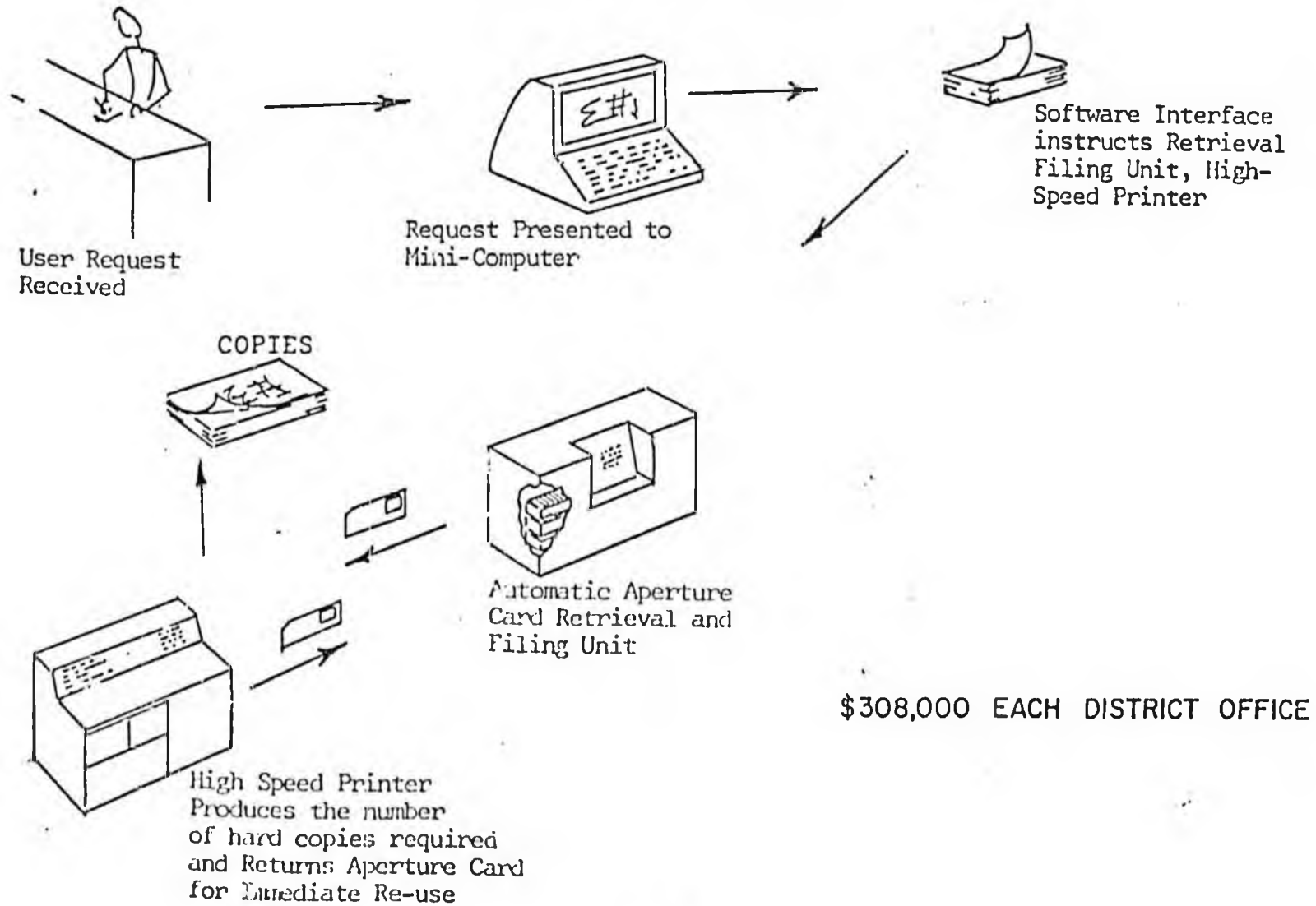


Figure 2

DISTRIBUTION CENTERS

AREA OFFICES & DISTRICT RECORDERS OFFICES

TOTAL COST (13 OFFICES) = \$600,750

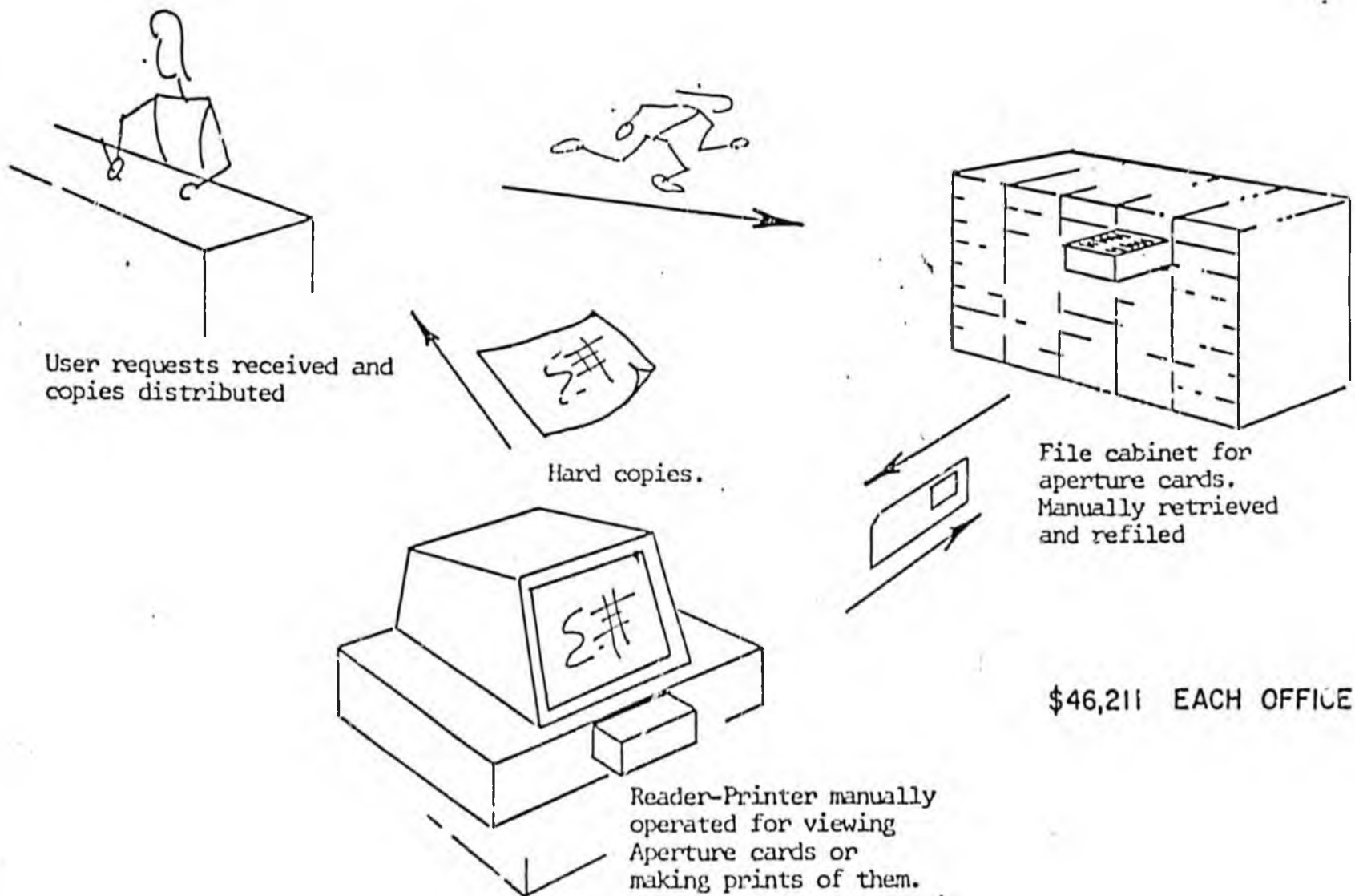


Figure 3

STATE RECORDING OFFICES RECORDING & USER'S REQUESTS

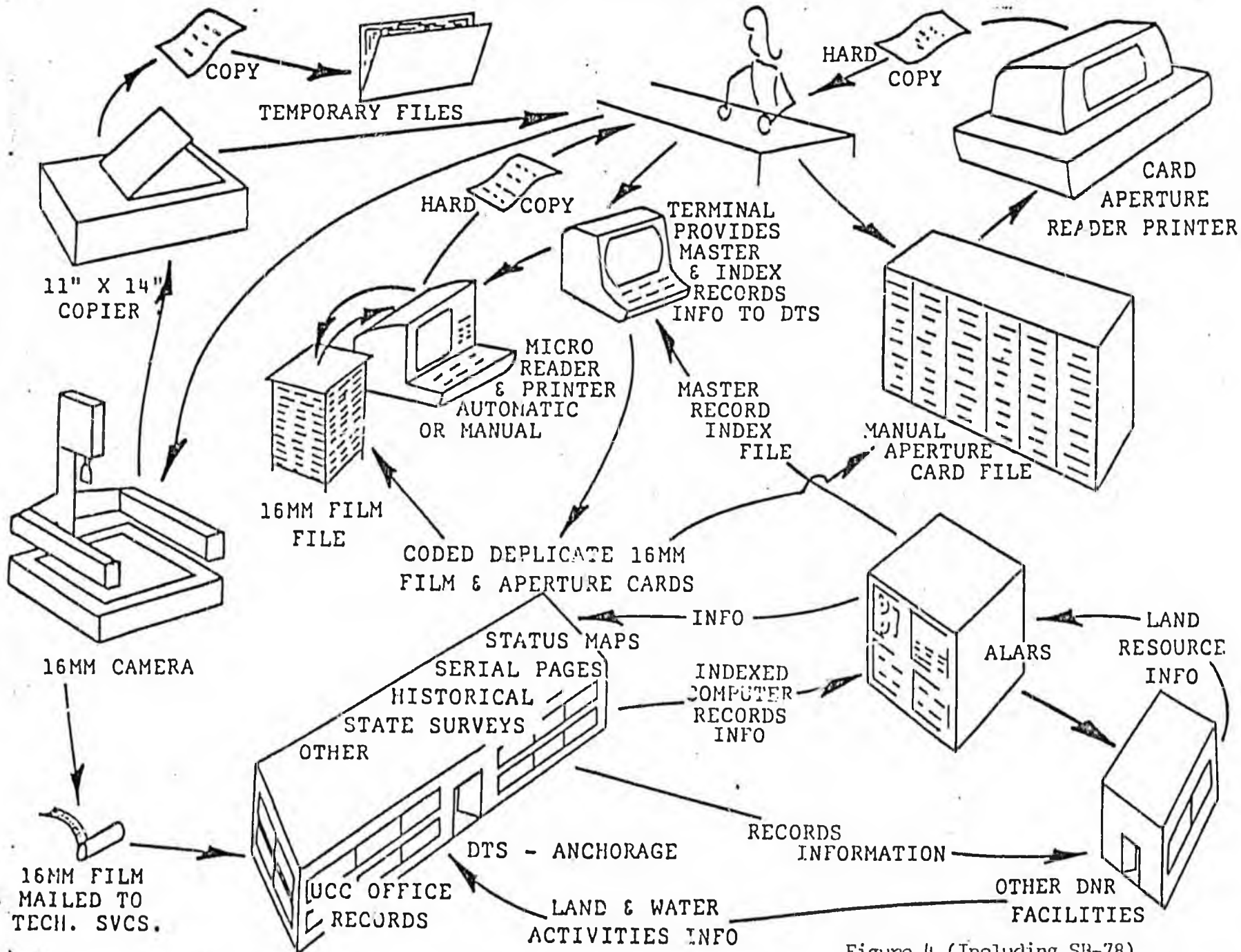


Figure 4 (Including SB-78)

LAND INFORMATION REPRODUCTION AND DISTRIBUTION CENTER
 DIVISION OF TECHNICAL SERVICES
