

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 80/2

2573 HLC • HB 342 - 343 • 2573

This is a compiled list of legal documents that are most frequently filed of record: (No Book & Page Number is used)

DOCUMENTS FILED:

BULK SALE TRANSFER	AS 45.05.516	INDEX CODE - BS
COPY OF RECORD OF MEETING OF CEMETARY ASSOCIATION	AS 10.30.020	INDEX CODE - CM
FINANCING STATEMENTS, SECURITY AGREEMENTS - U.C.C. Amendments & Continuations	AS 45.05.768	INDEX CODE - FS
ASSIGNMENTS OF F. S.	AS 45.05.776	INDEX CODE - FS
TERMINATION STATEMENTS & PARTIAL RELEASES - U.C.C.	AS 45.05.774	INDEX CODE - TS
COOPERATIVE CONTRACTS & TERMINATIONS	AS 10.15.230 - 255	INDEX CODE - FS
LIST OF TERMINATED CONTRACTS	AS 10.15.260	INDEX CODE - FS
PLATS	AS 40.15.010	INDEX CODE - PL
PLAT WAIVERS	AS 29.33.170	INDEX CODE - PL
CONDOMINIUM SURVEYS	AS 34.07.030	INDEX CODE - PL
BOUNDARY SURVEYS		INDEX CODE - PL
LIMITED PARTNERSHIP	AS 32.10.010	INDEX CODE - PR
MISCELLANEOUS LIENS		INDEX CODE - FL
LIEN NOTICE ON CHATELS	AS 34.35.175 - 190	
HOSPITAL & NURSES LIEN	AS 34.35.450 - 480	
VERIFIED WAGE LIEN	AS 34.35.440	
TAX LIENS & RELEASES		INDEX CODE - TL
STATE TAX LIEN	AS 43.20.240	
FEDERAL TAX LIEN	AS 43.10.090 - 150	
EMPLOYMENT SECURITY CONTRIBUTION	AS 23.20.200	
REAL PROPERTY OWNERSHIPS	AS 34.10.040	INDEX CODE - PO
(Repealed 7/19/78 - Only ones stamped by the Dept. of Natural Resources Filed)		
LOG BRANDS	AS 45.50.250	INDEX CODE - LB
(Amended - Now filed with the Dept. of Natural Resources, Forest Land & Water Management "Forestry").		

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

TOTAL NUMBER OF DOCUMENTS FILED AND/OR RECORDED
COMPARATIVE STATISTICAL REPORT
BY RECORDING DISTRICTS
FOR CALENDAR YEARS

DISTRICT	1975	1976	1977	1978	1979	1980	1981	1982	1983	% Increase (Decrease)	
										Over Previous Year	Since 1975
ANCHORAGE*	56669	62218	72702	77619	68812	61602	82011	86793	111651	29	97
Aleutian Is.	213	213	283	323	321	725	1006	815	1127	38	429
Bristol Bay	473	533	472	499	855	576	701	720	704	(2)	49
Cordova	741	733	793	820	718	810	1765	1276	900	(30)	22
Iliamna	99	148	296	261	155	151	268	540	348	(36)	252
Kuskokwim	131	141	199	287	659	1268	1697	743	789	6	502
Kvichak	187	188	176	250	301	271	285	374	418	12	124
TOTAL	58513	64174	74921	80059	71821	65403	87733	91261	115937	27	98
BETHEL	669	737	993	1427	972	905	1362	2155	2030	(6)	203
CHITINA** (Glennallen)	1228	1206	1612	1418	1303	1582	1198	1287	1449	13	18
FAIRBANKS*	23916	25766	29458	31618	26184	28625	34847	32903	40294	23	69
Barrow	351	2425	7607	3360	661	1251	2510	1071	1436	34	309
Ft. Gibbon	46	38	654	174	329	217	981	66	181	174	294
Kotzebue	2073	1618	854	1988	1990	2149	3501	817	1228	50	(41)
Manley Hot Sp.	75	89	111	315	656	942	592	333	323	(3)	331
Mt. McKinley	141	205	268	452	362	748	1967	1160	1889	63	1240
Nenana	1751	1414	1198	1252	935	831	1163	941	1041	11	(41)
Nulato	60	408	309	194	553	1011	619	1273	1843	45	2972
Rampart	25	41	58	67	112	58	174	84	69	(18)	176
TOTAL	28438	32004	40517	39420	31782	35832	46374	38648	48304	25	70
HOMER	2916	3578	5201	5628	5306	4634	5328	5313	7236	36	148
Seldovia		245	232	285	609	433	498	321	479	49	96
TOTAL	2916	3823	5433	5913	5915	5067	5826	5634	7715	37	165

DISTRICT	1975	1976	1977	1978	1979	1980	1981	1982	1983	% Increase/(Decrease)	
										Previous Year	Since 1975
KENAI	7042	7959	11009	12364	11067	9367	10803	12020	17291	44	146
KETCHIKAN	4491	5963	5886	5495	5286	4448	5681	5306	6985	32	56
Petersonburg	1209	814	1148	2439	951	1308	1320	1155	1534	33	27
Wrangell	523	607	720	1484	531	336	439	577	725	26	36
TOTAL	6223	7384	7754	9418	6768	6092	7440	7038	9244	31	49
JUNEAU*	4772	6083	7460	9336	7801	8483	10638	10634	15184	43	218
Haines	448	485	496	595	497	506	650	678	1020	50	128
Skagway	288	334	345	249	225	168	211	222	161	(28)	(44)
TOTAL	5508	6902	8301	10180	8523	9157	11499	11534	16365	42	197
KODIAK**	2149	2481	2653	2580	2693	2415	3116	3124	4126	32	118
NOME	1681	2768	2021	6978	3479	3514	3071	2843	2986	5	78
PALMER	12034	14573	17678	19189	18180	14409	19186	23410	33708	44	180
Talkeetna	2009	3448	2412	2269	3105	4105	3746	3348	3744	12	86
TOTAL	14043	18021	20090	21458	21285	18514	22932	26758	37452	40	167
SEWARD**	1378	1359	1690	1864	1717	1430	2695	2491	3221	29	134
SITKA	1501	1896	2377	2956	2283	2221	2916	2505	2985	19	99
VALDEZ**	1633	1207	1363	1488	2104	1808	1731	1725	1795	4	10
Combined Statistics	132922	151921	180734	197523	171726	163307	208696	209023	270900	30	104

