ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672

2572 HLC • HB 331 - HB 342

2572

HB

331

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

March 11, 1983

Honorable Albert P. Adams
Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Application of Little Davis-Bacon Act (AS 36.05) to designated grants
Our file: 366-267-83

Dear Representative Adams:

You have requested our opinion whether construction contracts made by non-governmental entities which are financed by state-funded grants are subject to the provisions of the Little Davis-Bacon Act (AS 36.05) regarding payment of prevailing wages to employees working on public construction. You cite examples of grants made for a day care center, a "human services complex," and a public works facility. These grants were made by appropriations in which the grantees were specifically designated. In each case the grantee is a private non-profit corporation.

The grants to which you refer are commonly known as designated grants and are governed by the provisions of AS 37.05.316 (Grants to Named Recipients). Another category of designated grant which is used to construct capital improvements in unincorporated communities is an Unincorporated Community Grant under AS 37.05.317. Because an unincorporated community is not a legal entity and therefore lacks the capacity to receive and administer a grant of public funds, AS 37.05.317(2) authorizes the Department of Community and Regional Affairs to make the grant to a private non-profit corporation or federally recognized tribal council which is representative of the unincorporated community. We recently expressed our view that construction contracted out by such an organization for an unincorporated community with grant funds provided by the state under AS 37.05.317 is subject to the provisions of the Little Davis-Bacon Act. 1982 Inf. Op.

03-C5LH

Att'y Gen. (October 5) 1/ A third category of grants, Grants to Municipalities under AS 37.05.315, provides state funds for a variety of local projects and activities directly to established political subdivisions of the state. The requirements of Little Davis-Bacon clearly apply to construction projects contracted out under those grants.

You now ask whether construction contracted out by non-governmental entities with grants made under AS 37.05.316 are also subject to that Act. We conclude that the answer to your question will depend upon the nature of the particular project being carried out by the grantee. If the project or improvement involves the undertaking or provision of traditional government facilities, services, or activities it is covered by the Act, despite the non-governmental status of the entity contracting out the work. However, if the work contracted out is not like that traditionally carried out or provided by government, it is not covered by Little Davis-Bacon. In order to define the line between those projects covered by the Act and those which are not, we recommend the adoption by the Department of Labor of regulations setting out the standards applicable to determining whether projects undertaken by affected grantees will be considered as covered or non-covered. By adopting regulations the department will put those entities on notice of their potential obligations under the Act and help assure uniform and consistent determinations of coverage or non-coverage. Our reasoning follows.

The fundamental requirement of the Little Davis-Bacon Act is set out in AS 36.05.010 which provides, in pertinent part, as follows:

> Sec. 36.05.010. WAGE RATES ON PUBLIC CONSTRUCTION. A contractor or subcontractor who performs work on public construction in the state, as defined by AS 36.95.010(3), shall pay not less than the current prevailing wages for work of a similar nature in the region in which the work is done.

1/ We note that our October 5, 1982 opinion incorrectly referred to grants made under AS 37.05.315, which deals with grants to organized municipalities. This was obviously a typographical error as the problem which it addressed involved an Unincorporated Community Grant, which is covered by AS 37.05.317.

"Public construction" is defined in AS 36.95.010(3) as follows:

> (3) "public construction" or "public works" means the on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, highways or other improvements to real property under contract for the state, a political subdivision of the state, or a regional school board with respect to an educational facility under AS 14.08.161;

The answer to your question essentially revolves around whether work carried out with public funds by a designated grantee is "public construction" within the meaning and purpose of the Little Davis-Bacon Act. This is a question which has yet to be addressed by the Alaska courts and, while we believe the courts would follow the analysis which we apply here, we obviously cannot guarantee that our view will ultimately be adopted by them. 2/

In 1982, the Alaska Supreme Court adopted an expansive view of the concept of "public construction" under Little Davis-Bacon. City and Borough of Sitka v. Construction and General Laborers Local 942, 644 P.2d 227 (Alaska 1982). In the Sitka decision, the court expressly stated that "[t]he fundamental purpose of Little Davis-Bacon is to assure that employees engaged in public construction receive at least the prevailing wage." It went on to emphasize that "[t]he focus of the act, quite clearly, is to the benefit of the employees, not the contracting principals." Sitka, 644 P2d at 232.

2/ It is particularly important to keep in mind that our view may or may not be adopted by the courts where, as here, the statutes with which we deal create certain rights and obligations on non-governmental third parties (e.g., contractors and workers) which, unlike state agencies, are not bound to adhere to the advice of the Attorney General. That precise situation arose in City and Borough of Sitka v. Construction and General Laborers Local 942, 644 P.2d 227 (Alaska 1982) where the Alaska Supreme Court expressly rejected an earlier written determination by the Attorney General's Office that the Act did not apply to the facts of that case.

In deciding that the contract at issue in Sitka was subject to Little Davis-Bacon, the Supreme Court expressly rejected the argument that it was not covered because it was not in the form of a traditional construction contract. The City of Sitka had argued that the contract should be viewed in isolation as a timber sale contract, unconnected with the contract for the construction of a dam, even though the timber to be sold and cleared under that contract was to be removed in order to make the site suitable for construction of the dam. The court refused to follow Sitka's argument, however, saying that to do so "unduly exalts form over substance." Sitka, 644 P2d at 232.

Similarly, we believe that the court would reject the application of rigid tests which would only inquire whether a particular project was owned by a governmental entity or whether the project was being carried out under contract with a governmental entity. 3/ Certainly, in most situations it is to be anticipated that a "public work" will be owned by a governmental entity. However, nothing in Little Davis-Bacon expressly requires governmental ownership of the project. While ownership may often be indicative of the "public" nature of a particular project, we do not believe it is necessarily determinative. Similarly, the Act is not limited to projects under contract with the state or a political subdivision. In fact, the statute, at AS 36.95.010(3) expressly defines "public construction" as projects under contract for the state or a political subdivision, indicating that the legislature clearly had in mind application of a broader test for Little Davis-Bacon coverage than a simple mechanical inquiry into the status of the contracting entity.

3/ A rigid application of strict rules for determining whether a project is "public construction" could afford the opportunity to circumvent or evade Little Davis-Bacon simply by funding construction of projects such as roads, fire halls, police stations, or school buildings through designated grants. We do not believe our Supreme Court would permit such a result. "'While the ingenuity of man is apparently limitless, the court has held with unvarying regularity that one may not do by indirection what is forbidden directly.'" Sheldon Jackson College v. State, 599 P.2d 127, 132 (Alaska 1979), quoting Wolman v. Essex, 342 F.Supp. 399, 415 (S.O. Ohio 1972).

As in the Sitka case, the test to be applied in determining whether a particular project is "public construction" subject to the provisions of the Act is a functional one which inquires into the nature of the project under contract and its relationship to the purposes of Little Davis-Bacon. We believe that test is one which looks, among other things, to the nature of the project itself to determine whether it is the kind of project or activity which is traditionally undertaken by government. If it is, and if public monies are utilized, the Act applies, irrespective of questions of "ownership" and contractor status.

We arrive at our conclusion based both on our reading of the Sitka case and because of the similar approach taken by the U.S. Department of Labor in applying the federal Davis-Bacon Act (40 U.S.C. § 276a, et seq.). The definition of "public building" or "public work" for purposes of the federal Act is set out at 29 CFR § 5.2(h) and provides, in pertinent part, as follows:

> (h) The term "public building" or "public work" includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

The Alaska Supreme Court expressly stated in Sitka that, because Little Davis-Bacon is modeled after the federal Act and because the federal regulations implementing that Act were adopted before AS 36.95.010(3) defining "public construction" became law in 1972, it "will look to the federal regulations construing Davis-Bacon for assistance in interpreting Little Davis-Bacon." Sitka at 231, n.8.

The test which we have stated, while relatively simple to set out, may prove difficult to apply to some kinds of projects. Obviously, some projects such as roads, airports, sewers, municipal buildings and school buildings are traditionally governmental in nature. Others, such as construction of women's shelters, day care centers, and animal shelters, while serving a "public purpose", 4/ have probably not traditionally been con-

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4/ Of course, any expenditure of state funds, whether through a governmental entity or a private organization must be made for a "public purpose." Article IX, sec. 6, Alaska Constitution.

structed by government. However, there will undoubtedly remain a "gray area" of projects which cannot be readily characterized as either governmental or non-governmental like health care facilities and power generation and distribution facilities. These kinds of projects are sometimes provided by government, sometimes by private entities, and sometimes by both in the very same community. In order to clarify the gray area and provide a basis for entities who receive designated grants and who may therefore be subject to Little Davis-Bacon to determine whether their project is subject to the requirements of the Act, we recommend to the Department of Labor, by copy of this letter to Commissioner Robison, that it adopt regulations setting out the kinds of tests or factors which it will apply in enforcing the Act. 5/ By doing so, that department will assure that designated grantees have notice of their potential obligations under Little Davis-Bacon and that determinations made by it are uniformly and consistently applied.

If you have any further questions regarding the scope of Little Davis-Bacon, please let us know.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Ronald W. Lorensen
Deputy Attorney General

RWL:vrb

cc: Jim Robison
Commissioner
Department of Labor

5/ The Alaska Supreme Court expressly acknowledged Labor's authority, under AS 36.05.030, to determine whether a contract is subject to Little Davis-Bacon in Sitka at 229. The kinds of factors which might be applied could include, among others, ultimate ownership of the facility, who the intended operator and/or user will be, and who will bear the costs of operating and maintaining the facility.

THE ALASKA CHAPTER
ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, INC.

SKILL
RESPONSIBILITY
INTEGRITY

BOX 4-2500 • ANCHORAGE, ALASKA 99509
TELEPHONE (907) 276-5354
TELEX 25-394

3201 SPENARD ROAD
ANCHORAGE
RICHARD M. PITTENGER
MANAGER

April 22, 1983

The Honorable Walter R. Furnace
Chairman, House Labor and Commerce Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

RE: HB 331

Dear Representative Furnace:

The Alaska Chapter, Associated General Contractors of America, Inc., strongly supports the passage of HB 331. HB 331 clarifies existing law to assure that recipients of State public funds utilize procedures aimed at preserving the free enterprise system.

The proposed amendment to AS 37.05 is quite simple. Section (a) insures that recipients of public funds for the construction or repair of any public facility must advertise these projects and make an award to the lowest responsible bidder. Two unhealthy situations are avoided by utilizing competitive bids: (1) bias in the selection and award process and (2) force account work.

Bias or the appearance of bias in public contract awards should be avoided. The universally accepted method of assuring that no collusion exists between the contracting entity and the contractor is the competitive sealed bid process.

"Force Account" or "day labor" refers to public works construction done by a governmental body using public employees with equipment purchased or rented by that body, as opposed to a "hard dollar" contract.

Alaska Chapter, A.G.C., contends that the public interest is best served by the contract method of construction.

Private industry is ready and willing to provide the public sector with the services it needs, and will do so at a competitive price. Taxpayers will benefit from this healthy competition because their main interest is to save tax dollars, and to get the maximum return for every tax dollar invested. When government decides to produce its own goods and services, it not only prevents the private sector from earning government dollars, but it also denies itself revenue from the taxes private enterprise must pay.

The contract method of construction has numerous advantges. It establishes definite costs before construction begins; it prescribes a date for completion of the work; it ensures quality workmanship and material; and it provides centralized responsibility for the work.

The quality of workmanship and materials is guaranteed by the contract system. The materials which go into the project are prescribed in detail in the specifications and are subject to the approval of the owner. If, in the owner's opinion, the workmanship or the materials are not as specified, the owner can reject the work and order it redone at the contractor's expense.

It is also a practice of many owners to require that the contractor maintain the project in good condition for a period of time after completion. It is, therefore, to the contractor's economic interest -- and to the maintenance of his reputation -- that the quality of his work measure up to the prescribed standards.

Not only does the public receive higher quality construction projects when they are contracted out, but the public also receives more for its money. Through long experience, contractors become specialists in one or more particular fields of construction. They know their sources of supply; they know the capacity of their machines and the capability of their personnel. When preparing a bid, a contractor's competitive incentive requires that he give considerable thought to the problem of devising the best and most economical manner of doing the work. His specialized knowledge and experience obtained in the marketplace have been sharpened and are instrumental in saving the taxpayer money on the project.

The contract provides that the project be completed on a prescribed date. The contractor cannot receive final payment or the release of money that is retained while the work is progressing until the job has been completed and accepted -- all to the satisfaction of the owner. This factor, plus his own economic need to finish and get on to the next project, gives assurance to the public that the job will be completed on time and within contract price. Many times the contract (bid) price is lower than what the government expects to pay.

In addition to providing the most efficient and economical means of producing public works construction, contracting out provides a variety of other benefits to the public in the form of risk shifting, which cannot be obtained under in-house performance. Some of these risks which are allocated when construction is done by contract are:

- The public only pays for what it receives; work actually performed is the basis of payment.