 REPRODUCTION DISTRIBUTION CENTER
 DISTRICT OFFICES

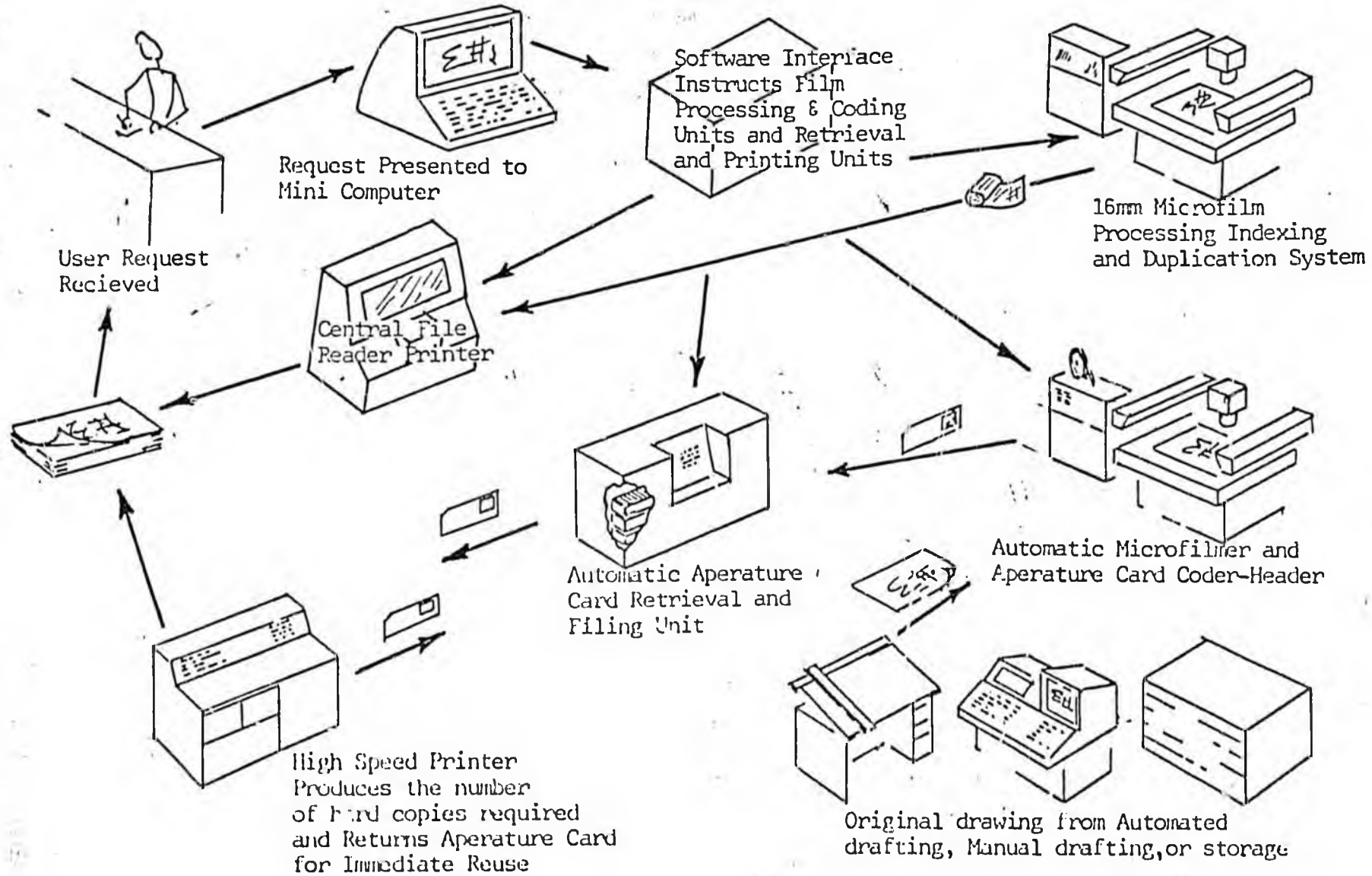


Figure 5 (Including SB-78)

MEMORANDUM
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF RESEARCH AND DEVELOPMENT

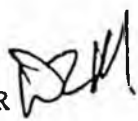
State of Alaska

TO: REED STOOPS
Director

DATE: February 6, 1981

FILE NO: 2100.A

TELEPHONE NO: 279-5577

FROM: DOUG MUTTER 
Chief

SUBJECT: Fiscal Note and
Comments on SB 78

Attached is a brief analysis and fiscal note for sections of SB 78 relevant to ALARS. Implementation of this fiscal note will hasten the development of our statewide effort to provide an LAS network and will provide programming money specifically for the recorders office (this \$300,000 in the fiscal note duplicates the \$300,000 in the ALARS CIP, so one or the other could be dropped as the other is approved).