NOTES

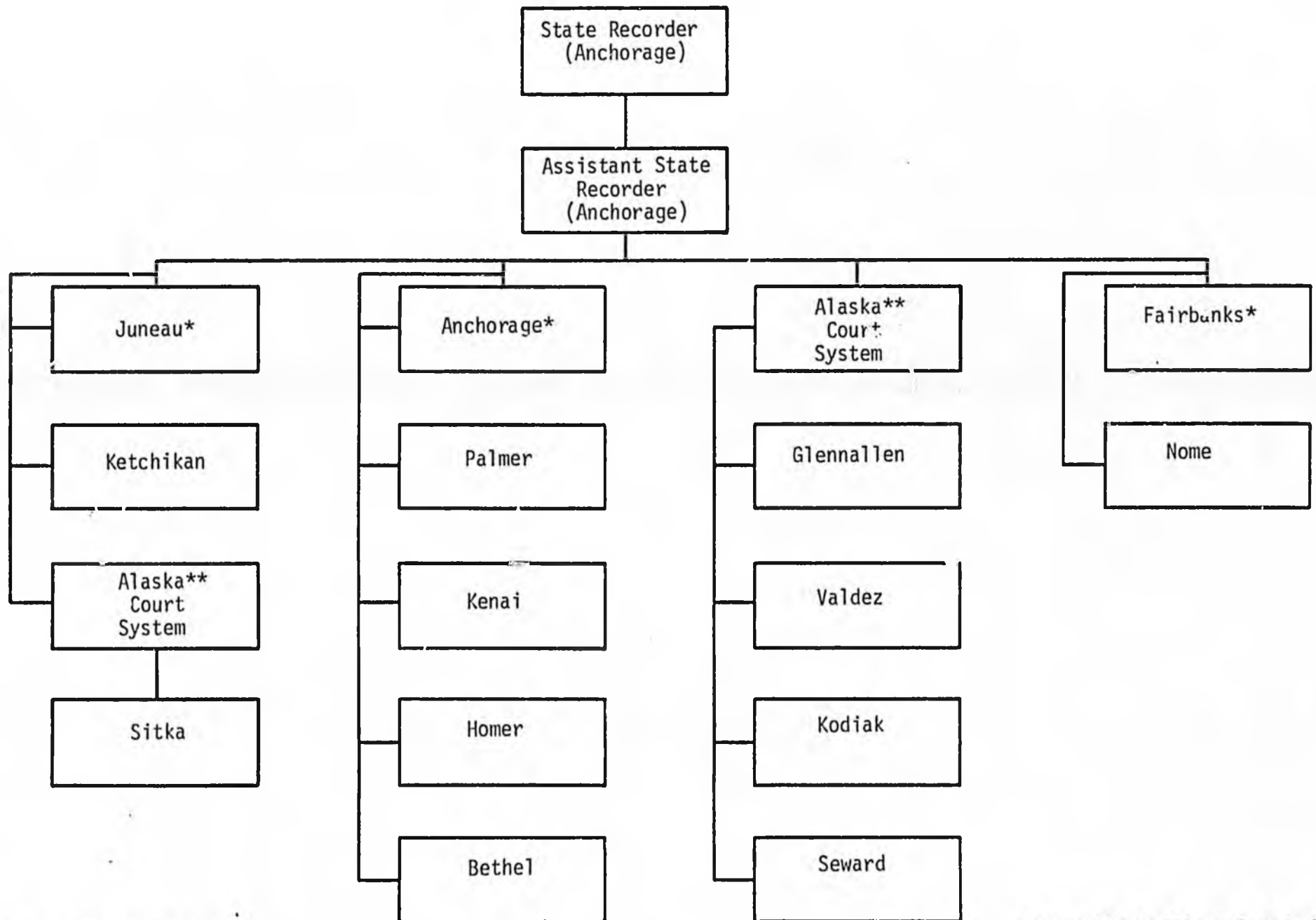
*Copy Center

These offices not only serve as the place of recording for the districts named but also serve as copy centers for a designated number of smaller offices which do not have adequate copy, micrographic and reproduction capabilities.

**Court Offices

These recording Offices are located within the Court facilities and are staffed by part-time or full-time court employees.

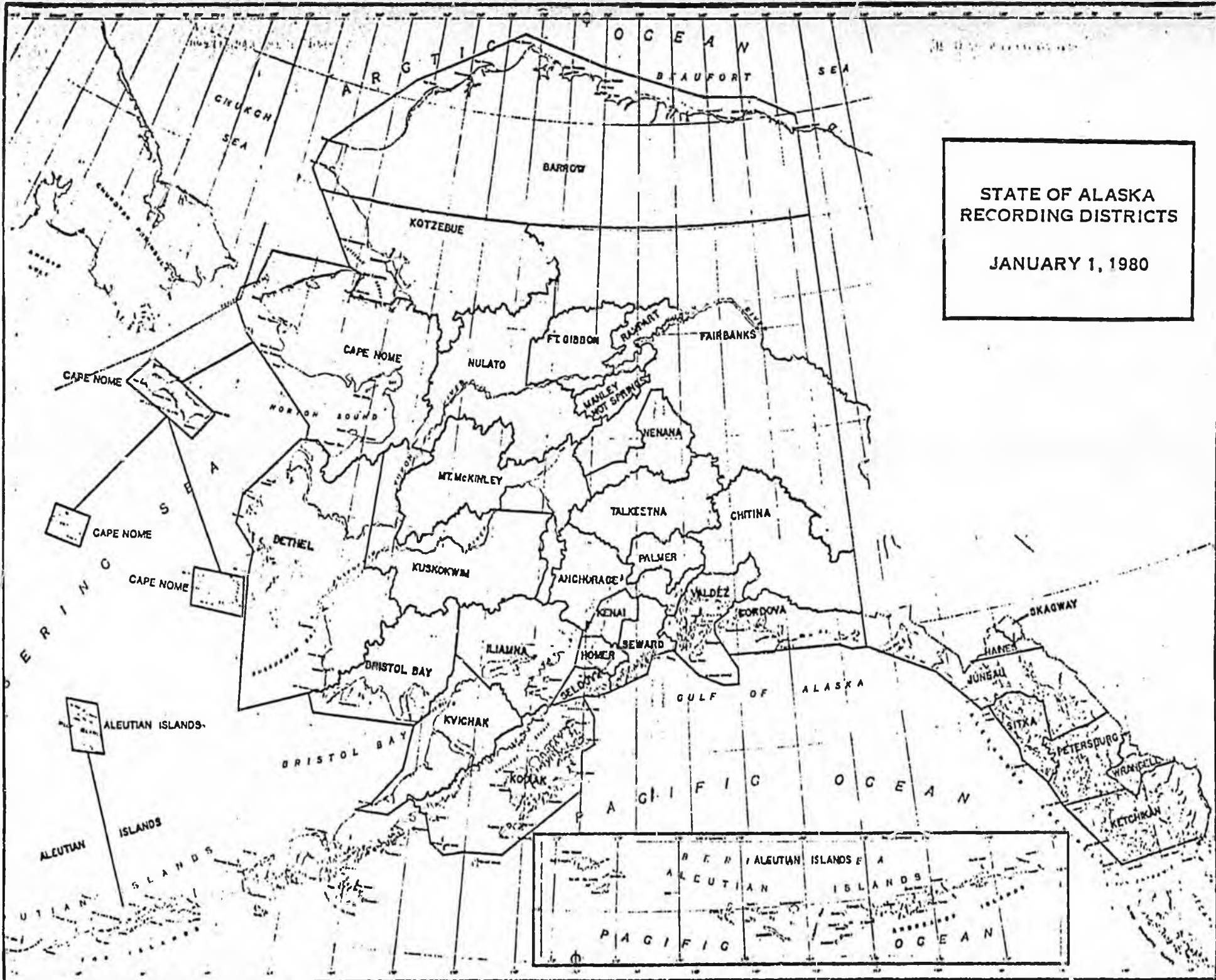
Chart Showing Structure and Physical Location of Alaska State Recorder's Offices (1983). For Names of Geographical Areas Services by Each Office Refer to Statistical Chart Attached



*Serves as copy center for offices shown below.

**Recording offices located within Court System

STATE OF ALASKA
RECORDING DISTRICTS
JANUARY 1, 1980



January 13, 1984

STATE RECORDER'S OFFICE
TITLE ADMINISTRATION & RECORDS
DIVISION OF TECHNICAL SERVICES
DEPARTMENT OF NATURAL RESOURCES

STATE RECORDER'S OFFICE:

PROGRAM MANAGER: Rose E. Farren

MAJOR PROGRAM: The Recording program is a continuous one and provides constructive notice for real and personal property transactions to the public, which requirement is basic to the American system of land transfer and financial responsibility.