- The price is firm and guaranteed by the contract, and the public has no risk of cost increases. All of the variables of the market place, such as increases in material prices, wages and shortages are borne by the private contractor.

- Timely completion is assured by a liquidated damage provision.

- Faithful performance is backed by performance and payment bonds.

- Risk of damage during construction is borne by the contractor, not the public.

- The contractor must "defend and hold harmless" the public against claims and must provide the public with insurance coverage.

- Quality inspection is at "arm's length" by independent inspectors.

- The final work is warranted and defects must be corrected at no expense to the public.

To take the risks away from the taxpayers and put them on a private contractor who, through his payment and performance bond, guarantees the job will be finished according to the terms of the contract, is worth a great deal in dollars. None of this protection of the public's interest exists when work is performed by a public agency with public equipment and personnel -- all of the risks are on the taxpayer.

Section (b) of HB 331 prohibits a recipient of State public funds from providing for preference to any local bidder unless that preference is established under AS 37.05.230(5). This provision eliminates local preference ordinances that provide preferences to contractors at the ity, city or borough level; however, a preference can be given to an bidders".

e above mentioned reasons, we urge your support of this Bill.

Sincerely,

ALASKA CHAPTER
ASSOCIATED GENERAL CONTRACTORS

Richard M. Pittenger
Manager

/bj

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

☐ POUCH B
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April 20, 1983

POSITION PAPER

RE: HB 331

SPONSOR: House Labor and Commerce Committee

Program Effects of the Bill

This bill would make it mandatory that the recipients of all state grants for construction projects solicit bids for construction. It also allows those same recipients to give preference to in-state contractors.

Comments

The Department is concerned that this bill imposes a set of guidelines designed specifically for State Grants upon Municipal Government. In many cases these governments already have appropriate procedures in place.

Additionally, many municipalities currently use municipal employees on construction projects. This enables these municipalities to stretch State grant dollars. This bill would appear to prohibit that practice.

Mark Lewis, Commissioner

21-P1LH

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 331
Title: State Grants...bidding rqrmnts
Sponsor: HLC
Requestor: HLC

II. FISCAL DETAIL

Agency Affected: DCRA
Program Category Affected: Development
BRU, Program of Subprogram(s) Affected: LGAD, DCP

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard Rainey
Phone: 465-4703
Division: Commissioner's Office
Date: 4/21/83

Approved by Commissioner:
Date: 4/22/83
Department: DCRA

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

HB

338

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM January 27, 1983

SUBJECT: Payment of overtime
(HB 338)

TO: House Labor and Commerce Committee
Attn: Ken Johnson

FROM: Thomas A. Sofo
Legislative Counsel

You have asked this office for an analysis of HB 338.

Section 1 of the bill adds a new paragraph to AS 23.10.060, the Alaska statute which addresses the payment for overtime in this state. The numbered paragraphs currently in AS 23.-10.060 contain exemptions for certain employees or types of work from the general overtime law that requires work in excess of 40 hours a week or 8 hours a day to be compensated at one and one-half times the regular rate of pay. HB 338 would add one more exception to the list by exempting work performed by an employee under a trade work plan. Although I am not completely familiar with how these plans work, it is my understanding that employees are able to trade hours, or possibly days worked with one another for their personal convenience. The trading of hours or days under the bill would require the approval of the employer so that work operations were not unnecessarily disrupted. The result of some of these informal "trades" might be that certain employees would be working more than 8 hours in a given day or more than 40 hours in a calendar work week. These extra work days or hours be balanced off by time off on other days or weeks when the subject employee wanted to maximize his nonwork time. In theory the total number of hours worked by two employees who normally work 40 hours a week would not be greater than 80 hours a week, although one of the employees in a given week might have worked 48 of those hours while the other employee with whom he has traded a work day may have worked only 32 hours. As the hypothetical illustrates, the application of this plan has the potential to make an employer liable for overtime payment in a given day or week

even though the cumulative hours worked by the employees involved would not otherwise subject the employer to overtime liability. It is for that reason that an exception to the overtime provisions of AS 23.10.060 was necessary.

This statute would apply to those employees covered by AS 23.10.060. Apparently, the Department of Labor has decided to oppose HB 338 based on their understanding that it was requested by a business identified as Seair. Although the backup material is somewhat confusing on this point, the department believes that this bill would be in violation of the federal Railway Labor Act while at the same time also apparently recognizing that Seair is not necessarily covered by that Act. Because of this confusion you have requested an opinion concerning the relationship of this amendment to the Railway Labor Act, 45 U.S.C. 151 - 188. A good treatment of that subject is contained in the Opinion of the Attorney General, No. 7, April 15, 1980 which is cited following AS 23.10.060. As the opinion states, federal statutes do not expressly preempt the state in the subject matter area of overtime pay for air transportation employees. The federal Fair Labor Standards Act 29 U.S.C. 201 - 219, exempts from the operation of the mandatory overtime provisions of that act air carrier employees subject to the provisions the Railway Labor Act. The question before the attorney general was whether Alaska could pose its own mandatory overtime provisions on employees who were otherwise exempt from the federal mandatory overtime provisions.

As the Alaska Supreme Court has already recognized, provisions of the Alaska Wage and Hour Act which are more favorable to employees than federal law are not preempted by the Fair Labor Standards Act. Webster v. Bechtel, Inc., 621 P.2d 890. However, since 42 U.S.C. 213(b)(3) explicitly exempted employees which were covered by the federal Railway Labor Act, a specific analysis of that Act is necessary. As to the extension of the Alaska mandatory overtime provisions to air transportation employees, I am in agreement with the conclusions reached by the Attorney General in the opinion cited above. Those conclusions are as follows:

> "1. In the case of pilots, flight crews, and other interstate air carrier employees whose activities are directly and substantially related to the transportation activities of the carrier, and who are covered by a valid existing collective bargaining agreement or

agreements with the carrier, the State is precluded from applying its overtime laws due to the preemptive nature of the Railway Labor Act.

"2. In instances where no collective bargaining agreements apply, crews of interestate air carriers are nonetheless beyond the jurisdiction of state overtime law because of the commerce clause implications discussed above.

"3. Non-flight personnel of interstate carriers who are not covered by valid existing collective bargaining agreements are not exempt from state law. As to those individuals the provisions of state overtime law apply.

"4. Air carriers operating solely intrastate would not seem to fall under the exclusionary scope of either the Railway Labor Act or of the Commerce Clause absent unusual fact situations. Accordingly, the protections of the Alaska Wage and Hour Act dealing with overtime extend to those individuals."

Based on the above analysis, certain air transportation employees would be covered by the Alaska law regarding the payment of overtime, as well as the exceptions to that law. Those persons would be ground employees of interstate carriers who are not covered by collective bargaining agreements and all employees of air carriers operating solely intrastate. However, there remains one important issue. Although the above analysis has identified the scope of coverage of the Alaska Wage and Hour Act as it pertains to certain air transportation employees, it has not addressed the basic issue of whether trade work programs are preempted by the federal Fair Labor Standards Act. The Fair Labor Standards Act only requires the payment of overtime for time worked in excess of 40 hours in a work week, 29 U.S.C. 207, while the Alaska statute requires overtime pay for time worked in excess of 40 hours a week or 8 hours a day. To the extent that the state has a higher minimum standard as to hours per day, it is free to tailor an exception to that standard based on trade work plans. However, if under a situation such as the hypothetical above, see page 2, the result of the trade work plan is that an employee works more than 40 hours in a given week without receiving overtime, the plan would violate the federal law as to those workers covered by the federal statute. Guaranteed weekly pay and fluctuating work week plans must meet the standards set

forth in the federal statute and are inapplicable in this instance. 29 C.F.R. 402-778.414 and 29 C.F.R 778.114.

The trade work plan is not preempted by federal law if in its application certain employees work more than 8 hours in a day. The plan is possibly preempted by federal law only to the extent certain employees might work more than 40 hours in a given week without receiving overtime compensation for those hours in excess of 40.

TAS:ojb
J3/011

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IPNRFUB AHQ

4-047102E031 01/31/84

ICS IPNRNCZ CSP

SUSPECTED DUPLICATE

CLARCOR, INC.
PHONE: 278-3306
JUNEAU, AK 99802

3U84-40133 TDRN SACRAMENTO CA 61 01-31 0552P EST

PMS DWIGHT PERKINS, RUSH

245 MARINE WAY NO.7

JUNEAU AK 99801

THIS IS YOUR COPY OF MESSAGE SENT TO REPRESENTATIVE JOHN J CONDERY

REQUEST YOU HOLD OPEN THE RECORD REGARDING TESTIMONY OF I.A.P.M.O.
OFFICIAL ON PERMANENT LEGISLATION FOR UNIFORM PLUMBING CODE AND
RESEARCH DIRECTORY CONCERNING THE USE OF PLASTIC PIPE FOR DRINKING
WATER.

LOS ANGELES SUPERIOR COURT EXTENDED AND MADE PERMANENT THE
INJUNCTION. COURT ORDER TO FOLLOW

RAYMOND J. LEONARDINI, GENERAL COUNSEL CALIFORNIA PIPE TRADES
COUNCIL OF THE UNITED ASSOCIATION

1314 EST

IPNRFUB AHQ

Bill No. House Bill 338

Date January 27, 1984

Title "An Act relating to the payment of overtime; and providing for an effective date."

Contact: Eileen Plate
465-2700
Bob Bacolas
465-4870

This legislation amends the law relating to the payment of overtime to exclude work performed by an employee under a trade work plan from the law requiring the payment of overtime for more than 40 hours of work a week. A trade work plan allows an employee to trade hours or days worked with another employee with the approval of the employer.

This bill does not take into consideration a number of factors. One of the basic principles of premium pay for overtime is to inhibit employees from working excess hours. The federal government, in order to set the standard, enforces the Safety Law, the Eight Hour Law, and the Workweek Law on all government contracts whether they be for construction, service, or manufacturing. These laws are intended to deter the employer from attempting to circumvent the laws designed to protect the employees' rights to healthy and profitable employment.

Even if this law were passed, any employer who attempted to practice a "trade work plan" would find himself in violation of federal law the first time an employee worked more than forty hours in one week, unless overtime were paid or otherwise exempted. If this legislation is intended to permit employees to trade shifts or workdays in the fashion of let's say, "I'll work for you on Tuesday, which is my day off, if you will work for me on Monday, which is your day off," then there is no need for such legislation. If, however, the intent is to allow me to work your shift for you after I have already worked mine on any given day of the week, then we have a situation where an employer can use any number of forms of economic leverage to make an employee work beyond the statutorily permitted number of hours, to the determent of the employee while enriching the employer. Keep in mind that the basic philosophy of the overtime law was to penalize the employer each time he permitted an employee to work past the regular workday or workweek.

Such a scheme has long been recognized as generally detrimental to the work force. The overtime laws were intended as a remedial labor legislation specifically to preclude such schemes in the workplace.

The department is opposed to this legislation. A zero fiscal note has been prepared.

APPROVED:

Jeri Robinson
Commissioner

POSITION PAPER/Department of Labor

OPINION NO. 7

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

420 "L" STREET, SUITE 300
ANCHORAGE, ALASKA 99501
(907) 276-3550

April 15, 1980

The Honorable Edmund Orbeck
Commissioner
Department of Labor
P.O. Box 1149
Juneau, AK 99811

Re: Enforcement of Alaska Overtime Laws with Respect to Air Carriers in Alaska
AS 23.10.060
A66-102-80

Dear Commissioner Orbeck:

You have inquired whether the Department of Labor may enforce the mandatory overtime provision of the Alaska Wage and Hour Act (AS 23.10.060-150) with respect to employees of air carriers operating within the State of Alaska. The answer to your question depends upon the nature of the employer's business, the nature of work performed by the individual employee, the existence or nonexistence of a valid collective bargaining agreement between the employer and its employees, whether the air carrier operates intrastate or interstate, and finally, whether the application of state law would create a burden upon interstate commerce.1/

1/ Specifically not addressed in this memorandum is the question of whether by the use of "flex-time contracts", an employer may avoid the mandatory payment of overtime to those employees who work irregular weekly or daily hours. That issue is currently before the Supreme Court of Alaska in the case of State of Alaska v. Bechtel, Inc., Supreme Court No. 4139. See also, Attorney General's Opinion dated February 10, 1978.