Some of the language in SB 78 is unnecessary legislative directive for actions that are the sole prerogative of the Executive Branch. For example, Sec. 40.17.010(a)(3) says, in part, each recorders office will have a copier??

As you know, we are already designing systems for bringing the Records Office into the Land Administration System, so have a head start. DTS is already working on a microfilm system, as well.

cc: Joe Burch

RECEIVED

FEB 13 1981

DIV. OF TECHNICAL
SERVICES

Analysis of SB 78

Section 1 of SB 78 (1/14/81), specifically creating AS. 40.17.010 has implications for DNR's ALARS data processing development project. Sec. 40.17.010(a) requires DNR to provide an access, storage and retrieval system in support of the Recorders Office. During FY 82, the ALARS CIP if approved, will address computer programming needs for the Recorders Office. It does not address complete network development and support on an operating basis as mandated here. Therefore, the costs for providing computer terminals, printers and telecommunications for 14 offices are included here. Program development and full time staff support are also identified here (in addition to support that will be provided for ALARS in general and not included in this fiscal note). Tying all offices together via a network is an ambitious task and should be addressed also by the Division of Data Processing, who provides major computer/network support for DNR. Provision of other records/microfilm should be addressed by DNR's Division of Technical Services.

Concerning the language of SB 78, 40.17.010(a)(2) - (4), (b), and (c) are not required in the legislation. These items are management perogatives that should be implemented or substituted as DNR's needs require. The law should state legislative intent as 40.17.010(a)(1) and (d) do, and leave the mechanics of implementation to DNR management and budgeting processes. Therefore, it is recommended that sec. 40.17.010 be rewritten to read:

Sec. 40.17.010 PLACE OF RECORDING AND ACCESS TO RECORDS. (a)
The Department of Natural Resource shall provide at each public office designated by the department the documents and indice or alternative document retrieval system of the recording district or districts served by that public office.

(b) The recorder shall provide reasonable public access during business hours to recorded documents, indices and facilities.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. Senate Bill 78
 Title Recording and REcordable Documents
 Requested by _____ Date _____

II. FISCAL DETAIL
 Agency Affected Dept. of Natural Resources
 Program Category Affected _____
 Budget Request Unit(s) Affected Division of Research & Development -- ALARS project

EXPENDITURES (Thousands of Dollars)

	XXXX	XXXX	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES			56.0	64.0	74.0	85.0
200 TRAVEL			13.0	7.0	8.0	9.0
300 CONTRACTUAL			860.0	600.0	625.0	650.0
400 COMMODITIES			7.0	8.0	9.0	10.0
500 EQUIPMENT			.9	-0-	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL			936.9	679.0	716.0	754.0

FY 82 Budget Detail for SB 78 Fiscal Note

<u>Code</u>	<u>Description</u>	<u>Amount</u>
100:	Programmer III full time to support statewide terminal network and new software.	\$56,000
200:	Travel (2 trips each) to 13 recording offices @ \$500.00 average per trip (1 person)	13,000
300:	Terminal, line, modem, printer leases and connect charges @ \$10./mi./mo. from Anc.	400.00
	computer time, data entry	160,000
	contract program development	300,000
400:	computer paper, printer ribbon, misc. office supplies @ \$500/office	7,000
500:	Desk, chair, etc. for 1 staff -- all other equipment leased.	900
	TOTAL	<u>936,900</u>

CODE REVISION COMMISSION



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ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

EXECUTIVE SECRETARY
BILLY G. BERRIER

MEMORANDUM

TO: Kevin Bruce, Committee Aide
Senate Judiciary Committee
Alaska State Legislature

FROM: Dickerson Regan, Consultant
Alaska Code Revision Commission *Dick Regan*

DATE: January 29, 1981

RE: Notes on DNR's Bill Analysis of SB 78 on
Recording and Recordable Documents

Following are the comments you requested on the Department of Natural Resources "Bill Analysis" for SB 78 on Recording and Recordable Documents. The numbers used in the comments tie to the numbers penciled on the DNR Bill Analysis and on a copy of the bill marked with the DNR proposed changes.

1. The main arguments for and against requiring acknowledgments are in the Alaska Code Revision Commission's (ACRC) comment on the bill at pages 17 and 18. See also on page 15 the Commissioners on Uniform State Laws' statement on the office of notary. For ready reference these sections of the comment are attached.

The ACRC took its position after a great deal of deliberation. However, realizing it would be controversial it also attached amendments to its draft bill that would remove the provision from the bill. If the legislature chooses not to follow the ACRC recommendation on acknowledgments in SB 77, it could refer to the form of amendments attached at the end of the ACRC commentary on the bill. They cover the same ground as the DNR's objections regarding pages 17-18 of SB 77.