MAJOR

RESPONSIBILITIES: In compliance with statutory requirements, maintain in a timely and accurate manner, making same easily useable, properly indexed and readily available to the public and industry, a reliable set of public records of all transfers of real and personal property interests, financial responsibility connected therewith and related documents so as to constitute constructive notice to all.

ACCOMPLISHMENTS

FY 84:

Based on past statistics, we projected an increase in workload of 13% statewide. This appears to no longer be a viable percentage, as the workload statewide has increased 25% in the first half of FY84 as compared to the first half of FY83. FY83 budget was \$1,563,200.00, FY84 budget was \$1,592,800.00. \$76,000.00 of FY84 budget was appropriated for establishing a new Recording Office in Kotzebue. Target date for opening this office is April 1, 1984.

One employee was added to the Palmer, Talkeetna Recording District office. With the additional employee, this office has brought the indexing (retrieval) system for all recorded or filed real and personal property documents for these two districts, to an acceptable level of one (1) to two (2) days. However, if the workload continues to increase at the rate of 25%, two (2) additional employees will be required to keep the Palmer, Talkeetna office at this level in FY84. Sitka Recording District is now staffed by a Department of Natural Resources employee rather than a Court System employee.

EMPHASIS

PLANNED FOR FY85: Develop and maintain new computer program, to reduce data entry time, processing, system maintenance, manhours and paper cost. Present program is obsolete and expensive to maintain.

Move Fairbanks Recorder's Office from Court System building to larger, more adequate space.

Re-establish normal business hours to the public in Anchorage and Kenai offices. Limit the present 60 day delay in creating indexes for title search function for the Anchorage office to 30 days (acceptable time frame is 1 to 2 days). In various other district offices, this process is presently from 10 to 45 days behind. Limit the present 276 days in returning original recorded documents in the Anchorage office to 120 days (acceptable time frame is 14 to 21 days).

FUTURE PROGRAM
NEEDS:

There are at least 13 statutes that the recording function operates under on a regular basis. Regulations have needed to be developed and implemented for many years. A fireproof vault for the Statewide Recording Records has also been needed for many years. If these records were damaged or destroyed, many would be irreplaceable and would create insoluble legal problems with respect to re-establishing accurate chain of title for the Anchorage and Iliamna Recording Districts.

The uncontrollable increase in workload makes it difficult to adequately fulfill recording responsibilities and maintain an acceptable level of service to the public without a corresponding increase in resources. There has to be a proportional growth in the number of staff positions and improvements in automation capabilities to maintain the public services required by statute.

STATISTICS:

There are 34 Recording Districts Statewide that are processed through 14 recording offices, four of which are maintained by part time Court System employees. In FY84, four new positions were allocated for nine (9) Department of Natural Resources Recording Offices and one was added to bring the Sitka Recording District under the administration of DNR (Sitka was previously staffed by a Court employee). The establishment of a Kotzebue recording District Office, presently processed through the Fairbanks Recording Office, will bring the total number of Recording Offices statewide to 15, staffed by 43 DNR employees and 4 part time Court System employees.

From FY75 through FY83 there were no increases in staffing levels to accommodate for the growth in the real and personal property transaction volume. In CY75 there were 132,922 real and personal property transactions processed through 14 recording offices, in CY83 there were 271,370 real and personal property transactions an increase of 51%. Until November 1983, these were processed by 38 DNR Recording Office employees and 5 part time Court System employees.

STATE RECORDER'S OFFICE 1/

FUNCTION

BENEFITS

1. Record and/or file a multitude of documents and plats 2/ placing them of record so as to constitute constructive notice.

2. Index and cross index and photograph or copy all documents and plats and maintain them in a manner so as to allow public viewing and use and for archival purposes.

3. Supply copies of documents to public, other state agencies and lesser units of government. Furnish certified copies to the court and/or parties to litigation.

4. File and provide searches of documents under the Uniform Commercial Code system involving real and personal property.

1. Provides constructive notice to the public which requirement is basic to the American system of land transfer and financial responsibility.

2. Allows the public, lending institutions and title companies to readily check chain of title, encumbrances and financial responsibility with limited or incomplete information to begin with and be self serving.

3. Allows for greater geographic distribution and use of record data without forcing public to travel great distances and/or request information in writing. Allows municipalities, boroughs and other taxing entities to maintain current tax roles. Certified copies are acceptable as evidence in a court of law.

4. Provides the business and financial community with information that allows them to identify financial responsibility necessary in the conduct of day to day business.

1/ Presently organized with section status within the Division of Technical Services, Department of Natural Resources. Network consists of thirty four (34) recording districts serviced through fourteen (14) different offices. For a brief history and organization of the Alaska Recorder's Office see attached information pamphlet.

2/ For list of documents see appropriate pages in pamphlet attached.



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

Department Natural Resources	Sponsor (Principal) Legislative Council	Bill Number SB-245 & HB-342
Department Position Recommend enactment if proposed changes in this bill analysis incorporated.		
Division Director <i>James R. Anderson</i>	Date 2/22/84	Commissioner's Signature Date

GOVERNOR'S OFFICE USE

Comments:

<input type="checkbox"/> Position Noted	By	Date
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SUMMARY

1. a) Related Bills (Similar or Conflicting) None known	1. b) Other Agencies Affected by Bill DOT/PF and local government
2. a) Organizational Support for Bill It is assumed title, mortgage and banking industry support bill.	2. b) Organizational Opposition to Bill None known

3. Program Effects of Bill

Will gather together and clarify provisions on recording that are now scattered throughout the Alaska Statutes and will lay a suitable framework for future use of technological advances in a centralized recording system. When fully implemented and automated will allow for a more cost effective operation of the Recorder's Office.

4. Fiscal Impact: Non- Fiscal Note Attached

5. Amendments Proposed:

See detail of bill analysis attached.

6. Comments:

See detail of bill analysis attached.

SB 245 and HB 342 Bill Analysis

General Comments:

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 together 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 to be placed of record for safekeeping.
2. Sections 1-19 deal with plats and maps with reference to "filing" and "recording" them. The most common distinction between the two words or processes with reference to the recording process is that a "filed" document becomes the property of the State and is not returned to the original owner. A "recorded" document does not become the property of the State and is returned to the owner. In both instances they are "placed of record" and microfilm copies are available. In the case of plats the original is kept as it is often needed to determine detail not ascertainable on the microfilm copy. Originally they were kept because a plat could not be hand copied into the record book as other types of written documents could be and were. The manner in which they are assigned a retrieval number is different. A recorded document is given a book and page number, i.e., Book 90 Page 225. A filed document such as a plat is given the next sequential number in the series preceded by the last two digits of the year in which filed, i.e. 84-26.

It should be noted that probably because of an inconsistent use of the words "file" and "record" in statutory language other documents have been historically filed and not returned to the owner. Among them are some liens, some lien releases, limited partnership agreements, etc. Like plats, they are numbered within their own series and kept as property of the State. Though not originally done to facilitate retrieval, the system has benefited the retrieval process and is accepted by the industry.

After the consideration of the impacts of Sections 1-19 upon the State Recorder's Office it is the consensus of opinion that there are no objections to Section 1-19 so long as it is clear that filed plats become the property of the State and the legislative history reflects the basic difference between a filed and recorded document. As the new system is implemented all other documents now processed as "filed" and kept will be processed as "recorded" and returned to the owner as provided for in this bill.

Chapter 17 Section by Section Comments

Sec. 40.17.010. Acceptable, no comment.

Sec. 40.17.020(a). Acceptable, no comment.

Sec. 40.17.020(b). We have some concern because what we like to think of as two separate subjects are covered here and we believe a third should be added. The three subjects are 1) accepting a certified copy of a conveyance document recorded or filed in another state, 2) accepting a certified copy of a conveyance document filed or recorded with the United States Bureau of Land Management and 3) the proposed addition, accepting a certified copy of certain conveyance documents originating with and of record with the Department of Natural Resources.