I

THE RELATIONSHIP BETWEEN THE FEDERAL FAIR LABOR STANDARDS ACT AND THE ALASKA WAGE AND HOUR ACT

The Federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219, specifically exempts from the operation of the mandatory overtime provision (§ 207) "any employee of a carrier by air subject to the provisions of §§ 181-188 of Title 45" 29 U.S.C. § 213(b)(3). The Alaska Wage and Hour Act, AS 23.10.050 et seq. contains no such exemption.2/

In passing the Fair Labor Standards Act Congress did not intend to foreclose all attempts by the individual states to regulate wages and hours. The Act itself states that none of its maximum hours provisions operates to excuse noncompliance by employers with any state law which establishes a higher standard. It is only where the standards set by the FLSA are higher than the comparative state standards that the Act serves to preempt the state activity. H.R. Rep. No. 2182 at 15 (75th Cong.). See also Eastern Sugar Associates v. Pena, 222 F.2d 934 (1st Cir. 1955); Rivera v. Div. of Industrial Welfare, 71 Cal. Rptr. 739 (1968); 29 C.F.R. § 778.5. Thus, merely because the federal law exempts airline employees

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2/ The Alaska Act, which is based upon the Federal Fair Labor Standards Act, McGinnis v. Stevens, 543 P.2d 1221, 1238 (Alaska 1975), originally contained the airline exemption. (Sec. 3, ch. 171 SLA 1959.) However, the Act was amended in 1970 to eliminate that exemption. (Sec. 1, ch. 243 SLA 1970, effective October 31, 1970.)

from mandatory overtime entitlement, it does not follow automatically that the state law must do likewise. Here, the State seeks to compel air carriers to pay overtime to those employees who have worked in excess of eight hours per day or 40 hours per week. Clearly, the State act has set a standard which is considerably higher than the comparative federal provision since the federal law does not contain an eight hour work day limitation.

Accordingly, in light of the authority recited above, and consistent with the State of Alaska's current position in State of Alaska v. Bechtel, Inc. Supreme Court No. 4139, presently pending before the Alaska Supreme Court, we feel that the Fair Labor Standards Act does not expressly preempt the Alaska Wage and Hour Act on the question of whether airline employees are excluded from the mandatory overtime directive of AS 23.10.060. A substantial question remains, however, as to whether the State Act has been nonetheless preempted through enactment and operation of the Federal Railway Labor Act, 45 U.S.C. §§ 151-188.

II

THE RELATIONSHIP OF THE RAILWAY LABOR ACT TO THE ALASKA WAGE AND HOUR ACT

There are two conflicting lines of reasoning concerning the impact of the Railway Labor Act upon attempted state regulation of wages and hours in industries subject

Railroad Co., 372 U.S. 284 (1963); Baltimore & Ohio Railroad Co. v. Commonwealth of Pennsylvania, 334 A.2d 636 (Pa. 1975), app. dism'd for want of subs. fed. ques., 423 U.S. 806 (1975); Gibbons v. Kansas City Southern Railway Co., 34 CCH Labor Cases, ¶ 71,276, 100 So.2d 319 (La. 1957).

In 1957, the United States Supreme Court had occasion to again examine the relationship between the Railway Labor Act and the regulation by states of working conditions in affected industries. California v. Taylor, 353 U.S. 553 (1957) involved the question of whether the Railway Labor Act operated to require that the terms of a collective bargaining agreement between a state-owned and operated railroad and its employees would prevail over conflicting provisions of state civil service law. The Court held that it did. Terminal Railroad Association v. Brotherhood of Railroad Trainmen, supra, was definitively distinguished. The Court stated that the state regulation in Terminal had withstood challenge because it was directed at the establishment of regulations governing safety and health and was not concerned with the right secured by federally protected collective bargaining. 353 U.S. at 560. Accordingly, it was outside of the scope of the Railway Labor Act. In Taylor, on the other hand, the state was attempting to regulate working conditions not specifically or directly connected to the maintenance of health or safety, in contra-

vention of an express collective bargaining agreement. That practice was not permissible, said the Court, since by means of the Railway Labor Act, Congress had preempted the field of employer-employee bargaining agreements in all "affected industries". The key factor is the existence of a valid collective bargaining agreement. Where such an agreement exists, its terms must prevail over inconsistent state legislation. See also United Airlines, Inc. v. Industrial Welfare Commission, 28 Cal. Rptr. 238 (1963); Railway Employees' Department v. Hanson, 351 U.S. 225 (1951); Pan American World Airways v. Division of Labor Law Enforcement, 203 F. Supp. 324 (N.D. Cal. 1962).

It would seem to us that the Taylor line of cases is more clearly controlling in this instance. In attempting to compel the payment of overtime by interstate air carriers to employees covered by collective bargaining agreements which provide otherwise the State is interfering with an agreement which has "the imprimatur of federal law upon it". Railway Employees' Department v. Hanson, 351 U.S. at 232. In doing so, the State has run afoul of the preemptive provisions of the Railway Labor Act. Insofar as the Alaska Wage and Hour Act operates to require the payment of overtime to affected employees of interstate air carriers covered by valid collective bargaining agreements, that Act is invalid since it

has been preempted by the Railway Labor Act. We must still ascertain, however, which employees are "affected" so as to be exempt from the operation of state law.

III

ACTIVITIES WHICH FALL
WITHIN THE AIR CARRIERS EXEMPTION

The inclusion of air carriers (and their employees) within the scope of the Railway Labor Act is found in subch. II of that Act, 45 U.S.C. §§ 181-188. Section 181 provides:

> All of the provisions of subchapter I of this chapter except section 153 of this title are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

Clearly, any commercial airline operating into or out of Alaska falls within the language of the Railway Labor Act. Equally clearly, pilots (expressly) and other members of the flight crew (by implication) are covered by the air carrier provisions of the Railway Labor Act and thus fall outside the purview of the Alaska Wage and Hour Act, at least insofar as the payment of overtime is concerned. However, application of the Railway Labor Act to any other employees of an air carrier depends upon an analysis of sec. 181 of the federal act and specifically upon the definition of the term "employee"

contained therein.

The Railway Labor Act was enacted for the purpose of avoiding the interruption of commerce caused by labor disputes and of assuring unimpeded continuity of transportation operations. Williams v. Jacksonville Terminal Co., 315 U.S. 586 (1942), reh. denied, 315 U.S. 830 (1942); National Airlines, Inc. v. International Association of Machinists & Aerospace Workers, 308 F. Supp. 179 (S.D. Fla. 1970), rev'd on other grounds 430 F.2d 957 (5th Cir. 1970), cert. denied 400 U.S. 992 (1971); Pan Am World Airways, Inc. v. United Brotherhood of Carpenters & Joiners of America, 324 F.2d 217 (9th Cir. 1963), cert. denied 376 U.S. 964 (1964). To that end the Railway Labor Act has direct application only to those employees of the carrier whose work bears a direct relationship to the transportation activities of the carrier. International Longshoremen's Association, AFL-CIO v. North Carolina State Port Authority, 370 F. Supp. 33 (E.D.N.C. 1974), aff'd, 511 F.2d 1007 (4th Cir. 1974); Roland v. United Airlines, Inc., 75 F. Supp. 25 (N.D. Ill. 1947). The mere fact that some of an employer's activities are related to transportation does not automatically subject all of that employer's activities to the Railway Labor Act. Instead, each activity must be scrutinized individually to see if the specific activity bears the necessary relation to transportaion. Jackson v. Northwest

Airlines, 70 F. Supp. 501 (M.D. Minn. 1947), aff'd 185 F.2d 74 (8th Cir. 1950), cert. denied 342 U.S. 812 (1951). Whether a particular employment situation satisfies the requisite nexus test is a question of fact which must be separately examined in each case. Edwards v. Southern Railway Co., 258 F. Supp. 212 (E.D. N.C. 1966).

Therefore, the Department of Labor is well advised to closely investigate and analyze each employee's activity in order to ascertain whether the activity bears a substantial and direct relationship to the transportation activities of the employer. Any employment activities which fail to satisfy this requirement fall outside of the coverage of sec. 181 of the Railway Labor Act and thus are subject to state regulation unless the attempted regulation is otherwise barred by operation of the Commerce Clause of the United States Constitution.

IV

COMMERCE CLAUSE RAMIFICATIONS

Art. I, sec. 8, cl.3 of the United States Constitution confers upon Congress the power "to regulate commerce with foreign nations, and among several states, and with the Indian tribes." Since there is a national interest in the free flow of interstate commerce, Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824); Bibb v. Navaho Freight Lines, Inc., 359 U.S. 520 (1959), the Supreme Court, under the auspices of the Commerce Clause, will strike down any state law which serves to substantially

impede that national interest. Southern Pacific Company v. Arizona, 325 U.S. 761 (1945). Under the Commerce Clause states have full unbridled regulatory authority over intrastate systems. Gibbons v. Ogden, supra. Interstate, however, a state has no regulatory authority except when exercised for the purpose of advancing a judicially recognized legitimate local interest and only so long as the regulation does not unduly burden interstate commerce. The paramount recognized legitimate state interest is the state's management of the health and safety of its citizens. Smith v. Alabama, 124 U.S. 165 (1888). However, in cases where an impediment to the free flow of commerce results from the state's enforcement of its own laws, the monetary or economic interests of the state of her citizens are not recognized legitimate local interests sufficient to withstand Commerce Clause challenges. Hood & Sons v. Dumond, 336 U.S. 525 (1949).

The impact upon interstate commerce of the regulation of the working hours of pilots and flight crews by individual states is obvious. Since the planes themselves move interstate competing or conflicting state laws governing work hours could result in substantial administrative and operational difficulties. Such problems, in turn, could jeopardize the smooth flow of interstate air carriage. State regulation of support personnel (that is to say employees other than flight

crews), however, would not appear to have such a direct and potentially burdensome impact upon commerce. In situations where the states are not preempted from exercising regulatory authority, the state's interest in the welfare of its citizens is entitled to greater weight. Southern Pacific Company v. Arizona, 325 U.S. at 767. In such a case courts traditionally have balanced the strength of the local interest against the impact upon interstate commerce. Pike v. Bruce Church, Inc., 397 U.S. 137 (1970). Where the state interest is substantial, attempted regulation does not interfere with the national commerce, and no less restrictive alternative exists, the state law may be upheld. Southern Pacific Company v. Arizona, supra; Dean Milk Co. v. City of Madison, 340 U.S. 349 (1951). Such would seem to be the case where non-flight personnel are concerned. For the State to apply the protections of its wage and hour laws to such employees would not appear to result in any undue burden upon interstate commerce.

V.

CONCLUSION

In summary the following principles appear to be valid with respect to the authority of the Alaska Department of Labor to enforce the mandatory overtime provisions of the Alaska Wage & Hour Act in favor of employees of airlines and air carriers operating within the State of Alaska.

1. In the case of pilots, flight crews, and other interstate air carrier employees whose activities are directly and substantially related to the transportation activities of the carrier, and who are covered by a valid existing collective bargaining agreement or agreements with the carrier, the State is precluded from applying its overtime laws due to the preemptive nature of the Railway Labor Act.

2. In instances where no collective bargaining agreements apply, crews of interstate air carriers are nonetheless beyond the jurisdiction of state overtime law because of the commerce clause implications discussed above.

3. Non-flight personnel of interstate carriers who are not covered by valid existing collective bargaining agreements are not exempt from state law. As to those individuals the provisions of state overtime law apply.

4. Air carriers operating solely intrastate would not seem to fall under the exclusionary scope of either the Railway Labor Act or of the Commerce Clause absent unusual fact situations. Accordingly, the protections of the Alaska Wage and Hour Act dealing with overtime extend to those individuals.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By:
Eric Olson
Assistant Attorney General

ems

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: November 30, 1983

REQUEST
Bill/Resolution No.: HB 338
Title: "...Payment of overtime..."

Sponsor: Representative Fritz
Requestor: Judiciary, Labor, & Comm.
Date of Request: April 25, 1983

FISCAL DETAIL
Agency Affected: Labor
Program Category Affected: Worker Protection
BRU, Program or Subprogram(s) Affected: Labor Standards & Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not Applicable

ANALYSIS: Attach a separate page for analysis

Prepared By: NB Robert J. Bacolas by bs — Robert J. Bacolas, Sr. — Phone: 465-4870
Division: Labor Standards & Safety — Date:

Approved by Commissioner: NB Jim Robison — Jim Robison — Date: 12/13/83
Agency: Labor

LEG:A:9
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

HB

341

HB 341 #9
SB 244

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

MEMORANDUM

TO: Chairman, Alaska Legislative Council

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

DATE: March 17, 1983

RE: Bill on security interests in real property

Pursuant to the authority granted in AS 24.20.075(c), the Alaska Code Revision Commission has prepared the attached bill on security interests in real property. It was introduced in the legislature through the Legislative Council in 1981 as House Bill 403. That bill did not move out of the House Judiciary Committee, its first committee of reference, and no committee hearings were scheduled on it. The apparent reason was opposition to proposed AS 34.21.060, a section that is deleted from the attached bill. That section dealt with clauses in home purchase contracts that permit the entire balance of purchase price to be declared due when the home is sold. During the commission's work on the draft this "due-on-sale" section of the bill took various forms and received much comment, especially from financial interests. Controversy over the section diverted attention from the main substance of the bill. Without it, the bill should receive consideration from legislative committees on its merits.