2. Whenever the system begins to use electronic transmission of recorded documents, the person at a remote terminal should have access to the recorded official plat. If it is recorded, he will have that access even if a large plat is recorded in several smaller parts. Perhaps DNR's concern that the original plat should be retained as a public

document could be easily accommodated by an amendment to the bill requiring that plats be both filed (as at present) and recorded.

3. Retaining the paper document (filing) is no more necessary for tax liens than for other important documents (deeds, deeds of trust). The Alaska Department of Revenue and the IRS agreed when the bill was drafted, and I believe the state recorder and the then responsible department (Commerce and Economic Development) also agreed.

4. I believe DNR's concern has been addressed and that the comment refers to an earlier draft of the bill or to the Uniform Federal Lien Registration Act before changes in this bill.

5. It is my understanding that the main impetus for ACRC drafting a recording bill was to seek to clarify what documents are recordable. Much effort of the ACRC was directed to this purpose. At present (leaving aside the question of acknowledgment) the recorder records the documents referred to in the bill as "Class A" documents, and must make the same judgment calls as the bill would require. "Class B" includes all other documents. They are not recordable at present, but will be recordable for safekeeping under the bill. The unschooled person bringing a document for recording should not be required to know whether his document is recordable in Class A, any more than he is now required to know whether his document is recordable at all.

6. The proposal for amendment of the bill should be clarified. Indexing of Class A documents is left for regulation by the DNR. If information for complete tract indexing is to be required in some recording districts (as the ACRC supposed it would be) the phrase "accompanied by" would prevent some important problems. An example: Complete tract indexing would require that the complete tract description be in a document or it would be rejected for recording and could not provide constructive notice. Such documents now form important links in the chain of title. The phrase "accompanied by" would permit the document to be recorded even if the grantor were dead or could not be reached to sign a corrected document with a full "legal description" of the property.

7. The proposal for amendment of the bill should be clarified. It is not clear whether the objection is to two classes of documents, to admissibility in evidence of unacknowledged documents or whether the objection has to do with admissibility in evidence in a broader sense.

8. As to (9), since some liens, even now, are recorded, it is necessary that a release be recordable.

As to (10), the reason for the objection should be clarified.

9. Bar Association review brought the need for this subsection to the ACRC. Fixture filing is provided for in SB 77, a bill which would adopt 1972 uniform amendments to the UCC. Fixtures are part of real property and one searching title to real property should find a lien on fixtures when he searches the real property records. The permission to record will do no harm and will be necessary if the pertinent part of SB 77 is passed here as it has been in 32 other states. Reference, in SB 77 proposed sec. 45.09.313(a)(2):

(1) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(2) a "fixture filing" is the filing, in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of AS 45.09.402;

10. The section is necessary in connection with section one and other parts of the bill that lay the statutory framework for future "recording" by electronic communication with one central "place of recording." It also is broad enough to be consistent with present practice.

I notice that I missed a couple of the DNR proposed changes. I've marked them 11 and 12 on the Bill Analysis.

11. At the time the bill was drafted, the records on state public lands were in a different department from state recording offices. Perhaps no problems are being experienced now with getting documents from state public land records into the recording system. Title companies may or may not see a continuing need for language similar to the questioned phrase. They may comment when they review the bill.

12. The term "accompanied by" is part of what makes this bill compatible with foreseeable technological advances in

Memorandum

January 29, 1981

Page 4

recording. A "document" is defined in proposed AS 40.17.040(5) to include not only a paper document but an electronic signal or tape that can be converted to a paper document by the recorder's machine or device. The bill is designed to be workable now and in the future. I believe the recorder needs the information this section calls for and should be asked to clarify why the section should be removed from the bill.

13. I believe this section was favored by all those who reviewed drafts of the bill. The request to remove it should be clarified.

DR:chw

Attachments

Section 5. SOURCE: AS 34.15.150.

COMMENT: This section and Section 3 have the same general purpose to remove the requirement of an acknowledgment in the execution and recording of a conveyance. This is also the philosophy of the Uniform Simplification of Land Transfers Act. The comment of the Commissioners on Uniform State Laws concerning that Act includes: "Whatever the office of notary public once was, other methods, in particular civil liability for slander of title and possible criminal sanctions now appear to provide more effective and less burdensome methods of discouraging fraudulent behavior."

This section also would validate conveyances previously executed but not acknowledged.

Attachment re ①

earlier or later date.

COMMENT ON A DIFFERENCE OF OPINION WITH
TITLE COMPANIES OVER WHETHER TO REQUIRE AN
ACKNOWLEDGMENT ON CONVEYANCES

There is a difference of opinion between title companies and the commission over that part of the recording bill which removes from existing law a requirement that a conveyance of real property be acknowledged. The title companies' position is that an acknowledgment should be required because

- (1) the requirement makes it more difficult to procure a signature by fraud or coercion, especially where a person is sick, old, under the influence of alcohol, or mentally incompetent, and
- (2) the requirement reduces the risk of forgery.

The commission's position is that

- (1) an acknowledgment is no longer reliable proof that a document was executed by the person named in it because notaries frequently take acknowledgments without knowing, or getting proof of identity of, the person acknowledging;
- (2) the public should not be encouraged to believe that a document is reliable simply because it bears the signature and seal of a notary public;
- (3) the requirement adds a needless complexity to conveying that is the cause for errors and invalidation of documents otherwise in proper form, and

Attachment re ①

(4) there is a trend toward doing away with acknowledgment in commercial transactions which frequently are of greater magnitude and importance than real property transactions.