- 1) Comment. This is a desirable feature even to using the broad term "conveyance" as defined in the bill.
- 2) Comment. This is a desirable feature but should be separated from above with more restrictive language than the word "conveyance". It should be limited to Patents, Quitclaim Deeds, Warranty Deeds, Certificates of Allotment, Clearlists, Tentative Approvals and Interim Conveyances. An affidavit should accompany the certified copy for recording with it setting forth the facts as to why the original is not available for recording. The Recorder's Office now reluctantly accepts certified copies of these documents without an affidavit under the weak authority of an informal opinion in letter form issued by a former legal assistant for the Alaska Court System.
- 3) Comment. The Department of Natural Resource's system for maintaining copies and records of conveyances under its land disposal program is much the same as that of the Bureau of Land Management's. There is occasionally a bonafide reason why an individual no longer has in his/her possession the original conveyance document it having been lost or destroyed prior to recording. The Recorder's Office does not now accept certified copies of conveyance documents issued by the Department of Natural Resources. As with conveyances issued by the BLM this provision should use more restrictive language than the word conveyance and be limited to Patents, Warranty Deeds, Quitclaim Deeds and Deeds of Title.

It is suggested that sub-section (b) be amended as follows and sub-section (c) and (d) be added.

(b) A certified copy of a conveyance that is eligible for recording as a class A document under A.S. 40.17.030 and 40.17.110 and that has been recorded or filed in a public recorder's office in another state may be recorded only as a class A document, and only in the records of a recording district where land affected by the conveyance is located. When so recorded, it has the same effect from the time it is recorded as though it were the original land conveyance.

(c) A certified copy of a conveyance restricted to a Patent, Quitclaim Deed, Warranty Deed, Certificate of Allotment, Clearlist, Tentative Approval and Interim Conveyance accompanied by an affidavit stating that the original was not recorded and setting forth the fact as to why the original is not available for recording originally issued by the Bureau of Land Management that is eligible for recording as a class A document under AS 40.17.030 and 40.17.110 and that has been recorded, filed or true copies maintained in offices of the Bureau of Land Management may be recorded only as a class A document, and only in the records of a recording where land affected by the conveyance is located.

When so recorded, it has the same effect from the time it is recorded as though it were the original conveyance. (Note: Though concerned generally with the proposal to accept any copies, the State Recorder agrees to this proposed amendment so long as it is restricted to named documents and accompanied by an affidavit as proposed.)

(d) A certified copy of a conveyance restricted to a Patent, Warranty Deed, Deed of Title and Quitclaim Deed accompanied by an affidavit stating that the original was not recorded and setting forth the facts as to why the original is not available for recording originally issued by the Department of Natural Resources that is eligible for recording as a class A document under AS 40.17.030 and 40.17.110 and that has been recorded, filed or true copies maintained in offices of the Department of Natural Resources may be recorded only as a class A document, and only in the records of a recording district where land affected by the conveyance is located. When so recorded, it has the same effect from the time it is recorded as though it were the original conveyance. (Note: The State Recorder has the same concerns here as noted under (c) above.)

Sec. 40.17.030(a)(b). As it now reads the document shall be accompanied by or include the mailing addresses of all persons named in the document who grant or acquire an interest.... The addresses of persons who grant are not necessary but the addresses of persons who acquire are necessary as lesser units of government use this information to post and keep tax roles and other records current.

We suggest the two words "grant or" on line 1 page 11 be deleted.

Sec. 40.17.030(c). For clarification purposes we suggest the word "only" on line 9 be deleted and the following added to the sentence after the last word i.e., "or by regulation to comply with accepted legal practice."

All other sub-sections acceptable and no comment.

Sec. 40.17.040. Acceptable, no comment.

Sec. 40.17.050. Acceptable, no comment.

Sec. 40.17.060. Acceptable, no comment.

Sec. 40.17.070(d). We have concern with the words "...and a citation of the statute requiring rejection." on lines 3 and 4 page 13. These words place a higher degree of adjudicative responsibility upon the District Recorder's than they now have, however we feel that the process can be adequately covered in regulations.

All other sub-sections acceptable and no comment.

Sec. 40.17.080. Acceptable, no comment.

Sec. 40.17.090. Acceptable, no comment.

Sec. 40.17.100. Acceptable, no comment.

Sec. 40.17.110(10). We have two concerns with (10). There is no definition of "conformed copy" and one or perhaps two are required. See comments under Sec. 40.17.140.

We assume (10) relates to existing Sec. 34.15.340(6) and if it does, it is not definitive enough in that it does not name the documents as named in Sec. 34.15.340(6). They are, lease, contract or option to purchase real property. We object to the fact that (10) as now written includes all documents and feel it should be restricted as Sec. 34.15.340(6) is. Further, wherever used the word "conformed" should be replaced with the word "true". The use of the word conformed in (10) is not consistent with the common definition of the word as it relates to the Recorder's Office. See proposed definition under 40.17.140.

All other sub-sections acceptable and no comment.

Sec. 40.17.120. Acceptable, no comment.

Sec. 40.17.130. Acceptable, no comment.

Sec. 40.17.140(7) to be compatible with the definition of "file", which we will propose be added, the following words should be added to the definition of "record." "After recording a recorded document is returned to the owner or other person so designated."

We suggest the addition of the following definitions to be appropriately arranged in numerical sequence.

(11) "conformed copy" means a true copy of a document upon which the recorder places recording information, usually done at the time the original document is presented for recording or filing. A copy made of a previously recorded document would not need to be conformed as it already contains to the recording information.

(12) "file" means the acceptance of a document for recording otherwise meeting statutory requirements when the document will become the property of the State, such as a plat and is not returned to owner.

Sec. 40.19.010. Acceptable, no comment.

Sec. 40.19.020. Acceptable, no comment.

Sec. 40.19.030. Acceptable, no comment.

Sec. 40.19.040. Acceptable, no comment.

Sec. 40.19.050. Acceptable, no comment.

Sec. 34.15.015. Acceptable, no comment.

Sec. 34.10.041. Acceptable, no comment.

Sec. 43.10.042. Acceptable, no comment.

Sec. 44.37.025. Acceptable, however we agree with the Revisor of Statutes that it should be placed in Title 40.

Sec. 25 of proposed bill. Acceptable, no comment.

Sec. 26 of proposed bill. Acceptable, no comment.

Sec. 27 of proposed bill. For reasons explained in fiscal note the effective date of the Act should be January 1, 1986.

MEMORANDUM

State of Alaska

TO: Bud May
Deputy Director
Division of Technical Services

DATE: March 16, 1984

FILE NO:

TELEPHONE NO:

FROM: Edward G. Barber, Jr. *EB*
Head, Contract Administration

SUBJECT: SB-245 & HB-342 -
Recordation of Certified
Copies of State Title
Conveyances

HB-245 and HB-342 have been reviewed and we certainly agree that the Department must, through some mechanism provide the periodic recording of State Title Conveyances, when the original document has been lost or destroyed.

The mechanism should be extremely strict and only permitted when there are no other alternatives. Such an action should require the signature of a Director.