The bill covers the relationship, rights, and remedies of debtor and creditor in secured real property transactions. It resulted from the commission's general review of real property law in Title 34 and a conviction that some revision is desirable.

The main sources drawn upon in preparing the bill are the existing Alaska law on deeds of trust, the Uniform Commercial Code, the Washington law on nonjudicial foreclosure, and the Uniform Land Transfers Act. That Act has not been adopted as a whole in any state.

A commentary on the bill as revised is attached also.

JWA:chw
Attachments
cc: Hon. Bill Sheffield
Hon. Edmond W. Burke, Chief Justice
Myrton R. Charney, Executive Director
Legislative Affairs Agency

SB 477

MARCH 1983

ALASKA CODE REVISION COMMISSION

COMMENTARY TO ACCOMPANY

DRAFT BILL ON SECURITY INTERESTS IN REAL PROPERTY

BILL NO.

General Features of the Bill

The attached bill prepared by the Alaska Code Revision Commission is an effort to bring into secured real property transactions some of the same principles that govern secured personal property transactions under the Uniform Commercial Code. The bill covers the broad area of relationships, rights, and remedies of debtor and secured creditor. The state law on summary foreclosure of deeds of trust would be superseded, but not drastically changed. In cases where foreclosure under a power of sale is required, the bill makes possible a commercially reasonable resale by listing and sale through a real estate agent, in order to avoid the disasterous forced-sale prices often received at public auction.

The bill was introduced in the Twelfth Legislature as HB 403. Action was not taken on it. All attention focused on a relatively minor part of the bill, a section limiting the use of "due-on-sale" clauses in security agreements for the purchase of a home. That controversial section, readily separable from the body of the bill, is not included in the present form of the bill and has largely been preempted by recent federal and state statutes and regulations (sec. 341, Garn-St. Germain Depository Act of 1982, P.L. 97-320, 12 U.S.C., § 1701 j-3; 12 U.S.C. § 371(g); 12 C.F.R. § 548.8-4(f); AS 06.01.020; AS 18.56.098(e); 15 AAC 118.267).

Persons familiar with the present Alaska law on both

real and personal property should find the bill a natural development. The vast majority of real property sales are now financed by deeds of trust. Most departures in the bill from present practices under deeds of trust are not great. The main changes occur where needed to permit additional kinds of sales of collateral in cases of default. The bill makes deed of trust foreclosure procedures applicable to mortgages and contracts of sale. Under present law mortgages are more difficult to foreclose than deeds of trust, for no logical reason, and there are no statutory guidelines for foreclosing contracts of sale, which has resulted in substantial litigation at both the superior court and supreme court level (e.g., Lonas v. Metropolitan Mortgage and Securities Co., 432 P.2d 603 (1967); Moran v. Holman, 501 P.2d 769 (1972); Curry v. Tucker, 616 P.2d 8 (1980); Wickwire v. McFadden, 633 P.2d (1981); Strack v. Miller, 645 P.2d 184 (1982); additional cases are summarized in Department of Revenue v. Baxter, 486 P.2d 360 365 n.10).

A bill of this kind must specify procedures to be followed and forms to be used in carrying out the procedures. The procedures to be followed before sale in a summary foreclosure are set out in the bill in AS 34.21.110--34.21.150. These sections are followed by AS 34.21.160--34.21.170 which specify the content of forms that are to be used. Since the forms are designed to advise the defaulting debtor of his rights and to inform him of the procedures that will be followed, they cover some of the same material that is set out in the preceding substantive sections. AS 34.21.100 in the bill explains this relationship between the sections.

A contents page and a comparison of time elements and steps from default to sale under existing law and under the bill are attached here for ready reference. (See next 3 pages)

CHAPTER 21. SECURITY INTERESTS IN REAL PROPERTY

Sec. 34.21.010. POLICY AND SCOPE
Sec. 34.21.020. TRANSACTIONS EXCLUDED
Sec. 34.21.030. WHERE COLLATERAL NOT OWNED BY DEBTOR
Sec. 34.21.040. REQUEST FOR STATEMENT OF ACCOUNT
Sec. 34.21.050. ALIENABILITY OF DEBTOR'S RIGHTS
Sec. 34.21.060. NOTIFICATION OF ASSIGNMENT
Sec. 34.21.070. RELEASE OF SECURITY INTEREST
Sec. 34.21.080. REMEDIES OF SECURED PARTY
Sec. 34.21.090. REQUIREMENTS FOR SUMMARY FORECLOSURE
Sec. 34.21.100. PROCEDURE BEFORE SALE
Sec. 34.21.110. TRANSMITTING AND POSTING NOTICE OF DEFAULT
Sec. 34.21.120. RECORDING NOTICE OF INTENT TO SELL
Sec. 34.21.130. TRANSMITTING, POSTING, AND PUBLISHING NOTICE OF INTENT TO SELL
Sec. 34.21.140. TRANSMITTING FURTHER INFORMATION ABOUT SALE
Sec. 34.21.150. MANNER OF TRANSMITTING NOTICE
Sec. 34.21.160. CONTENT OF NOTICE OF DEFAULT
Sec. 34.21.170. CONTENT OF NOTICE OF INTENT TO SELL
Sec. 34.21.180. CURING DEFAULT BEFORE SALE; EXTINCTION OF DEBTOR'S RIGHT TO CURE
Sec. 34.21.190. MANNER OF SALE
Sec. 34.21.200. PURCHASE OF COLLATERAL BY LIENHOLDER
Sec. 34.21.210. PROCEDURE AFTER SALE
Sec. 34.21.220. EFFECT OF SALE
Sec. 34.21.230. DISPOSITION OF PROCEEDS OF SALE
Sec. 34.21.240. SECURED PARTY'S LIABILITY FOR FAILURE TO COMPLY; ENJOINING SALE
Sec. 34.21.250. GENERAL VALIDITY OF SECURITY AGREEMENT
Sec. 34.21.260. WAIVER OF RIGHTS
Sec. 34.21.270. DEFINITIONS

Other Amendments:

Sec. 06.05.175. DEPOSITOR AND CUSTOMER RECORDS CONFIDENTIAL
Sec. 09.45.170. JUDGMENT ON FORECLOSURE OF LIEN

Repeal of AS 09.45.200 and AS 34.20.010--34.20.135

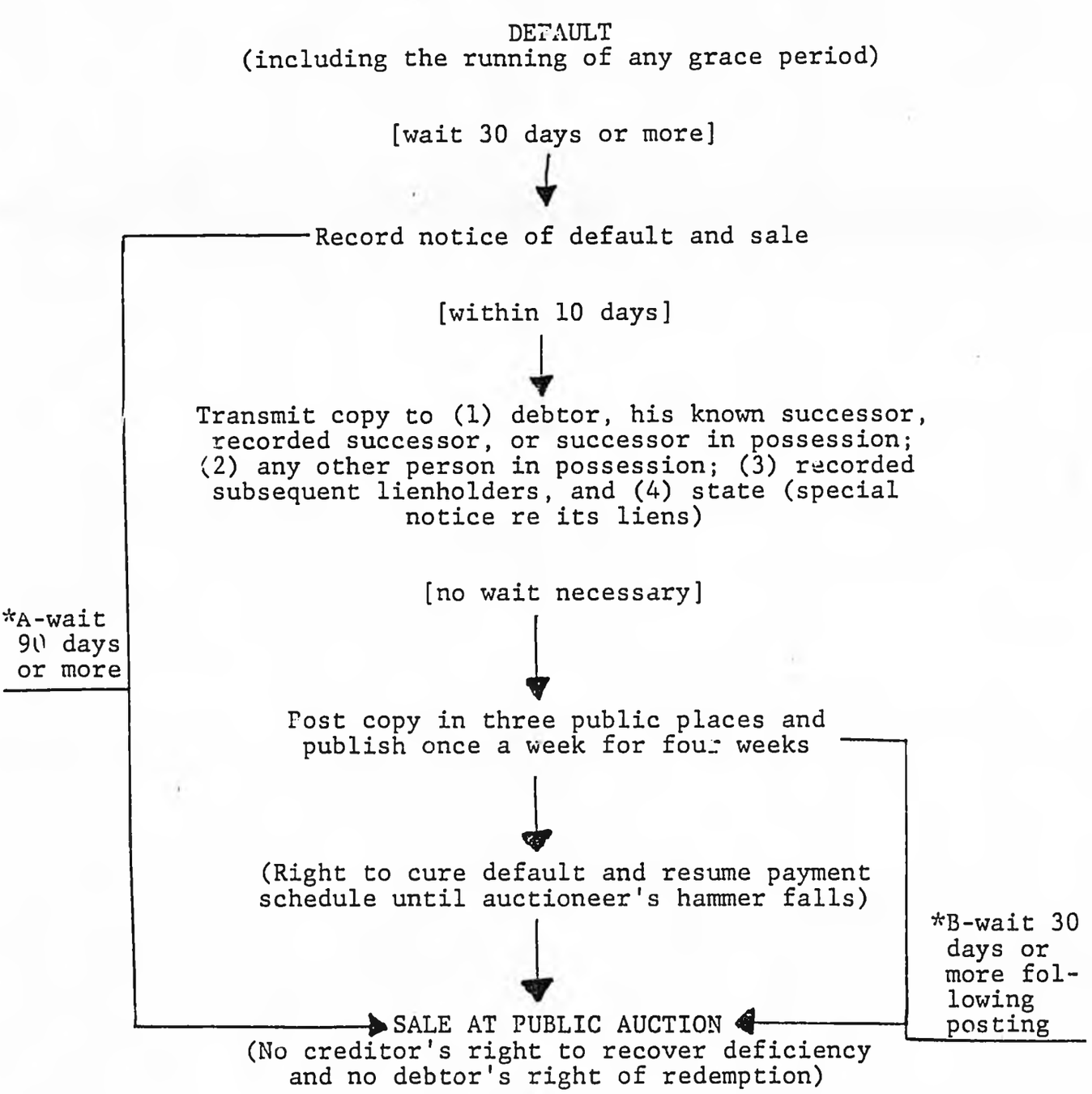
Transitional provisions

Effective date

STEPS IN SUMMARY FORECLOSURE

UNDER EXISTING SECTIONS 34.20.070 - 34.20.135

(Deeds of Trust)



Minimum time between the end of a grace period for receipt of payments and the date of sale: 120 days.

* A and B time lapse is used depending upon which brings one to a later sale date.

STEPS IN SUMMARY FORECLOSURE
UNDER PROPOSED SECTIONS 34.21.090 - 34.21.280

(Any security agreement containing a power of sale)

DEFAULT

[wait 30 days or more]

↓

Transmit notice of default
[to (1) debtor or his successor
and (2) occupants]

[wait 30 days or more]

↓

Record notice of intent to sell

[no wait necessary]

↓

Transmit notice of intent to sell [to (1) debtor and any other person with known or recorded interest in the collateral; (2) an attorney shown in a lis pendens, and (3) the Attorney General with special notice re state liens], post it on the collateral and start publication of it once a week for 3 weeks

*A-wait 60 days or more

[no wait necessary]

↓

Notice of time and place of public sale or time after which private sale will be made (this separate notice is not necessary if it was included in notice of intent to sell)

*B-wait 45 days or more following transmittal posting and start of publication

[wait 10 days or more]

↓

SALE

(No creditor's right to recover deficiency and no debtor's right of redemption)

Minimum time between the end of a grace period for receipt of payments and the date of sale: 120 days.

* A and B time lapse is used depending upon which brings one to a later "sale" date.

The date for "sale" shown here is also the last date for curing a default and resuming the regular payment schedule (a "simple" cure). The sale may be held later as a public sale or a "commercially reasonable" private sale, but after the final date for a simple cure, the sale can be stopped only by paying the full principal, interest and costs.

Section Analysis

Following are source notes and brief comments on the sections, where appropriate. In the source notes and comments the Uniform Commercial Code, AS 45.01--45.09, is referred to as the UCC. The Uniform Land Transactions Act is referred to as the ULTA and the Uniform Simplification of Land Transfers Act is referred to as the USLTA. The Revised Code of Washington Annotated is referred to as RCWA.

Section 1

COMMENT: This section states the general purposes of the Act.

Section 2

AS 34.21.010

SOURCE: (a) is from AS 45.09.102; (b) is from AS 45.09.202; (c) is part of the ULTA § 3-103(7) and USLTA § 1-201.

COMMENT: (a) is intended to allow a court to find a transaction subject to this chapter even though there is no documentary evidence of the parties' intent. The Supreme Court of Alaska has made it clear this is our present law. Brand v. First Fed. Sav. and Loan, 478 P.2d 820 (1970); Dept. of Revenue v. Baxter, 486 P.2d 360, 365 (1971).

The material in (c) was included as part of the definition of "security interest" in the referenced uniform acts. The general subject matter of .010 is covered in ULTA § 3-102.