The provisions deleting the acknowledgment requirement from existing law are not central to the purpose of the draft bill on recording. Because the commission realizes there is a legitimate difference of opinion on the question, it has drafted the following form of amendments to the bill which would retain, rather than do away with, the acknowledgment requirement. The drafting is made available should a committee believe the changes are warranted, although the commission's recommends against it.

BILL ANALYSIS

Bill Number : SB 78

Sponser: Rules Committee
(for the Code Revision Commission)

Assigned to: Division of Technical
Services

Summary

1. Program effects of bill: The Division of Technical Services thinks that the bill simplifies some present recording requirements and incorporates some new concepts that make recording laws simpler for the public. However, this Division thinks that the overall impact will require a higher degree of judgement call on the part of the recording office that necessitates more employees and a higher class of employees in order to make the judgement calls required by this bill. Technically, we think that both filing and recording should remain two conditions within the recorders office. Technically, this Division believes filing of subdivision plats and surveys plats should remain as filed documents. (This should not be recorded and subject to fraud.)
2. Comments: With no acknowledgement required on recording documents and affidavits attached to copies this Division thinks the potential for fraud is increased over today's present system. Some form of acknowledgement and only original signature documents should be recorded as Class A documents. This is in line with court cases and present court administrative rules that were developed for the recording office in years past. Recording plats would place a land title document that belongs (in our estimation) to the general public back in the hands of private individuals and should remain in the hands of the public by being filed and not recorded. We believe filing also is applicable to state and federal tax liens. The language in the bill seems to purport that the recording offices would be required to perform searches of information rather than making information available to the public and other users as is presently the practice. We believe the bill should emphasis information availability only in order to decrease the liability to the state; rather than have the recording offices make the judgement calls on types of documents to be recorded and to which category (Class A or B) they are to be recorded in. The bill should be written to reflect that the individual filing the document should state the class or type it is to be recorded under and the recording office simply make a review that it does in fact meet the requirements under 47.17.030 and is a category described in 40.17.110.
3. Proposed amendments: On page 2, Section 40.17.020(b) delete "in the state division of Forest, Land and Water Management"; the Department of Natural Resources presently follows the requirements of any private citizen for recording or filing of plats. Page 3, Section 40.17.030(a)(4) delete the words "accompanied by". Section 40.17.030(a)(5) delete the entire statement. Page 3, Section 40.17.030(c) delete the entire statement. (We believe some type of acknowledgement should be attached to a document.) Page 6, Section 40.17.090(a) delete the entire statement. Page 10,

7

1

12

8 13

Section 40.17.110(b)(9), (10) delete in its entirety. Page 12, Section 40.17.110(b)(35) delete in its entirety, (this we believe should be a document that is filed in the recording office). Page 13, Section 40.17.110(b)(47), (48) delete in its entirety. Page 13, Section 40.17.110(b)(50) delete in its entirety, (this is covered under the Uniform Commercial Code filings and should not be a recording document under the recording office in this bill). Page 15, Chapter 19, Recording Federal Liens. Delete in its entirety. Page 17, Section 3 amending AS 34.15.010(a), delete in its entirety. Page 18, Section 5 amending AS 34.15.150, delete in its entirety. Page 19, Section 6 amending AS 44.37.025(c) delete in its entirety, (the Division of Technical Services presently is constrained utilizing judicial employees of the court system to perform services for recording). The Division of Technical Services is presently attempting to establish recording positions in the court served areas to resolve problems utilizing court employees who are not under the direct division control and to give full support to the recording functions in these offices.

2
3-4
9
3-4
1
1
10

4. Fiscal Impact

Fiscal Note Attached

5. Other Departments Effected: N/A

6. Related Legislation: The Department of Natural Resources has submitted a FY 82 CIP budget request to upgrade the Departments land information and distribution system. A review of this proposed SB 78 legislation and relationship to the submitted FY 82 CIP will be forthcoming within two weeks.

Prepared by: Joseph C. Burch

Director Approval _____

Commissioner's Approval _____

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 78

Title An act relating to recording and recordable documents.

Requested by Rules Committee (for Code Revision Commission) Date May 11, 1981

II. FISCAL DETAIL

Agency Affected Department of Natural Resources

Program Category Affected Department of Natural Resources Management and Administration

BRU, Program, or Subprogram(s) Affected Management & Administration; Information/Records Mgmt.

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES	0	0				
200 TRAVEL	0	0				
300 CONTRACTUAL	50.0	0				
400 COMMODITIES	0	0				
500 EQUIPMENT	0	0				
600 LAND & STRUCTURES	0	0				
700 GRANTS, CLAIMS, ETC.	0	0				
TOTAL	50.0	0				

FUNDING (Thousands of Dollars)

GENERAL FUND	50.0	0				
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	0	0				
PART TIME						
TEMPORARY						

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

The contractual funds request are to rewrite and publish amended procedures and new recording regulations for Class A and B documents. This includes funds for the Department of Law to resolve change over problems and review of new regulations to be promulgated.

Additionally are funds for advertising costs associated with adopting regulations, informing the public of new laws for recording, and publishing a handout summary of new recording procedures and requirements.