One might argue that an individual requesting such an action be required to proceed through Action to Quiet Title, but in many situations it is a subsequent "title" holder that initiates such a request. If we permit recordation of certified copies of title conveyances, but only under very strict guidelines, we may prevent legislation that could quite possibly jeopardize the entire recording system.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2/15/84

REQUEST SB 245
Bill/Resolution No.: 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)

OPERATING	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
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						
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REVENUE						
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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.* *gcb* Phone: 786-2296
Division: Technical Services Date: 2/15/84

Approved by Commission: _____ 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 foreseeable 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 seven reclassified and three new 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 8 out of 21, \$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. In addition, another capital project with a department ranking of 15 out of 21 provides for skeleton network terminals.
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	<u>\$ 182.0</u>
		(\$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	<u>\$ 37.0</u>

PROJECT NUMBER:	PROJECT TITLE:	LOCATION:	PROJECT MANAGER:	PHONE:			
5	Recorder's Office	Statewide	Rose Farren	265-4333			
			FY 85 BUDGET YEAR				
	FY 83 ACTUAL	FY 84 AUTHORIZED	SERVICE LEVEL 1	SERVICE LEVEL 2	SERVICE LEVEL 3	SERVICE LEVEL 4	GOVERNOR
01 PERSONAL SERVICES	1,151.5	1,358.6	1,358.6	1,383.5	1,432.7	1,857.7	1,695.0
02 TRAVEL	3.3	9.1	9.1	9.1	9.1	12.2	12.2
03 CONTRACTUAL	371.3	145.0	145.0	145.0	157.5	310.3	245.0
04 SUPPLIES	37.1	47.5	47.5	47.5	48.0	60.0	60.0
05 EQUIPMENT	0	20.0	20.0	20.0	13.1	72.0	62.0
06 LANDS/BUILDINGS							
07 GRANTS, CLAIMS							
08 MISCELLANEOUS							
TOTAL	1,563.2	1,580.2	1,580.2	1,605.1	1,660.4	2312.2	2074.2
1002 FEDERAL RECEIPTS							
1004 GENERAL FUNDS OTHER FUNDS	1,563.2	1,580.2	1,580.2	1,605.1	1,660.4	2312.2	2074.2
15 FULL-TIME	37	42	42	42	45	59	53
16 PART-TIME/SEASONAL		1	1	1		1	
17 NONPERMANENT							

PROJECT NEED, DESCRIPTION, AND EXPLANATION OF MAJOR DIFFERENCES BETWEEN SERVICE LEVELS:

Recorders Office:

The Recording Section has the statutory responsibility of receiving & recording or filing for the public all documents pertaining to real and/or personal property transactions. Copies of these documents & indexes thereto must be maintained permanently. These records provide constructive notice to the public which requirement is basic to the American system of land transfer & financial responsibility. They allow the public, lending institutions & title companies to readily check chain of title, encumbrances & financial responsibility with initially limited or incomplete information. These records provide the business & financial community with information that allows them to identify financial responsibility necessary to conduct day to day business.

AGENCY Department of Natural Resources

PROGRAM Management & Administration

BRU Information/Records Mgmt.

COMPONENT Information/Records Mgmt.

P-2 PROJECT DETAIL	
Project Number	5
Title	Recorder's Office

FY85

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- SL 1 Will allow for 67% of the functions required by statute to be completed and discontinue services provided but not required by statute to the public. Limit business hours to the public to five hours. Limit the return of documents to 136 days, limit the indexing process for title search function used to establish marketable record title to one month.
- SL 2 Will allow for 67% of the functions required by statute to be completed and discontinue services provided but not required by statute to the public. Limit business hours to the public to five hours. Limit the return of documents to 136 days, limit the indexing process for title search function used to establish marketable record title to one month.
- SL 3 Will allow for 72% of the functions required by statute to be completed and continue to not provide services to the public that are needed but not required by statute. Limit business hours to the public to five hours. Limit return of documents to the public to four months, limit the indexing process for title search function used to establish marketable title to one month.
- SL 4 Will allow for the recording function to return to an acceptable level of proficiency and provide the citizens of Alaska with the quality of service they pay for but presently do not receive. This allows for additional office space, and the creation of DNR recording offices out of the four court offices. (All services required by statute and those not required by statute are stated in the statewide District Recorder's office functions statement). Adverse public reaction to the discontinuance of services provided that are not required by statute is documented. Will establish 1 Recorder's Office in Valdez with 2 new positions & 2 microfilm equipment operators positions, 1 for Fairbanks copy Center, 1 for Juneau Copy Center. Establish DNR Recorder's Office in Kodiak with 1 new full-time position & 1/2 time new position. Establish 2 new recording positions for Kenai office to handle Seward Recording District function and the increased workload in Kenai. Establish seven new recording clerk positions in the Anchorage office to re-establish normal business hours and return the recording process to an acceptable standard of performance. The Statewide recording function generates revenue comparable to SL 4 & could be self supporting if placed on program receipts. Will allow the Kenai & Fairbanks Recorder's Office to move from Alaska Court System Buildings & provide additional required office space of 800 square feet for Kenai & 3,000 to 3,500 for Fairbanks Office.

AGENCY Department of Natural Resources

CATEGORY Management & Administration

PROGRAM Information/Records Mgmt.

TITLE Information/Records Mgmt.

FY85

P-2

**ADDITIONAL
EXPLANATION
FORM**

Recorder's Office #1

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12/30/83

00189

STATEWIDE DISTRICT RECORDERS OFFICE FUNCTION:

Services Required by Statute: (At current budget level of \$1,500,000 80% of required statute work will be completed by eliminating all non-statute as identified below):

1. Record and/or file a multitude of documents, placing them of record so as to constitute constructive notice.
2. Index and cross index and photograph or copy all documents and maintain them in manner so as to allow public viewing and use and for archival purposes.
3. Supply copies of documents to public, other state agencies and lessor units of government. Furnish certified copies to the court and/or parties to litigation. (See attached draft memo dated 7/26/83).
4. File and provide searches of documents under the Uniform Commercial Code System involving real and personal property.
5. Prepare monthly reports and furnish copies of Non-Resident Alien Conveyances, Mining documents, Armed Forces report of separation and Change of Ownership documents.
6. Original recorded/filed documents are reviewed, compared to the computer indexes and returned to requestor.
(Quality Control Function).
Benefit: This ensures that all information is accurate and complete before original documents are returned to the requesting party(s).

SERVICES PROVIDED BUT NOT REQUIRED BY STATUTE:

1. Provide copies of all recorded documents, indexes and cross indexes to ten (10) court offices located throughout the state. (See attached Aniak letter dated 6/29/83. - No fee charged - 5% of total workload).

P-2	ADDITIONAL EXPLANATION FORM
Recorder's Office	41

AGENCY	Department of Natural Resources
PROGRAM	Management & Administration
BRU	Information/Records Mgmt.
COMPONENT	Information/Records Mgmt.

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Benefit: This allows for greater geographic distribution and use of record data without forcing public to travel great distances and/or request information in writing. It allows municipalities, boroughs and other taxing entities to maintain current tax roles.

2. Compile copies of the hand written reception and location indexes for private companies who publish financial reports. (Fee charged - 3% of total workload.

Benefit: This information is used by lending institutions, attorneys, builders and numerous other businesses nationwide.

3. Prepare location indexes which describes the real property associated with a particular document. No fee charged - 12% of total workload.

Benefit: These indexes provide the information necessary to obtain name(s) of the owner(s) of record, if only the real property description is known to the interested party(s) searching the records.

4. Assist and instruct the public in gathering information from the public records. No fee charged - 5% of total workload.

Benefit: The general public is less knowledgeable in searching these records than those in the title industry. They must be instructed in the method of retrieving the information required by them.

Listed below are priority projects required to provide a more concise and uniform recording system statewide.