AS 34.21.020

SOURCE: AS 45.09.104(8).

COMMENT: The exclusion in this section is consistent

with the definition of "security interest" as a "consensual" interest.

AS 34.21.030

SOURCE: AS 45.09.112.

COMMENT: This section is designed to protect the real party in interest. Its effect is similar to that of existing law, which requires the trustee to send a notice of sale "where the trustee or beneficiary has actual notice of the lien or interest." AS 34.20.070(c)(3).

AS 34.21.040

SOURCE: This section was taken from ULTA § 3-209 which is based upon § 9-208 of the UCC (AS 45.09.208). Language is added to allow a debtor to request statements from the bank to which he actually makes his payments.

COMMENT: Existing law makes no provision for such a statement, although the common practice is for statements to be sent even though not requested.

Liability is imposed on the person failing to comply with the request only if he lacks a "reasonable excuse."

The bill gives the holder of a subordinate security interest like a second deed of trust the right to get from the trustee or beneficiary on a first deed of trust a statement of account on the obligation secured by the first deed of trust. The duty placed on the secured party or his agent bank to provide information would create an exception to the strict confidentiality of bank records under AS 06.05.175. Section 3 near the end of the bill specifically amends that section.

AS 34.21.050

SOURCE: AS 45.09.311.

COMMENT: This section is verbatim from the UCC. It is to make clear that in all secured real property transactions the debtor has an interest which the debtor can dispose of and which the creditors of the debtor can reach.

The section does not preclude a security agreement provision which makes a transfer a default but merely prevents such a provision from having the effect of prohibiting transfer. The transfer would be subject to the security interest.

AS 34.21.060

SOURCE: AS 45.09.405(c).

COMMENT: Existing law deals with the subject of this section only by providing that recording an assignment of a mortgage is not in itself notice to the debtor of the assignment. AS 34.20.010. In contrast, AS 34.20.130 provides that recording an assignment of the beneficial interest in a deed of trust is "constructive notice to all persons." (When the assignor acts as the assignee's agent to receive payments following the assignment, this section could be ignored.)

AS 34.21.070

SOURCE: The section is based upon AS 45.09.404(a), § 9-404(1) of the UCC.

COMMENT: The section requires the secured party to pay the debtor both a fixed sum of $500 and his actual damages if he fails to provide the statement within 15 days after demand. This is the UCC provision, substantially, except the UCC requires the statement within 10 days and the dollar penalty is $100.

AS 34.21.080

SOURCE: AS 45.09.501(a), with major changes.

COMMENT: The commission saw no reason to restrict the secured party from proceeding with judicial and nonjudicial remedies simultaneously. The section follows generally UCC sec. 9-501(1) which provides that remedies shall be cumulative.

The section is subject to the court's authority to consolidate actions and to require marshaling of assets. As with existing law on nonjudicial foreclosure, AS 34.21.220(d) in the bill provides that there is no right to recover a deficiency after sale in a nonjudicial foreclosure.

AS 34.21.090

SOURCE: RCWA 61.24.030.

COMMENT: The last phrase, "or another person," in subparagraph (1) is intended to insure that deeds of trust continue to be summarily foreclosed.

All of the requirements of this section are also in existing law. AS 34.20.070(a) and (b).

AS 34.21.100

SOURCE: Original drafting.

COMMENT: This section is a guide to the balance of the chapter. It is to make clear that secs. 110 through 150 cover the pre-sale procedures and time elements for power-of-sale foreclosure, and that secs. 160 and 170 only establish the content of the principal notices, i.e., the notice of default and the notice of intent to sell.

AS 34.21.110

SOURCE: RCWA 61.24.030.

COMMENT: This section repeats the present rule that proceedings cannot begin until 30 days after the default.

As under existing law, notice is sent to the debtor. The requirement of service on an occupant is new to Alaska Statutes, but almost certainly required by common law.

AS 34.21.120

SOURCE: RCWA 61.24.040(1)(a).

COMMENT: Existing law requires a notice of default which includes a notice of time and place of sale. The proposed section requires a simple notice of default followed, if necessary, by a formal notice of intent to sell which is recorded. If a sale becomes necessary, sec. 150 requires that an informal notice giving further information as to the sale be provided to interested parties.

AS 34.21.130

SOURCE: (1)(A) is from RCWA 61.24.040(b); (1)(B) is from RCWA 61.24.040(c); (2) is from AS 34.20.070(d); (3) is from RCWA 61.24.030; and (4) is from AS 09.35.140(2). There are changes from the original forms.

COMMENT: The initial notice of default should be relatively inexpensive for the secured party to send out, unlike the currently used notice of default which requires a record search. The more expensive notice of intent to sell goes out only if the debtor fails to cure within 30 days of the first notice. Since the debtor pays costs and attorneys fees when he cures under both present law and the proposed section, this provision should save the debtor considerable money.

Subparagraph (2) continues the present rule requiring that the state be given particular information as to the liens it has on the collateral.

Posting on the collateral of notice of intent to sell is required.

Subparagraph (d)(3) changes the present publishing requirement which is hidden in AS 09.45.180 and 09.35.140(2) from four to three weeks. But the time between the first publication and the sale must be at least 45 days.

AS 34.21.140

SOURCE: Original drafting.

COMMENT: This section includes provision for giving notice of time and place or manner of sale to all those who received the notice of intent to sell and to all those who have asked to be notified.

AS 34.21.150

SOURCE: Original drafting.

COMMENT: The section clarifies intent.

AS 34.21.160

SOURCE: Paraphrased from RCWA 61.24.030(6).

COMMENT: This section requires that when a secured party declares a debtor in default, he fully informs him the basis of the default, what he must do to cure the default and the consequences if he fails to cure it. It requires a clear warning to the debtor that his rights in the collateral will be cut off under sec. 180(g) if he fails to cure within the required time.

AS 34.21.170

SOURCE: RCWA 61.24.040(f), with many changes.

COMMENT: The notice set out in this section corresponds to the existing notice of sale, except that this notice need not contain the time, place, and manner of the sale. When it does not contain this information, the debtor and interested parties will be advised of specifics as to the sale by a later notice. The later notice will also go

out to all other persons who have written to the person designated in the notice expressing an interest and providing a mailing address.

AS 34.21.180

SOURCE: (a) is from RCWA 61.24.090(b)(1); (b) and (c) are paraphrased from AS 34.20.070(b); (d) is original drafting; (e) is from RCWA 61.24.090(b)(2) and (4); (f) is from RCWA 61.24.090(b)(5); (g) and (h) are original drafting.

COMMENT: Subsection (a) essentially restates existing law, except that it explicitly allows cure by persons other than the debtor.

Subsection (b) sets a time limit within which cure must be made. After the expiration of that time period, cure can only be made by tendering the full amount of indebtedness under (d).

Subsection (c) limits to two the number of times the debtor will be permitted to cure after the second step toward foreclosure has been reached. By subsection (c) the debtor is limited in the number of times he can reinstate the security agreement after defaulting and permitting foreclosure to reach the last stage before sale.

Subsection (d) is intended to ameliorate the harshness of (g), which cuts off the debtor's right to cure in order to maximize the purchase price at the foreclosure sale. The debtor may rescue his home at any time before the sale by paying the entire default, including the accelerated amount.

Subsection (e) applies to cures the rule currently applicable to post-sale redemption, which is that a creditor who rescues the debtor acquires a lien for the amount spent on the rescue.

Subsection (f) is designed to provide a clear record for the title searcher. If the secured party's failure to record the required notice after cure causes a debtor to lose a sale, the debtor may sue for damages under sec. 240.

Subsection (g) is a radical departure from existing law, which allows cure until the auctioneer's hammer falls. The proposed section cuts off the debtor's right to a simple cure so that the collateral can be listed and sold. While the proposed section appears on its face to treat the debtor harshly, it is intended to protect his equity from the usual sacrifice sale. No other state has been found which has eliminated the requirement of a public auction.

Subsection (h) assures that any payment made which stops default proceedings will not be a bogus payment.

AS 34.21.190

SOURCE: (a) is from AS 45.09.904; (b) is original drafting; (c) is on the subject of AS 45.09.904(c); (d) is from AS 45.09.904(c); (e) is from AS 45.09.507(b); and (f) is from AS 45.09.507(b).

COMMENT: Subsection (a) provides for sale following expiration of the cure period.

Subsections (d) and (e) incorporate the UCC standard of the commercially reasonable sale. To insure a high purchase price, a commercially unreasonable sale transfers good title to the buyer (see sec. 220). However, an aggrieved debtor may sue the secured party for damages under sec. 240.

The concept of this section is basic to the UCC and basic to this bill.

AS 34.21.200

SOURCE: Original drafting.

COMMENT: Offset bidding at a sale of collateral at public auction is the norm at present, and continues to be provided for in this section.

This bill permits negotiated sales of the collateral as well as sales at public auction. Subsection (a) prohibits the foreclosing secured party from being a purchaser at a sale that he negotiates as seller.

Subsection (b) authorizes a junior lienholder to set off the amount of his lien if he is a purchaser of the collateral and first pays off or secures the release of superior liens.

AS 34.21.210

SOURCE: AS 34.20.080(c) and (d).

COMMENT: This section requires that there be included in, or attached to, the deed issued by the secured party (1) an affidavit of the manner of giving the required notices and (2) an affidavit of publication of the notice of intent to sell. Existing AS 34.10.080(d) calls for recording of these affidavits by the secured party after the sale.

AS 34.21.220

SOURCE: (a) is from AS 34.20.090(a); (b) is from AS 34.20.090(b); (c) is from AS 34.20.090(c); and (d) is from AS 34.20.100.

COMMENT: This section is little changed from existing law.

Subsection (d) restates the present rule which allows nonjudicial foreclosure only where no deficiency judgment is permitted.

AS 34.21.230

SOURCE: (a) is from AS 45.09.504(a); (b) is original drafting; and (c) is from AS 45.09.504(b).

COMMENT: Subsection (a) is taken from the UCC. The priorities among various types of liens and security interests are left by (a)(3) to case law. Although it is not spelled out in the bill, it is intended that the secured party retains a right to file an interpleader action when priorities are in doubt.

AS 34.21.240

SOURCE: AS 45.09.507.

COMMENT: This section allows for an injunction before sale or damages after sale for failure to comply with this chapter.

AS 34.21.250

SOURCE: AS 45.09.201.

COMMENT: This section is taken from the UCC, and is included principally to contrast with AS 34.21.260.

AS 34.21.260

SOURCE: This section is from AS 45.09.501(c), but is more inclusive.

COMMENT: This section protects debtors from being asked to waive various rights guaranteed by this chapter.

AS 34.21.290

SOURCE: (1) is from AS 45.09.105(3); (2) is from AS 45.09.105(4); (3) is from USLTA § 1-201(19); (4) is from AS 45.09.105(8); (5) is from USLTA § 1-201(25) and ULTA § 3-103(7); and (6) is from AS 45.09.105(9).

COMMENT: All definitions are paraphrased from the UCC or the USLTA, as noted. The terms "governmental agency,"

"receiver," and "trustee in bankruptcy" are added in (6) to clarify intent.

Section 3

AS 06.05.175

COMMENT: This subsection is added to meet the possible reluctance of a financial institution to provide information to the holder of a subordinate security interest.

Section 4

AS 09.45.170

COMMENT: This section substitutes the broader term "security interest" for the term "mortgage" in the long-standing section on judicial foreclosure in the Code of Civil Procedure. No change is made in the judicial foreclosure procedure, but it is made clear by statute that the procedure is available broadly for foreclosure of all security interests.

Section 5

Repeal of AS 09.45.200 and AS 34.20.010--34.20.135

COMMENT: AS 09.45.200, here repealed, provides that an action for foreclosure cannot be maintained while an action is pending for the debt. Reference AS 34.21.080 in the bill.

The other sections repealed are the existing law on deeds of trust.

Section 6

COMMENT: This transitional section takes the conservative approach that the law in effect when a security agreement is entered into shall be the law used in enforcing the security agreement. However, since this Act follows more closely the existing law on deeds of trust than it does the existing law on other security agreements, an exception is made as to deeds of trust. The person foreclosing a deed of trust

is given an option to proceed with foreclosure under this Act if he should wish to.

This transitional section will make it necessary that the statutes repealed or amended by this Act be retained in Alaska Statutes volumes for several years after this Act goes into effect.

Section 7

The effective date of the Act should be several months following enactment to allow time for becoming familiar with its terms.

HB

342

MARCH 22, 1984

TO: JOHN

FROM: KEN

RE: HB 342 "RELATING TO FILING AND RECORDING AND TO RECORDABLE DOCUMENTS"

THE MAIN PURPOSE OF HB 342 IS TO CLARIFY EXISTING ALASKA STATUTES ON FILING AND RECORDING AND TO CENTRALIZE THE THE RECORDING PROCESSES WITHIN STATE GOVERNMENT. THE BILL WOULD CREATE A NEW SECTION UNDER TITLE 40 OF THE ALASKA STATUTES ENTITLED RECORDING IN PUBLIC RECORDS, WHICH LAYS OUT IN DETAIL THIS PROPOSED RECORDING SYSTEM.