IV. DATE May 11, 1981

PREPARED BY *[Signature]*

AGENCY Division of Technical Services

PHONE 263-2200

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 78
 Title An act relating to recording and recordable documents
 Requested by Rules Committee (for Code Revision Commission) Date 5-11-81

II. FISCAL DETAIL

Agency Affected Department of Natural Resources
 Program Category Affected Department of Natural Resources Management and Administration
 BRU, Program, or Subprogram(s) Affected Management & Administration; Information/Records Mgmt.
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES	0	0				
200 TRAVEL	0	0				
300 CONTRACTUAL	50.0	0				
400 COMMODITIES	0	0				
500 EQUIPMENT	0	0				
600 LAND & STRUCTURES	0	0				
700 GRANTS, CLAIMS, ETC.	0	0				
TOTAL	50.0	0				

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND	50.0	0				
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME	0	0				
PART TIME						
TEMPORARY						

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

The contractual funds request are to rewrite and publish amended procedures and new recording regulations for Class A and B documents. This includes funds for the Department of Law to resolve change over problems and review of new regulations to be promulgated.

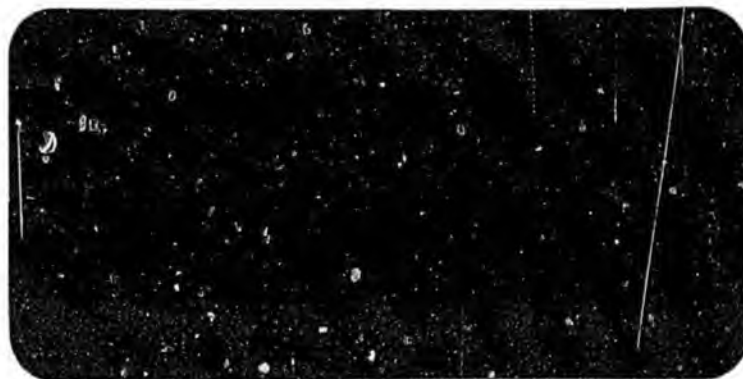
Additionally are funds for advertising costs associated with adopting regulations, informing the public of new laws for recording, and publishing a handout summary of new recording procedures and requirements.

IV. DATE 5-11-81 PREPARED BY Claud M. Hoffman
 AGENCY DNR, Division of Technical Services
 Original: Legislative Finance PHONE 263-2200
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

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TEKNEKRON CONTROLS INCORPORATED

DRAWING CONTROL
AND
DISTRIBUTION SYSTEM

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February 1981

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I.0 EVOLUTION OF THE DRAWING CONTROL AND DISTRIBUTION SYSTEM

Drawings and their associated change notices, standards, procedures and specifications are the most valuable documents created and used by engineering and technological organizations. These engineering records represent the result of many thousands of hours of effort, and are a precise means of communication to users of the drawings for further engineering, construction, manufacturing and maintenance activities. Technical organizations have historically incurred substantial direct and indirect costs to index, maintain, and distribute drawings and other engineering records.

Teknekron Controls Incorporated (TCI) has experience with many of the basic difficulties of handling drawings. TCI has been providing its clients with automated systems for the storage and retrieval of documents for over five years. Accordingly, efforts were begun at TCI to provide automated storage, retrieval and remote access capability for drawings, and the first system was delivered to the Lawrence Livermore Laboratories of the University of California.

The essential features of the Drawing Control and Distribution System (DCDS) offered by TCI are:

- **Immediate and Remote User Access**

A user may obtain a video image of the drawing, through a high resolution video terminal within seconds. A video zoom feature permits examination of detail on the screen, and a hardcopy can be printed at any size suitable for the use intended. The user is routinely provided with the latest revision and associated change notices, and preceding revisions are available if desired.