1. Establish ten new positions to handle the forecasted 140,000 documents, at full funding which will include their essential equipment (chair, desk, etc.) and an additional 2,000 square feet of office space. The office space to be contiguous to the existing 5,000 square feet. \$480K Yearly.
2. Develop and implement regulations for the present recording function and to enact new legislation. Statutes are not specific in nature and are confusing to both the constituents and the recording section. \$50K One-Time Cost.
3. Place the recording function on program receipts and allocate additional funds from the general fund to accommodate the free services provided by this section to other state agencies. \$150K Yearly.

AGENCY Department of Natural Resources

PROGRAM Management & Administration

BRU Information/Records Mgmt.

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ADDITIONAL
EXPLANATION
FORM

Recorder's Office

- 4. Create DNR Recorder offices out of the four Court offices, combine offices to decrease the number of one person offices to provide better services to the public. \$240K Yearly.
- 5. Establish three (3) regional Assistant State Recorders positions, reducing cost for administrative travel, better management of remote offices and provide a concise and uniform system. \$100K Yearly.

AGENCY Department of Natural Resources

PROGRAM Management & Administration

BRU Information/Records Mgmt.

COMPONENT Information/Records Mgmt.

FY85

P-2
ADDITIONAL EXPLANATION FORM
 Recorder's Office

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 Revised Date

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MEMORANDUM

State of Alaska

TO: Esther Wunnicke, Commissioner
Department of Natural Resources

DATE: October 28, 1983

FILE NO:

TELEPHONE NO: 274-3528

FROM: Jim Leonard, Manager *JLE*
Anchorage Office of Management and Budget

SUBJECT: Management Review of State
Recorder's Office

Attached are the Executive Summary and Final Report on our review concerning the operation of the State of Alaska Recorder's Office. The review was conducted by Jim Leonard and Phil Weber. Questions should be directed to either myself or Phil at 274-3528.

Attachments

cc: Bob Arnold, Department of Natural Resources
Jim Barnett, Department of Natural Resources
Jim Anderson, Department of Natural Resources
Frank Wheeler, Office of Management and Budget
Lennie Boston, Office of the Governor
✓ Sana Efird, Office of Management and Budget
Glen Price, Legislative Audit

OFFICE OF
MANAGEMENT & BUDGET

OCT 31 1983

BUDGET REVIEW

30700

EXECUTIVE SUMMARY

A Management Analysis of the Operation of the State of Alaska Recorder's Office

161003

Purpose and Scope

From August 29, through September 9, 1983, the Office of Management and Budget conducted a review of the State of Alaska Recorder's Office. The purpose of the review was to:

1. Improve the operational effectiveness of the Recorder's Office.
2. Identify what steps are needed to reduce an excessive workload backlog.

Background

The recording function is a primary activity of government. The Recorder's Office provides a secure place to accurately record real property documents to insure the security and certainty of title.

The Recorder's Office charges recording fees which are returned to the General Fund. In recent years, these receipts have been more than operational costs. However, the Recorder's Office does not have access to these excess receipts as a means to improving operations.

Between 1979 and 1983, the Recorder's Office document processing volume has grown by 24 percent; however, there has not been any proportional growth in the number of staff positions or improvements in automation capabilities. The current automated system cannot be supported.

Findings

1. Workload bottlenecks :

We found two steps in the processing of recorded documents which create substantial workload backlog. Both are labor intensive steps:

Indexing -- this process involves transferring information and preparing it for computer data entry. In various district offices, this process was from 20 to 60 days behind.

Validation -- This process includes comparing computer reports to source documents to insure accuracy. This process was up to five months behind at one office. Because original source documents must be kept for

validation, the public often must forfeit documents for up to five months or have duplicate copies made.

2. Responsiveness :

The Recorder's Office workload is controlled externally by the public demand for recording; however, the ability to manage the workload is controlled internally as a function of the State's operating budget and the authorized staffing levels.

The Office has little, if any, flexibility to respond quickly to the volume of transactions received from the public. Unless action is soon taken to add staff for the backlog described above, the backlog will continue to grow.

3. Storage :

The Recorder's Office archives storage area is not fire proof. If the Anchorage public records were destroyed, there is a high probability that the archives would also be destroyed. This would create insoluble legal problems with respect to re-establishing accurate chain of title for the Anchorage Recording District.

Conclusions

1. Within the current budget and staffing level constraints, all practical steps have been taken to increase the efficiency of indexing and validation.
2. If the State Recorder's Office could use more of the funds generated by recording public documents, the Office could more easily staff for increased levels of activity. The inability to provide an adequate level of service costs the public about \$9 million per year. Under this concept, increased recording fees may be necessary if it is desired that the Recorder's Office contribute a fixed amount of surplus funds to the General Fund.
3. The lack of a fire proof storage area for archival documents presents an unnecessary risk which could have a devastating effect upon the continuity and security of future land title recording activities.

Recommendations

1. Increase the number of full time permanent employees to handle the projected increase in transaction volumes. The estimated cost is \$226,000 per year.
2. Hire part time, temporary employees to reduce the current indexing and validation backlog. The one time estimated cost is \$4,200 to \$13,500.

561195

3. Automate the indexing portion of the document processing workload by using optical scanning equipment or a computer system capable of online data entry or both. The estimated one time cost is \$350,000 plus annual maintenance.
4. Use program receipts to fund the suggested automation and staff increases. This would enable the Recorder's Office to better meet the service level demands imposed by the public.
5. Identify two fire proof locations for archive storage. One would serve as the primary storage for archives. The second location would serve as a backup in the event the first archival site was destroyed.

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MANAGEMENT ANALYSIS OF THE OPERATION OF THE
STATE OF ALASKA RECORDER'S OFFICE

ACTICOU

At the request of the Department of Natural Resources, Division of Technical Services, the Office of Management and Budget conducted a management review of the State Recorder's Office from August 29 through September 9, 1983.

The purpose of the review was to determine what actions are needed to improve overall operations of the office and to reduce the workload backlog, dating up to five months. The methodology used to conduct the review involved:

- a. reviewing Alaska Statutes regarding Recorder's Office duties;
- b. reviewing history and functions;
- c. observing operations in the offices at Anchorage, Kenai and Palmer;
- d. interviewing title companies and Recorder's Office employees.

BACKGROUND

The Recorder's Office has been affiliated with many State entities. First with the Alaska Court System until transfer to the Department of Administration in January 1977. It next came under the control of the Department of Commerce and Economic Development in July, 1979. In July, 1980 it was finally transferred to the Department of Natural Resources.

The transfers have likely contributed to inadequate support, funding or management attention. These factors could be the causes of the operational problems which currently exist.

In the four year period from 1979 to 1983, there was a 24 percent increase in the number of documents processed by the Recorder's Office. Although the budget for the office increased, there were no increases in staffing levels to account for the growth in transaction volume. The past inadequate staffing has contributed to the backlog, the untimely processing of source documents which belong to the public, and to additional costs for those who are financing land purchases and sales.

There are three areas which require immediate attention.

WORKLOAD BACKLOG

We identified two steps in the document processing cycle which create backlogs. Both of these steps are very labor intensive.

Indexing

The indexing process occurs prior to computer data entry, microfilming and report preparation. This involves transferring information from source documents to data entry forms. This manual transfer of "index information" re-

quires about two minutes per document; however, because of the volume of documents received which require indexing, it may take two staff days to index one day's volume of documents. This condition occurred during our review on September 1, when 550 documents were received.

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Because of processing activities which occur before indexing, the past inadequate staff levels, and the high volume of documents received, a three week processing delay now exists. For example, on September 1, 1983 the Anchorage office was indexing documents received August 10. At the Kenai office, the documents being indexed that day included those received during July.

This delay impacts the availability of current reference materials for the public. For example, title companies refer to unvalidated reports to determine if there are liens on property. As a result, the accuracy of their assessments is in doubt.