QUESTIONS:

1. WHY WAS TITLE 40 CHOSEN AS THE SPOT FOR THIS NEW SECTION ON RECORDING ?

2. WHY HAS THE DEPARTMENT OF NATURAL RESOURCES BEEN MANDATED TO PROVIDE THESE SERVICES IN THIS BILL ?

3. WHAT WOULD THE INITIAL EXPENSE BE TO IMPLEMENT THIS PROGRAM ?

4. DID THE ALASKA CODE REVISION COMMISSION WORK WITH THE DEPARTMENT OF NATURAL RESOURCES IN WRITING THIS BILL ?

5. IS THERE A PROJECTED COST SAVINGS FOR THE STATE AS A RESULT OF THIS BECOMING LAW ?

6. HOW MANY NEW POSITIONS WOULD BE CREATED BY THIS LEGISLATION ?

7. WHAT IS THE ANTICIPATED PAY LEVEL FOR THOSE PEOPLE ? WHAT WOULD BE THE JOB REQUIREMENTS FOR THESE POSITIONS ?

8. HOW DID THE ALASKA CODE REVISION COMMISSION COME TO DECIDE TO UNDERTAKE THIS PROJECT ? WHAT WAS THE IMPETUS FOR THIS BILL ?

9. WHAT ARE THE FEELINGS OF THE DEPARTMENT OF NATURAL RESOURCES ON THIS BILL ? DOES THE DEPARTMENT FEEL IT NECESSARY ?

10. UNDER CURRENT STATUTES, RECORDING COMES UNDER TITLE 34. WHY MOVE IT TO CHAPTER 40 ?

ALASKA CODE REVISION COMMISSION

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

MEMORANDUM

TO: Representative John Cowdery, Chairman
House Labor and Commerce Committee

FROM: Dick Regan, Research Director
Alaska Code Revision Commission

DATE: March 22, 1984

RE: HB 342 on Recording

I pencil this memorandum late at night and will have little chance to review it with representatives of the Department of Natural Resources before the scheduled hearing at 8:15 a.m. in the morning.

However, I believe the attached amendments may satisfy questions asked by DNR about HB 342. They are my effort to reach an accord in the hope that the bill can move out of the Labor and Commerce Committee.

The two definitions drafted for insertion on page 23 I affirmatively support.

The balance of the drafted amendments I do not affirmatively support but propose for form. I believe that adopting them would constitute a reasonable compromise and would not seriously conflict with the code revision commission's concepts as expressed in the bill.

A great effort has been made to satisfy all parties on this bill. I hope the appropriate representatives of DNR will join me in offering the attached amendments as a reasonable compromise of the few minor questions DNR has raised about the bill in its present form.

DR:chw

#5

A M E N D M E N T

Offered in the HOUSE By:

TO: HB 342

Page 10, lines 8 and 9:

Delete all material and insert:

"that is in the custody of the department or the United States Bureau of Land Management but has not been recorded in the records of a recording district, or that has been recorded in a public recorder's office in another state, may be".

Page 10, following line 13:

Insert "(c) When a certified copy is recorded under this section, it must be accompanied by an affidavit explaining why the original conveyance cannot be recorded instead of the copy."

Page 11, following line 7:

Delete "A signature," and insert "An".

Page 23, following line 11:

Insert "(3) 'conformed copy' means an exact image of a document or a true copy of a document on which has been written an explanation of things that could not be copied exactly, such as "/s/" followed by a printed copy of a signature;". Renumber the following paragraphs accordingly.

Page 23, following line 19:

Insert "(7) 'file' means deposit into custody;". Renumber the following paragraphs accordingly.

Page 28, line 3:

Delete "January 1, 1984" and insert "January 1, 1986".

Amendments offered by Ted Farquhar D.N.R. #6 HB 342

neither presumption applies.

Sec. 40.17.100. RECORDING A RECONVEYANCE. When the parties to a recorded conveyance absolute in its terms intend it to serve only as security for repayment of a debt, the conveyance is absolute as to all persons who rely upon it in good faith and for value before a reconveyance is recorded.

Sec. 40.17.110. CLASSES OF DOCUMENTS ELIGIBLE FOR RECORDING. (a) A signed document listed in (b) of this section or included under (c) of this section that meets the requisites for recording under AS 40.17.030 may be recorded as a class A document. The recorder may not record as a class B document a document that would be a class A document except for a technical defect in the document. A document that meets the requisites for recording under AS 40.17.030 and that is not a conveyance or a defective class A document, is a class B document the recording of which is permitted for the safekeeping of a record copy of the document. The effect on title and rights of recording class A and class B documents is set out in AS 40.17.080.

(b) The recorder [~~may~~ shall] record as a class A document only

(1) a conveyance acknowledged or proven under AS 34.15.-150 - 34.15.250 or a certified copy of the conveyance if recording the copy is permitted by AS 40.17.020;

(2) an acknowledged or proven power of attorney or other instrument granting or revoking a power to act as agent or attorney for another person;

(3) a contract for the sale or purchase of real property when acknowledged or proven by all parties to the contract;

(4) an option for the purchase of real property when it is acknowledged by the person granting the option;

(5) a certificate of a public official or an affidavit of

any person that may affect the title to or any interest in real property in the state that is described in the certificate or affidavit, stating facts relating to age, sex, birth, death, capacity, relationship, family history, heirship, names, identity of parties, marital status, possession or adverse possession, adverse use, residence, service in the armed forces, conflicts and ambiguities in description of land in recorded instruments, and the happening of any condition or event that may terminate an estate or interest; a certificate or affidavit recorded under this section must contain the recording information of a recorded document referred to in it;

(6) an instrument by which a real property security agreement is subordinated or waived as to priority;

(7) a document creating a condition, covenant, restriction, or reservation relating to rights in real property;

(8) an assignment of all or part of a security interest in real property;

(9) a release of lien or security interest in real property;

(10) a conformed copy of a ~~document~~ lease, contract, or option to purchase real property that is otherwise recordable as a class A document under this section, when the person offering the document attaches to it an affidavit that

(A) the conformed copy was received by the person in the course of the transaction;

(B) the original is not in the person's possession; and

(C) the instrument offered for recordation is a conformed copy;

(11) a conveyance from the United States of an interest in real property in the state;

executed by the same parties who executed the original document; or and

(57) a master form that can be incorporated by reference in documents later recorded.

(c) A document specifically permitted or required to be recorded by another law of the state or made recordable as a class A document by regulation of the department may be recorded as a class A document.

Sec. 40.17.120. RECORDING MEMORANDUM OF LEASE. (a) Recording a memorandum of lease substantially complying with (b) of this section has the same effect as recording the lease.

(b) A memorandum of lease is a document signed by the lessor and lessee and containing a reference to an unrecorded lease, sublease, or agreement to lease or sublease, and supplying at least the following information:

(1) the names of the parties;

(2) any addresses of the parties set out in the lease;

(3) the date of the lease;

(4) a description of the real property leased or subleased;

(5) the commencement and termination dates of the lease if fixed and, if not fixed, the method by which the dates are to be fixed; and

(6) a statement of the conditions upon which a party may exercise a right to extend or renew the lease or to exercise a right to purchase or refuse to purchase the real property or part of it.

Sec. 40.17.130. ACTIONS AGAINST RECORDER AND STATE. (a) If the recorder fails to record and index a document properly, the recorder may be compelled to record and index the document properly by an action filed in the superior court.

(b) The state is liable to a person injured by the failure of the recorder to perform duties under this chapter. Neither the

Offrd by Dept of Nat. Resource #2 CSS

neither presumption applies.

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any person that may affect the title to or any interest in real property in the state that is described in the certificate or affidavit, stating facts relating to age, sex, birth, death, capacity, relationship, family history, heirship, names, identity of parties, marital status, possession or adverse possession, adverse use, residence, service in the armed forces, conflicts and ambiguities in description of land in recorded instruments, and the happening of any condition or event that may terminate an estate or interest; a certificate or affidavit recorded under this section must contain the recording information of a recorded document referred to in it;

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STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2/15/84

REQUEST
Bill/Resolution No.: SB 245 HB 342
Title: Recording Bill

Sponsor: Legislative Council
Requestor: Code Revision Committee
Date of Request: 4/8/83

FISCAL DETAIL
Agency Affected: Dept. of Natural Resources
Program Category Affected: Management and Administration
BRU, Program or Subprogram(s) Affected: Information/Records Management
Recorders Office

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	-0-	-0-	26.0	27.3	28.6	30.1
200 TRAVEL	-0-	-0-	5.0	3.0	3.0	3.0
300 CONTRACTUAL	-0-	150.0	25.0	-0-	-0-	-0-
400 SUPPLIES	-0-	-0-	8.0	8.0	8.0	8.0
500 EQUIPMENT	-0-	-0-	5.0	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
800 MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	150.0	69.0	38.3	39.6	41.1
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	150.0	69.0	38.3	39.6	41.1
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	1	1	1	1
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Based on 5000 class B documents (2% of total documents now being recorded) being recorded during first year of operation at already established fees $50.0 additional income would be generated which would certainly increase in future years as public becomes aware of program.

ANALYSIS: Attach a separate page for analysis

Prepared By: Warner T. May W.T.M. JCB Phone: 786-2296
Division: Technical Services Date: 2/15/84

Approved by Commissioner: Norman D Arnell, Deputy Date:
Agency:

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

SB 245 and HB 342, FISCAL ANALYSIS

Assumptions

1. As stated in the memo from the Code Revision Commission, dated February 22, 1983 and Journal Supplement #10, dated April 8, 1983, the general purpose of the bill is to gather and clarify provisions on recording that are scattered throughout the Alaska Statutes, and lays a suitable framework for future use of technological advances in a centralized recording system. It also establishes two classes of documents, Class A for constructive notice recording and Class B for other documents for safekeeping.

2. Based on a feasibility report, the current recording system, which is computerized in a batch mode system, does not allow for anticipated growth in the workload. The current computerized recording system is in desperate need of having its program rewritten to correct current problems.

3. A new computer program, whether written for the current recording system or the new recording system, would be approximately the same cost and would provide cost savings to the State by reducing data entry, processing, systems maintenance, manhour and paper costs.

4. A new system must have a centrally located data base with on-line access from the three copy centers in Anchorage, Fairbanks, and Juneau.

5. In the forseeable future, the outlying offices will not have this capability due to their remote locations and will continue with the current manual procedures to send the manually written data to one of the three copy centers for entry into the system.

6. The three copy centers will have in-house printers for hard-copy printout, which is required daily. This will eliminate the manual system presently used which, based on manhours, is quite time consuming and costly. These hard-copy printouts are needed and used by title companies, lending institutions, numerous agencies and the public for up-to-date filing and recording information.

7. All assumptions are based on the passage of the bill in FY 84 with an effective date one-and-a-half years after passage of the bill on January 1st. If the bill was passed in FY 84, the effective date of the bill will be January 1, 1986. This would allow funding for implementation to be spread over three fiscal years. Additionally, it would allow timely and quality implementation of the new recording system. Mandated and proper design of separate computer programs for Class A and Class B documents, writing of comprehensive regulations and procedural manuals followed by training of all personnel and users is time consuming.

8. A revised schedule of fees for the department now being considered will generate additional income of $600.0 per year for the Recorder's Office. This does not include fees for Class B documents as none are now recorded. Assuming that 5000 Class B documents, which is only 2% of the total documents now recorded, will be recorded in the first year of operation an additional $50.0 in fees would be generated. As the public becomes familiar with the program, the number of documents recorded will most certainly increase resulting in additional fee income. Over the years the increase in existing fees and fees for Class B documents will offset initial costs of the system.

9. All information presently available in the existing system also must be made available in the new system and data conversion costs as distinct from design costs must be separately considered.

Relationship to FY 85 Budget Presentations and Further Assumptions

1. The Recorder's Office workload has increased approximately 13% per year and is seriously backlogged in most offices. The Governor's FY 85 budget submission requests an increase in operating funds of $494.0 with ten positions statewide. Not included in this figure is a $50.0 one-time cost for writing of comprehensive regulations. On the capital side, with a department priority ranking of 7 out of 13, $350.0 has been requested for study, design, update and expansion of existing or a new computer system whichever is cost effective. Data conversion dollars are not included.

2. Analysis of SB 245 and HB 342 in relationship to FY 85 budget submissions, which appear to be reasonable for approval, indicate there are several areas where the bills will additionally impact the department.