- **Single Central File**

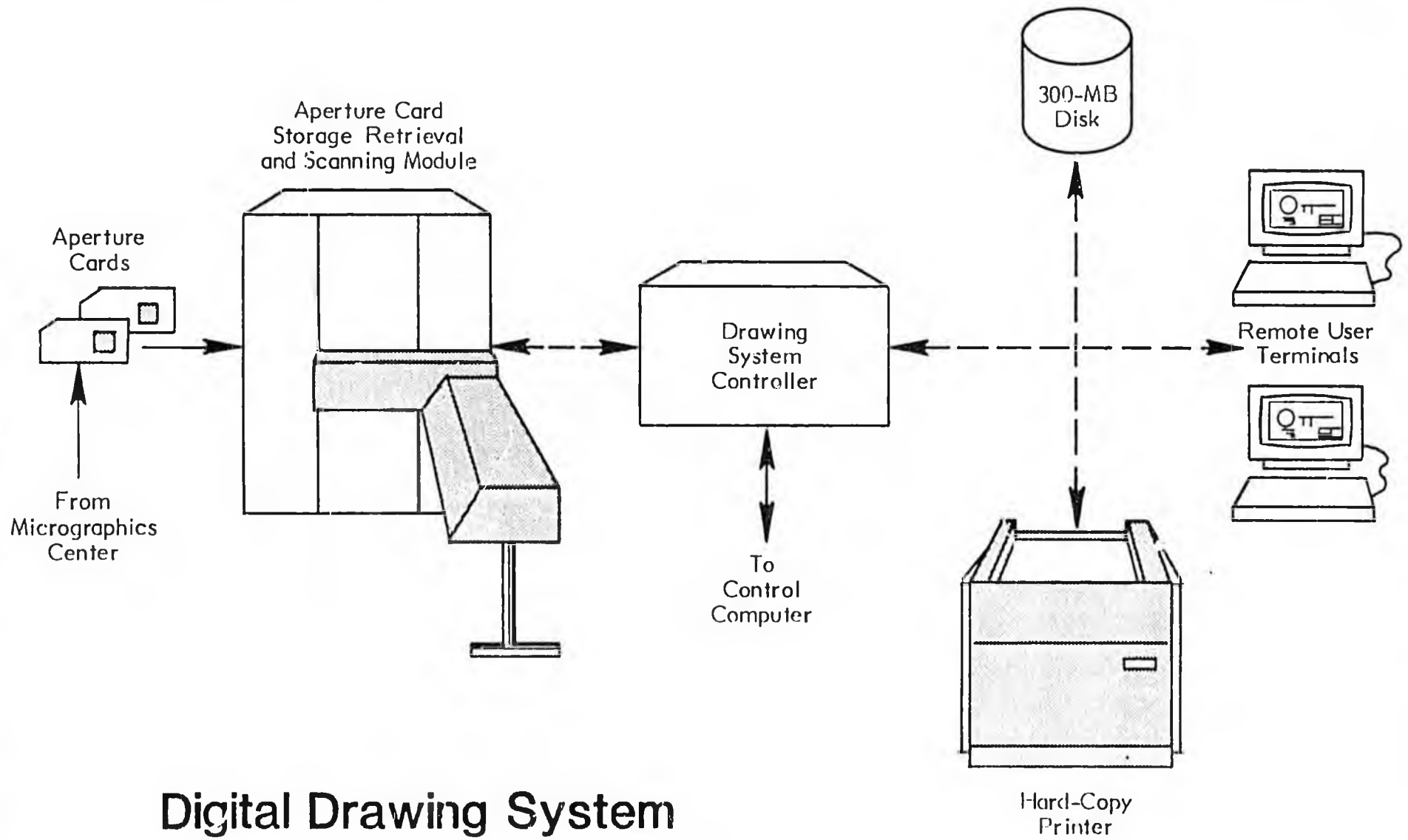
All drawings and related documents are stored centrally. This eliminates duplicate files and assures a single point of control for keeping all records current. Distribution of prints to individuals is markedly reduced and they no longer need to depend upon local satellite or personal files which may not be current.

- **Round-the-Clock Availability**

Since the DCDS is fully automated, overtime or shift workers have full access to the drawings necessary to perform the work. Should unusual situations arise, they do not need to rely on the Drawing Control Center. This feature avoids some portion of incorrect or delayed work, thereby reducing wastage and rework.

The installation of a DCDS will beneficially affect overhead operating costs by permitting a higher level of individual and organizational productivity through the timely access to and use of specific information required by knowledge workers. The capital invested in the DCDS should be viewed in the same manner as the automation of any administrative routine.

A simple sketch of the basic system components indicating information flows appears on the following page. The succeeding sections of this description of the DCDS discuss various features applicable to most, but not all, organizations and presents an overview of the system and its components.



Digital Drawing System

2.0 DCDS APPLICATION FEATURES

A fully automated drawing storage, retrieval and display system offers the use of the most advanced techniques in drawing retrieval and image processing in the handling of drawings. With the DCDS drawings can be recalled from totally secure storage and displayed at local or remote locations on high resolution video screens. These video terminals offer a zoom capability, along with the ability to initiate the production of a hard-copy printout at local or remote locations.

The DCDS benefits that follow are but a few which developed out of solving many of the common problems addressed by TCI in the design of drawing control systems.

- o **Control Large Drawing Inventories / Eliminate Multiple File Locations**
 - A single automatic central file assures greater quality control of drawings and aperture cards
 - A single automatic central file reduces administrative costs by eliminating file searches and refiles
 - A single central file reduces overhead costs by eliminating space requirements at satellite locations
 - A single central file reduces the cost of producing duplicate aperture cards for remote locations
 - A single automatic central file eliminates misfiles and "out-of-file" conditions

- o **Simplify Drawing Identification and Minimize Retrieval Delays**
 - A unique coding is applied to each individual aperture card to simplify retrieval
 - Drawings are filed randomly by module eliminating misfiles

- Drawings are retrieved from storage in 8-20 seconds
- Drawings are displayed at remote terminals in 20-45 seconds
- Users desiring drawings are assisted by simplified computer aided search procedures
- **Simplify File Updates / Minimize Problems from the Use of Out - Of - Date Drawings**
 - When a drawing revision has been completed the aperture cards from the previous revisions are automatically pulled from the file for updating
 - New aperture cards are checked by the control computer and the coding is verified before entry into the system
 - Maintaining a single, central, up-to-date file ensures that users are always referencing current information
 - Out-of-date drawings can be stored off-line for reference or discarded as desired
- **Maximize Drawing Availability**
 - Drawings are accessible 24 hours a day
 - Overtime or "flex-time" operations can be supported with a minimum of administrative personnel
 - 2nd and 3rd shift operations have full drawing access capability with a minimum of administrative support
 - Hardcopy requests can be printed out at remote locations
- **Minimize Drawing Reproductions and Reduce Costs**
 - The requester is able to quickly call up any drawing within the system and view it on the video screen eliminating the need for many hard copies
 - Traditional drawing request forms and the time and material spent filling each request with a hard copy print are eliminated
 - When a hard copy is necessary it can be produced automatically by the local user without clerical assistance