Validation

Validation is necessary to insure that reports available to the public are accurate. The process involves the comparison of the source document to the computer report. Because the public needs current information, unvalidated reports are placed in the library for public use. On September 1, 1983 the most current report in the Anchorage office was dated August 9. In Kenai, the last validated report was December 16, 1982.

Original source documents cannot be returned until validation is accomplished. During our review, original documents dating back to April 12, 1983 were not yet mailed.

RESPONSIVENESS

The Recorder's Office has no control over the workload it must handle. The workload is controlled externally by public demand for the recording of documents. In contrast, the ability to handle the workload is controlled internally by operating budget and staffing constraints.

Because of the conflict between internal constraints and external demands, the Recorder's Office cannot quickly react to increased public requirements. As a result, backlogs occur causing degraded service to the public.

The time needed to conduct title searches has increased from 1 to 10 days. This delay creates a financial burden to the general public through increased interest charges on every transfer of real estate involving security interest. Based on the number of mortgages being processed in Anchorage, the increased time needed to conduct title searches costs the public about \$9 million per year. (See Attachment 1)

ARCHIVE STORAGE IS NOT FIRE PROOF

The Anchorage Recorder's Office maintains the State archives which are kept in a room that is not fire proof. The archives provide the only source of information in the event the public records are lost or destroyed. If the

district records in Fairbanks were destroyed, the archives in Anchorage would be used to replace them. However, if the archives and public records in Anchorage were destroyed, there would be no means to replace the Anchorage records and they would be lost forever.

The archive storage room is also used to store original documents until the computer reports are validated and the originals returned to the public. A fire in the archives room could also destroy these very valuable documents.

CONCLUSIONS

--All possible management efforts have been taken to increase the efficiency of processing documents. These efforts include:

- The dual qualification of personnel to insure that personnel are fully utilized;
- reducing the amount of handling of the documents;
- borrowing personnel from other Department of Natural Resource activities and other state agencies on a short-term basis.

--The Recorder's Office cannot quickly respond to increased public demands for service. The ability to provide an increased level of service to the public is constrained by the operating budget and staff levels. Failure to provide increased service to the public creates a backlog of documents waiting to be processed. This causes public records to be out-of-date which increases the time required for title searches. Costs to the public, in Anchorage alone, are about \$9 million per year.

--The lack of a fire proof archive storage area is an unwarranted risk. The loss of archival documents would create untenable legal problems concerning certainty and continuity of title.

RECOMMENDATIONS

Increased Permanent Staff

The Department of Natural Resources should increase the staffing levels in the State Recorder's Office. This increase should include the addition of permanent full time employees to handle projected increases in the workload. The following are our estimates of permanent position requirements.

- Anchorage - 5.0
- Kenai - 1.5
- Palmer - 1.5

It is estimated that personnel, equipment and space rental costs would be about \$226,000 per year.

The total number of new full time positions which are required might be reduced through the consolidation of remote Recorder's Offices which DNR considers not cost efficient. A workload analysis of these offices might lead to the transfer of positions to those recording districts where new positions are needed.

Temporary Staff

Temporary part time employees should be hired to work on eliminating the current backlog. These employees could be obtained from temporary employment agencies, students or handicapped personnel. It is estimated this would cost from \$4,200 to \$13,500.

Automation

The Department of Natural Resources should automate the document recording process as much as possible. Considerations, at a minimum, should include:

- The use of an optical scanner for indexing and validation activities;
- The use of an on-line data entry system; or
- A combination of optical scanner and on-line capabilities.

The advantages of automation are:

- An optical scanner would reduce the time required to enter indexing information by 60-70 percent.
- On-line data entry would be much faster than manually transcribing indexing information.
- On-line entry could automatically compute fees, record book and page data and enter serial number, date and time information.
- Both an optical scanner and on-line system could be tied directly to a computer for data entry purposes. The capabilities of these systems would eliminate much of the manual data entry requirements and improve accuracy.

Development of an automated system should be accomplished using a structured methodology. Department of Natural Resources studies estimates that automation would cost \$350,000.

Administration and Use of Program Receipts

Consider establishing a board of directors to manage the State Recorder's Office. The board could represent a cross section of the state and private functions; to which services are provided. This board could approve or disapprove all actions relating to the operation of the Recorder's Office. Administrative control should remain under the Department of Natural Resources.

The State Recorder's Office should be provided with the capability to use program receipts for staffing and automation requirements. This would allow the office to more quickly react to public demand for increased service levels without the constraints of the normal budget and staff acquisition processes. In FY 1983, the Recorder's office program receipts were \$1.2 million more than the operating budget. This surplus could fund the costs for all previous recommendations. If it is desired to have a fixed amount of surplus receipts deposited to the general fund, then consideration should be given to increasing recording fees.

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Archive Storage

The Department of Natural Resources should take immediate action to obtain a fire proof area for the storage of archive documents. In addition, a second fire proof archive repository should be obtained to store second copies of archival documents. This second repository should be located so that any catastrophic event which might destroy one facility would not destroy the second.

ATTACHMENT 1

The estimate of the financial impact to the general public is based upon the delay in processing recorded documents. A real estate purchase is not considered officially closed until it has been recorded. At the closing meeting, all documents are signed and then forwarded for recording. Any delay in recording will mean the seller will not receive the purchase price money until the transaction has been officially closed. During the delay, the seller has lost the interest which could be earned if the purchase price money had been received and invested on the day of the closing meeting.

Mortgages in the Anchorage area are estimated to number at least 30,000 per year. The mortgages average about \$100,000 each. At a 12 percent interest rate the daily interest lost is about \$1,000,000. A nine-day delay would mean about \$9,000,000 lost.

$30,000 \text{ mortgages} \times \$100,000 \text{ per mortgage} = \$3,000,000,000.$

$\$3,000,000,000 \times 12\%/360 \text{ days} = \$1,000,000 \text{ per day}.$

$\$1,000,000 \text{ per day} \times 9 \text{ day recording delay} = \$9,000,000.$

202000

HB

343

LAW OFFICES

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March 30, 1984

Honorable John J. Cowdery
House Labor and Commerce Committee
Pouch V
Juneau, Alaska 99811

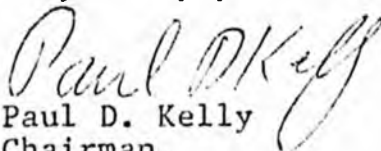
Re: Report of the Task Force of the Business Law
Section of the Alaska Bar Association regarding
HB 343 and SB 246, Corporate Code Revision.

Dear Representative Cowdery:

Enclosed please find the report of the Task Group of the Business Law Section of the Alaska Bar Association. The report is the result of significant efforts by members of the task group who took time out of their busy practices to serve without compensation in providing their expertise on a subject of great importance to the Alaska business community. Each member on the task group has significant experience as a business law practitioner.

Admittedly, the accompanying report is a brief review of a lengthy piece of legislation. The drafters have attempted to highlight certain areas of concern and hope that this report will aid the legislature. Listed below are the members who participated in the task group and their addresses and phone numbers. Please feel free to contact the group if we can be of any further assistance.

Very truly yours,


Paul D. Kelly
Chairman,
Business Law Section
of the Alaska Bar Association

PDK/pj
enclosure

March 30, 1984
Representative John J. Cowdery
Page Three

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March 30, 1984
Representative John J. Cowdery
Page Two

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ALASKA BAR ASSOCIATION

P.O. BOX 279, ANCHORAGE, ALASKA 99510, (907) 272-7469

BUSINESS LAW SECTION

March 30, 1984

Honorable John J. Cowdery
House Labor and Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: Report of the Task Force of the Business Law
Section of the Alaska Bar Association regarding
HB 343 and SB 246, Corporate Code Revision.