A.	One Time Costs:	
a)	Computer program for Class B documents	$ 50.0
b)	Data conversion, regulation and procedural manual writing, training, reproduction, advertising and associated travel costs	127.0
c)	Equipment costs	5.0
	Total	$ 182.0
	($150.0 FY 85 - $32.0 FY 86)	
B.	Continuing Costs Starting FY 86:	
a)	One permanent full-time position to handle Class B document recording	$ 26.0
b)	Miscellaneous additional supplies	8.0
c)	Travel costs	3.0
	Total	$ 37.0

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

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5. In the forseeable future, the outlying offices will not have this capability due to their remote locations and will continue with the current manual procedures to send the manually written data to one of the three copy centers for entry into the system.

6. The three copy centers will have in-house printers for hard-copy printout, which is required daily. This will eliminate the manual system presently used which, based on manhours, is quite time consuming and costly. These hard-copy printouts are needed and used by title companies, lending institutions, numerous agencies and the public for up-to-date filing and recording information.

7. All assumptions are based on the passage of the bill in FY 84 with an effective date one-and-a-half years after passage of the bill on January 1st. If the bill was passed in FY 84, the effective date of the bill will be January 1, 1986. This would allow funding for implementation to be spread over three fiscal years. Additionally, it would allow timely and quality implementation of the new recording system. Mandated and proper design of separate computer programs for Class A and Class B documents, writing of comprehensive regulations and procedural manuals followed by training of all personnel and users is time consuming.

8. A revised schedule of fees for the department now being considered will generate additional income of $600.0 per year for the Recorder's Office. This does not include fees for Class B documents as none are now recorded. Assuming that 5000 Class B documents, which is only 2% of the total documents now recorded, will be recorded in the first year of operation an additional $50.0 in fees would be generated. As the public becomes familiar with the program, the number of documents recorded will most certainly increase resulting in additional fee income. Over the years the increase in existing fees and fees for Class B documents will offset initial costs of the system.

9. All information presently available in the existing system also must be made available in the new system and data conversion costs as distinct from design costs must be separately considered.

Relationship to FY 85 Budget Presentations and Further Assumptions

1. The Recorder's Office workload has increased approximately 13% per year and is seriously backlogged in most offices. The Governor's FY 85 budget submission requests an increase in operating funds of $494.0 with ten positions statewide. Not included in this figure is a $50.0 one-time cost for writing of comprehensive regulations. On the capital side, with a department priority ranking of 7 out of 13, $350.0 has been requested for study, design, update and expansion of existing or a new computer system whichever is cost effective. Data conversion dollars are not included.

2. Analysis of SB 245 and HB 342 in relationship to FY 85 budget submissions, which appear to be reasonable for approval, indicate there are several areas where the bills will additionally impact the department.

A. One Time Costs:

a)	Computer program for Class B documents	$ 50.0
b)	Data conversion, regulation and procedural manual writing, training, reproduction, advertising and associated travel costs	127.0
c)	Equipment costs	5.0
	Total	$ 182.0

($150.0 FY 85 - $32.0 FY 86)

B. Continuing Costs Starting FY 86:

a)	One permanent full-time position to handle Class B document recording	$ 26.0
b)	Miscellaneous additional supplies	8.0
c)	Travel costs	3.0
	Total	$ 37.0

neither presumption applies.

Sec. 40.17.100. RECORDING A RECONVEYANCE. When the parties to a recorded conveyance absolute in its terms intend it to serve only as security for repayment of a debt, the conveyance is absolute as to all persons who rely upon it in good faith and for value before a reconveyance is recorded.

Sec. 40.17.110. CLASSES OF DOCUMENTS ELIGIBLE FOR RECORDING. (a) A signed document listed in (b) of this section or included under (c) of this section that meets the requisites for recording under AS 40.17.030 may be recorded as a class A document. The recorder may not record as a class B document a document that would be a class A document except for a technical defect in the document. A document that meets the requisites for recording under AS 40.17.030 and that is not a conveyance or a defective class A document, is a class B document the recording of which is permitted for the safekeeping of a record copy of the document. The effect on title and rights of recording class A and class B documents is set out in AS 40.17.080.

(b) The recorder [~~may~~ shall] record as a class A document only

(1) a conveyance acknowledged or proven under AS 34.15.150 - 34.15.250 or a certified copy of the conveyance if recording the copy is permitted by AS 40.17.020;

(2) an acknowledged or proven power of attorney or other instrument granting or revoking a power to act as agent or attorney for another person;

(3) a contract for the sale or purchase of real property, when acknowledged or proven by all parties to the contract;

(4) an option for the purchase of real property when it is acknowledged by the person granting the option;

(5) a certificate of a public official or an affidavit of

any person that may affect the title to or any interest in real property in the state that is described in the certificate or affidavit, stating facts relating to age, sex, birth, death, capacity, relationship, family history, heirship, names, identity of parties, marital status, possession or adverse possession, adverse use, residence, service in the armed forces, conflicts and ambiguities in description of land in recorded instruments, and the happening of any condition or event that may terminate an estate or interest; a certificate or affidavit recorded under this section must contain the recording information of a recorded document referred to in it;

(6) an instrument by which a real property security agreement is subordinated or waived as to priority;

(7) a document creating a condition, covenant, restriction, or reservation relating to rights in real property;

(8) an assignment of all or part of a security interest in real property;

(9) a release of lien or security interest in real property;

(10) a conformed copy of a [~~document~~ lease, contract, or option to purchase real property] that is otherwise recordable as a class A document under this section, wher the person offering the document attaches to it an affidavit that

(A) the conformed copy was received by the person in the course of the transaction;

(B) the original is not in the person's possession; and

(C) the instrument offered for recordation is a conformed copy;

(11) a conveyance from the United States of an interest in real property in the state;

executed by the same parties who executed the original document; or

(57) a master form that can be incorporated by reference in documents later recorded.

(c) A document specifically permitted or required to be recorded by another law of the state or made recordable as a class A document by regulation of the department may be recorded as a class A document.

Sec. 40.17.120. RECORDING MEMORANDUM OF LEASE. (a) Recording a memorandum of lease substantially complying with (b) of this section has the same effect as recording the lease.

(b) A memorandum of lease is a document signed by the lessor and lessee and containing a reference to an unrecorded lease, sublease, or agreement to lease or sublease, and supplying at least the following information:

(1) the names of the parties;

(2) any addresses of the parties set out in the lease;

(3) the date of the lease;

(4) a description of the real property leased or subleased;

(5) the commencement and termination dates of the lease if fixed and, if not fixed, the method by which the dates are to be fixed; and

(6) a statement of the conditions upon which a party may exercise a right to extend or renew the lease or to exercise a right to purchase or refuse to purchase the real property or part of it.

Sec. 40.17.130. ACTIONS AGAINST RECORDER AND STATE. (a) If the recorder fails to record and index a document properly, the recorder may be compelled to record and index the document properly by an action filed in the superior court.

(b) The state is liable to a person injured by the failure of the recorder to perform duties under this chapter. Neither the

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ALASKA CODE REVISION COMMISSION

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

MEMORANDUM

TO: Representative John Cowdery, Chairman
House Labor and Commerce Committee

FROM: Dick Regan, Research Director
Alaska Code Revision Commission

DATE: March 22, 1984

RE: HB 342 on Recording

I pencil this memorandum late at night and will have little chance to review it with representatives of the Department of Natural Resources before the scheduled hearing at 8:15 a.m. in the morning.

However, I believe the attached amendments may satisfy questions asked by DNR about HB 342. They are my effort to reach an accord in the hope that the bill can move out of the Labor and Commerce Committee.

The two definitions drafted for insertion on page 23 I affirmatively support.

The balance of the drafted amendments I do not affirmatively support but propose for form. I believe that adopting them would constitute a reasonable compromise and would not seriously conflict with the code revision commission's concepts as expressed in the bill.

A great effort has been made to satisfy all parties on this bill. I hope the appropriate representatives of DNR will join me in offering the attached amendments as a reasonable compromise of the few minor questions DNR has raised about the bill in its present form.

DR:chw

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DR:chw

A M E N D M E N T

Offered in the HOUSE By:

TO: HB 342

Page 10, lines 8 and 9:

Delete all material and insert:

"that is in the custody of the department or the United States Bureau of Land Management but has not been recorded in the records of a recording district, or that has been recorded in a public recorder's office in another state, may be".

Page 10, following line 13:

Insert "(c) When a certified copy is recorded under this section, it must be accompanied by an affidavit explaining why the original conveyance cannot be recorded instead of the copy."

Page 11, following line 7:

Delete "A signature," and insert "An".

Page 23, following line 11:

Insert "(3) 'conformed copy' means an exact image of a document or a true copy of a document on which has been written an explanation of things that could not be copied exactly, such as "/s/" followed by a printed copy of a signature;". Renumber the following paragraphs accordingly.

Page 23, following line 19:

Insert "(7) 'file' means deposit into custody;". Renumber the following paragraphs accordingly.

Page 28, line 3:

Delete "January 1, 1984" and insert "January 1, 1986".

Fa 342

BRIEF HISTORY AND ORGANIZATION OF ALASKA RECORDERS OFFICE

State of Alaska

Dept. of Natural Resources

Division of Technical Services

Prepared By
ROSE E. FARREN,
State Recorder
LINDA PLUMB,
Acting Assistant State Recorder

FEBRUARY 1983

PREFACE

The recordation/filing[1]/ of real property and other documents for the purpose of serving constructive notice to the public has had a long and varied history. It is the purpose of this "Brief History and Organization of Alaska Recorder's Office" to acquaint the reader with how it all started, developed over the years and, to some extent, what it all means. There is no attempt to discuss any legal issues.

Credit for some of the material in this paper is given to a document entitled "Recordation and Recording Procedures in Alaska" prepared in 1966 by E.Z. Rehbock, Legal Assistant for the Alaska Court System.

1/ The words "record" and "file" and sometimes the phrase "file for record" are sometimes erroneously used interchangeably. There is a basic difference in the words and they should not be used interchangeably. A recorded document is one that is copied into the records in some manner and returned to the owner. A filed document is placed on file, becomes the property of the State and is not returned to the original owner. The recorder's office handles both types of documents.

Under the territorial form of government in Alaska, the recordation of conveyances, filing of tax liens and recordation of mining claims and other mining instruments was a duty of the United States Commissioners in their respective precincts. The beginning of recording activities in Alaska can be traced to the establishment of civil government for Alaska in 1884 when the Congress provided that Alaska should be governed by the laws of Oregon. Oregon statutes contained copious provision for the recordation of instruments and the commissioners were charged with the administration of these laws. In 1900 Congress enacted a code of laws based mainly on Oregon law and containing detailed and specific rules for a recording system, which is basically still in force and comports with the principles of recordation as used in the majority of jurisdictions.

The early records of Alaska, as found in the various districts, contained meager information on fee title to real property, although this is one of the important types of information desired. The old records contain mining or quitclaim deeds of property (usually unsurveyed) of which there is no pretense of a legal estate. This condition must not be ascribed to "loss" of old records (although in some precincts it unfortunately happened that they were destroyed by fire), but to the fact that the Congress had for a time long neglected to enact legislation for the acquisition of fee titles in Alaska. Legislation authorizing townsite entry was first enacted in 1891. The homestead laws were extended to Alaska only in 1898. The U.S. Survey system was not extended to Alaska until as late as 1899.

An important statute provides that persons "actually in use or occupation" of lands in Alaska at the beginning of civil government on May 17, 1884 shall not be disturbed therein, but that the acquisition of such land is reserved to future legislation of the Congress. This act was intended as a preliminary to the enactment of future legislation by the Congress for the acquisition of land. It served as a temporary protection.

The functions assigned to recorders in Alaska were augmented in the early 1900's by congressional legislation on mining on the federal public domain and by enactment of territorial laws on mechanic's liens, conditional sales and chattel mortgages. The body of territorial law relating to the filing in the

recorder's office of conditional sales, bulk sales, chattel mortgages and other chattel security became obsolete in 1962 when Alaska adopted the chattel filing provisions of Title 9, UCC.

At the time of transition from the territorial U.S. District Court to the integrated Alaska Court System, there existed a great variety of functions concerned with recording. The difficulty of transition was alleviated because the present boundaries of recording districts are essentially oriented by the boundaries of the former recording precincts, and the commissioners were replaced by magistrates upon whom the recording duties evolved.

Under territorial government, instruments submitted for recordation were originally copied into the record book by longhand. The use of typewriters was established around 1915. A photostatic copying method was introduced in the larger cities, mainly in Anchorage and Fairbanks, around 1950. At that time it was a practice of the territorial U.S. District Court, which had jurisdiction over recording, to enter into reproduction contracts with commercial title insurance companies. The companies furnished the cameras, were responsible for adequate reproductions and furnished a copy of each instrument to the court under the terms of the contract. Since these arrangments were on a local basis, the size of the copies and the quality of the product varied from place to place. At that time the functions of the recorders were regulated by statute, but their activity lacked central supervision. The statute had made some provision for maintenance of books, for indexing, for fees and general duties of recorders.

Pursuant to the Session Laws of Alaska of 1959 and effective in 1960, the Alaska Supreme Court, by Order No. 12, established the recording districts and designated District and Deputy Magistrates to act as Recorders. There are fourteen (14) amendments to Order No. 12 which correct descriptions, change places of record and combine recording districts. The last major changes took place on July 1, 1975. Order No. 12 was revised to combine the geographical boundaries of:

McCarthy and Chitina Recording Districts to be known as the Chitina Recording District.
Hyder and Ketchikan Recording Districts to be known as the Ketchikan Recording District.
Whittier and Anchorage Recording Districts to be known as the Anchorage Recording District.
Fairhaven and Cape Nome Recording Districts to be known as the Cape Nome Recording District.
The Barrow Recording District was established.
The Kotzebue Recording District was established.

The Noatak-Kobuk Recording District was merged with the Fairbanks Recording District in 1969. A portion of the Noatak-Kobuk Recording District/Fairbanks Recording District above the 68°N latitude is now the Barrow Recording District and a portion of the Noatak-Kobuk Recording District/Fairbanks Recording District below the 68°N latitude is now the Kotzebue Recording District.

On August 3, 1971, the court created the position of District (State) Recorder with the responsibility for overseeing the operation of recording throughout the state.

On January 1, 1977, the Recording System was transferred to the Department of Administration, Division of General Services and Supply.

On July 1, 1979, the Recording System was transferred to the Department of Commerce and Economic Development, Division of Banking and Securities.

On July 1, 1980, the Recording System was transferred to the Department of Natural Resources, Division of Technical Services, which agency and division now has the responsibility for operation of the recorder's offices.

With each transfer, the department was given authority to establish regulations for establishing, modifying or discontinuing recording districts.

From 1960 until June 16, 1967, the geographical description for each recording district was the offical description of that recording district. Amendment No. 8 of Order No. 12, dated June 16, 1967 changed that by designating the "Alaska Recording Districts' Portfolio", dated September 1, 1964 as the official maps describing the boundaries of all recording districts. The maps and legal descritions were intended to complement each other, but if there were a discrepancy, the boundary as shown on the offical maps would govern. A full set of these maps, as amended, may be found in Anchorage, Fairbanks and Juneau. Each place of recording for the other areas has sets for the recording districts for which they are the place of record. There is also a large Recording District Map in each office, showing boundaries of all recording districts in relation to one another.

Since the last major changes to recording districts on July 1, 1975, there have been thirty-four (34) recording districts serviced through fourteen (14) different offices. Nine (9) of these offices are staffed and managed by the Department of Natural Resources, Division of Technical Services personnel. The remaining five (5) offices are administered through the Alaska Court System personnel on a part or full time basis.

Due to the great expanse of real estate within the State of Alaska and the infrequency of population centers, the functions and scope of separate recording offices will vary. In some instances the volume of recording is not sufficient to warrant an office and full time employee. In five (5) recording districts (Chitina, Kodiak, Seward, Sitka and Valdez) the situation is handled by employing Court System personnel on a part time basis. In other recording districts the volume is so low that part time employment of court employees is not feasible. These areas are handled by larger recording district offices with maintenance of grantor and grantee indices and paper copies of documents supplied to court offices within those districts. Recording districts administered in this manner include: Aleutian Islands, Bristol Bay, Cordova, Haines, Kuskokwim, Kvichak, Nenana, Petersburg, Skagway and Wrangell. Still other small populus districts are administered and maintained in larger offices with no local offices maintained. These districts include: Barrow, Ft. Gibbon, Iliamna, Kotzebue, Manley Hot Springs, Mt. McKinley, Nulato, Rampart, Seldovia and Talkeetna.

After the initial processes of checking for statuatory compliance, clocking in and indexing, all documents must be forwarded to one of the three (3) copy centers for microfilming of the original documents. After microfilming, all documents are returned to their place of reception for proper dispersal. The copy centers are:

ANCHORAGE for: Aleutian Islands, Anchorage, Bethel, Bristol Bay, Chitina, Cordova, Homer, Iliamna, Kenai, Kodiak, Kuskokwim, Kvichak, Palmer, Seldovia, Seward, Talkeetna and Valdez Recording Districts.

FAIRBANKS for: Barrow, Fairbanks, Ft. Gibbon, Kotzebue, Manley Hot Springs, Mt. McKinley, Nenana, Cape Nome, Nulato and Rampart Recording Districts.

JUNEAU for: Haines, Juneau, Ketchikan, Petersburg, Skagway, Sitka and Wrangell Recording Districts.

Photostatic copying was introduced in the larger cities (Anchorage and Fairbanks) around 1950. In 1971 microfilming techniques were instituted and have been refined to the present day use of microfilm reader/printers and 16 and 35mm microfiche and roll microfilm, cataloged through the use of computerized alphabetic grantor, grantee and real property legal description indices. The Anchorage Recording District was the first district with computerized indices. This was started June 22, 1971. The Palmer Recording District began November 1, 1971. Talkeetna, Fairbanks, Kodiak, Kenai and Cape Nome Recording Districts began January 2, 1972, Juneau Recording District began July 1, 1972, Ketchikan and Sitka Recording Districts began August 1, 1972, Homer Recording District began July 1, 1974, Kvichak, Cordova, Aleutian Islands, Nenana, Rampart, Nulato, Mt. McKinley, Manley Hot Springs, Kuskokwim, Bethel, Chitina, Valdez and Seward Recording Districts began January 2, 1975, Petersburg, Wrangell, Seldovia and Bristol Bay Recording Districts began July 1, 1975, Haines and Skagway Recording Districts began January 2, 1976. There are also computerized indices for Fairhaven Recording District from January 2, 1972 until it was merged with Cape Nome July 1, 1975. There are also computerized indices for McCarthy Recording District from January 2, 1972 until it was merged with the Chitina Recording District July 1, 1975. There are computerized indices for the Hyder Recording District from January 2, 1973

until it was merged with Ketchikan Recording District July 1, 1975. All the computerized information is dispersed to the appropriate offices through the Anchorage Recording District office.

The purpose of the Recorder's Offices has always been to provide a secure, impartial place of record for real property documents. In most cases these records are irreplaceable and yet necessary to maintain a chain of title to all real estate within the State of Alaska. The Recorder's Offices also provide a mechanism by which liens, Deeds of Trust and other encumbrances against specific properties may be brought to the public notice.

Illustrations attached indicate the complexity and type of documents filed or recorded. Statistical data has been supplied for years 1975 through 1932. Also a skeleton organizational chart depicting the present day structure of the fourteen State Recorder's Offices.

XIV. TABLE OF COMMON DOCUMENTS

This is a compiled list of legal documents that are most frequently recorded of record: (Must use Book & Page Numbers)

DOCUMENTS RECORDED IN THE DEED BOOK:	INDEX CODE - D
Warranty Deed	AS 34.15.030
Quitclaim Deed	AS 34.15.040
State Police Deed	
Guardian's, Administrator's or Executor's Deed	AS 34.25.050
Trustee's Deed	AS 34.20.080
Patents	
Clerks Deed	
Bill of Sale (when conveyance of real property and requires a full acknowledgement)	
Tax Deed	AS 34.25.080

DOCUMENTS RECORDED IN THE LIEN BOOK:	INDEX CODE - LI
Notice of Right To Lien	AS 34.35.064
Acknowledgement of Right to Lien	AS 34.35.069
Verified Mechanics or Materialmen Lien	AS 34.35.070
Bond	AS 34.35.072
Extension Notice	AS 34.35.080
Release of Lien	AS 34.35.485
Certified Copy of Judgement or Decree of a Court of This State or the United States	AS 09.30.010
Satisfaction of Judgement	AS 09.30.310
Certificate of Attachment or an Order or Proceeding of Record Discharging attachment	AS 09.40.050
Employees Lien for Failure to Make Payments to a Benefit Fund	AS 23.10.047
Verfied Workmen's Compensation Lien	AS 23.30.165
Timber and Lumber Liens	AS 34.35.230 - 240
Landowner's Lien For Timber	AS 34.35.245
Manufacturing Lien Claim	AS 34.35.305
Packers & Processor's Lien	AS 34.35.320 - 330
Child Support Lien	AS 47.23.230
Watchmen's Lien	AS 34.35.395 - 415

DOCUMENTS RECORDED IN THE MINING BOOK	INDEX CODE - MI
Mining Location	AS 38.05.195 & 27.10.050
Amended Location	AS 38.05.200 & 27.10.070
Mining Lease	AS 38.05.205
Annual Labor	AS 38.05.210 & 27.10.160
Surveys May Qualify as Annual Labor	AS 27.10.230
Notice to Contribute & Affidavits	AS 38.05.220 & 27.10.190
Liens on Mines & Oil Wells	AS 34.35.125 - 165
Lien for Performance of Annual Labor	AS 38.05.230
Prospecting Site Location	AS 38.05.245
Grubstake Contract	AS 27.10.020 & 27.15.010

TAKEN FROM THE MANUAL OF RECORDING PROCEDURE FOR THE ALASKA LAND RECORDING OFFICE DATED JULY 1, 1980

DOCUMENTS RECORDED IN THE MISCELLANEOUS BOOK: INDEX CODE - MS

CONTRACT OR OPTION FOR THE SALE OR PURCHASE OF REAL PROPERTY WHEN ACKNOWLEDGED BY ALL PARTIES	
RESTRICTIONS & COVENANTS ON REAL PROPERTY	
LIS PENDENS (containing description of property) (must contain the case number assigned by the court, no requirement to be notarized)	AS 09.45.790
FINAL ORDER OF CONDEMNATION	AS 09.55.370
DECLARATION OF TAKING	AS 09.55.420
LETTER OF CONSERVATORSHIP & ORDERS TERMINATING CONSERVATORSHIP	AS 13.26.265
CONDOMINIUM DECLARATION & AMENDMENTS	AS 34.07.020 - 07
WATER APPROPRIATION OR CERTIFIED COPY BY COMMISSIONER OF DEPT. OF NATURAL RESOURCES	AS 46.15.160
LEASES, SUB-LEASES, ASSIGNMENTS & TERMINATIONS	
DISCHARGE PAPERS	
UTILITY, SEWER & RIGHT OF WAY EASEMENTS	
ASSIGNMENTS OF RENT & RELEASES THEREOF	
JUDGEMENTS QUIETING TITLE	
DECREES OF DIVORCE	
ATTESTED OR NOTARIZED COPY OF A NOTICE OF NONRESPONSIBILITY	AS 34.35.065
VERIFIED NOTICE OF COMPLETION	AS 34.35.071
PARTY WALL AGREEMENTS	
CERTIFICATE OF REDEMPTION	AS 29.53.320
CERTIFICATE OF SALE	
CONTRACT FOR THE SALE OF TIMER, MINERALS, OR THE LIKE OR A STRUCTURE OR ITS MATERIALS TO BE REMOVED FROM REALTY IS A CONTRACT FOR THE SALE OF GOODS. EFFECTIVE AS A TRANSFER OF AN INTEREST IN LAND.	AS 45.02.107
OIL & GAS LEASES & ASSIGNMENTS	
EARNEST MONEY RECEIPT (acceptable only if signature of seller and buyer is acknowledged)	

TAKEN FROM THE MANUAL OF RECORDING PROCEDURE FOR THE ALASKA LAND RECORDING OFFICE DATED JULY 1, 1980

DOCUMENTS RECORDED IN THE MORTGAGE BOOK:	INDEX CODE - M
REAL MORTGAGE	AS 34.20
RELEASE OF MORTGAGE	AS 34.20
DEED OF TRUST & ASSIGNMENTS	AS 34.20.110
PROMISSORY NOTE (acceptable only if attached to a deed of trust or if separate document original signature must be acknowledged and must contain the legal description of property)	
SUBSTITUTION OF TRUSTEE	AS 34.20.120
ASSIGNMENT OF BENEFICIAL INTEREST	AS 34.20.130
SUBORDINATION OR WAIVER AS TO PRIORITY	AS 34.20.130
NOTICE LIMITING FUTURE ADVANCES	AS 06.30.560
NOTICE OF DEFAULT	AS 34.20.070
AFFIDAVIT OF PUBLICATION OF NOTICE OF SALE	AS 34.20.080
AFFIDAVIT OF MAILING THE NOTICE OF DEFAULT	AS 34.20.080
DEED OF RECONVEYANCE	

DOCUMENTS RECORDED IN THE POWER OF ATTORNEY BOOK:	INDEX CODE - PA
POWER OF ATTORNEY & REVOCATION THEREOF	AS 34.15.320 - 330

TAKEN FROM THE MANUAL OF RECORDING PROCEDURE FOR THE ALASKA LAND RECORDING OFFICE DATED JULY 1, 1980