Dear Sir:

Enclosed is a review by the Task Force of the Business Law
Section of the Alaska Bar Association of Senate Bill 246 and
House Bill 343, the Corporate Code Revision.

The Review represents a time-limited study of the bills and was
performed for the limited purpose of bringing to your attention
some of the possible legal and economic consequences to the
business community and the Alaska public that could arise if the
bill were adopted in its present form. We urge you, then to
consider this only as such and not an exhaustive section by
section analysis of proposed amendments or a scholarly attempt
at opposition or rebuttal to the work product of the Code Revision
Commission.

In our deliberations, we met, both in subcommittees and
as a whole Task Force with John Abbott, Chairman of the Code
Revision Commission. At some of those meetings, Jerry Kurtz,
another member of the Commission, was also present. At these
meetings there was candid exchanges of views on the bills. In
addition, we were advised that Professor Dan Fessler was avail-
able to meet with us, although at a date too late to assist us
with this report given the time constraints put on our work by
your Committees.

Individual sections of the bills are commented upon in
the attached review, but considering the bills as a whole, we
would make the following observations:

March 30, 1984
Honorable John J. Cowdery
Page Two

1. Any major revision of a comprehensive body of law, such as the Corporate Code should include as one of its objectives, making the practice of law and business operations under the Code easier and more explicit.

We believe the proposed bill goes a long way to make the law more explicit than our current Code in many aspects, but not necessarily easier under which to practice or conduct business. For an Alaskan practitioner, far more work needs to be done in carefully drafting Articles, By-laws and other documents than is currently the case. While it may be the intent to encourage the preventive practice of law and reduce remedial litigation, in the vast majority of cases, we think it will merely raise the cost of going into business in the corporate form.

For the out-of-state practitioner, the problem is compounded, because as more states adopt the revised Model Act, Alaska's unique departures will require special time and study to assure compliance.

2. The Bills contain very material departures from current law in substantive rights and liabilities among corporate management, shareholders, creditors, secondary acquirers of shares and third parties doing business with Alaskan and even foreign corporations in Alaska.

We have two concerns about these departures. First, some substantive changes, such as the proposed limitations on distributions and the proposed direct liability of Officers and Directors to creditors are significant barriers to stimulation of commercial activity in the state and ought not to be adopted as this state's public policy. Second, we believe that passing a law this session with a July 1, 1984, effective date that contains such significant changes will prove to be an unwarranted shock on the practicing bar, the affected business community and the public.

3. Many provisions of the current Alaska Corporations Code merit attention and any thorough revision of the Code should analyze these special provisions to test their current value. Many of these provisions, such as registration of controlling out-of-state shareholders and disclosure of alien ownership, are ripe for elimination.

March 30, 1984
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We found numerous occasions in the bills and the accompanying comments where these provisions were restated in the revision without explanations to their continuing value.

4. In March, 1983, a final exposure draft of the revised Model Business Corporation Act drafted after much careful study, under the auspices of the American Bar Association was released. The revised Model Act is the product of top legal and business professionals from across the nation.

We recognize that Professor Fessler has drawn liberally, in his proposals to the Code Revision Commission version, from the Model Business Corporation Act before its 1983 revision. Submitted herewith for your reference is a copy of the March 1983 Model Act draft. The final version is due to be published in the summer of 1984, with minor changes.

Some members of the Task Force have reviewed the revised Model Act and the accompanying commentary had the benefit of nationwide consideration by practitioners and academicians and, to the extent adopted in other states, will enhance interstate corporate commerce. In our opinion if a comprehensive revision is deemed necessary, the revised Model Act is the appropriate vehicle for Alaska to utilize.

Furthermore, we urge consideration of the Model Act because its adoption in many states will provide a body of decisional law upon which Alaskans may draw for guidance in interpreting the Act, something a very unique Act would not have available. In addition, an extensive legal commentary accompanies the Model Act aiding the reader in a clear understanding of the provisions. Finally, as is the case with the old Model Act, the draftmen of the revised Model Act will provide model bylaws and official corporate forms to assist the public. This should significantly reduce legal costs.

We hope that this rather hurried review is useful to your committees in your own deliberations on the bills.

It is our view that there are numerous questions about specific provisions in the that the Committees should require more study.


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Since the HB 343 carries such important consequences and there has been no showing of urgency to change the law, nothing is lost by deferring action on a new comprehensive code for Alaska until next session. By so doing, the legislature could accomplish the following:

- a. give the Legislature, Code Revision Commission, and the public a meaningful opportunity to fully consider the revised Model Act;
- b. give all sectors of the business community an opportunity to consider and propose specific amendments;
- c. explain to the non-lawyer business community the Legislature's interest in revising the Code and seek an expression of support or concern from affected economic sectors.

The Task Force is willing to continue working with your Committees and with the Code Revision Commission towards a bill that is the best possible statute for Alaskans.

Yours cordially,


Richard Block
Task Group Chairman

RB/pj
enclosures

February 8, 1984

To: John

From: Ken

RE: HB 343--RELATING TO THE REVISION OF THE CORPORATIONS
CODE

COMMENTS:

This bill of course has been in the works for several years and was first introduced in to the legislative process by the code revision commission in 1982. The bill would revise the states statutes regulating corporations; replacing statutes drafted in the 1950's.

Today in the committee meeting the plan, as we talked about it, is to go over the amendments made by the code revision commission and the Dept. of Commerce. These amendments are rather minor in the overall scope of the bill.

Dick Regan of the commission will be here to answer questions, Senator Rodey will also answer questions and

discuss the Senate's action on the bill. Prof. Fesler has class until 9am. We hope to hook up with him at about 9:15 via the telephone.

QUESTIONS:

CONCERNING THE LIABILITY OF DIRECTORS

1. Can review this section and shed some light to the committee on the liability of directors ?
2. How does the section covering the liability of directors differ from current statutes which covers this liability question ?

SMITH, ROBINSON & GRUENING

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February 22, 1984

Hon. John J. Cowdery
Alaska House of Representatives
Pouch "V" - Mail Stop 3100
Juneau, AK 99811

Re: House Bill 343
An Act Revising the Alaska Corporations Code

Dear Representative Cowdery:

We are writing to provide you with a summary of our comments regarding H.B. 343, which is an Act revising the Alaska Corporations Code. We are impressed with the thoroughness and thoughtfulness of the proposed revisions. Although lengthy and complex, these revisions will add a great deal of certainty to the law of corporations in the State of Alaska. The present statute is not as detailed as the proposed revisions. Alaska courts have not resolved many of the legal issues which confront corporations.

The official comments accompanying this proposed revision and statements made at public hearings properly summarize the major features of these revisions. For the most part, we are in agreement with those comments. However, as noted herein, the provisions relating to liabilities of officers, directors, and shareholders; the provisions relating to derivative suits; and the provisions relating to dissolution deserve special attention. In addition to our comments on these portions of the proposed revision, we also suggest some technical changes which occurred to us during our review of the proposed bill.

I. Liability of Directors, Officers, and Shareholders to Creditors of a Corporations

In general terms, under existing law in the State of Alaska, officers, directors, and shareholders are not liable to creditors of a corporation. The creditor's claims against a corporation are limited to claims against the assets of the

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corporation. Officers and directors are liable to corporations for their wrongful acts which harm the corporation. Shareholders are liable to the corporation to pay for their shares, and are liable to directors to contribute to a director's liability to the corporation in the event a dividend is paid improperly to shareholders.

H. B. 343 continues the liability of officers and directors to the corporation for their wrongful acts. Section 488 of the Bill expands directors' and officers' liability to include liability to creditors for materials, labor and services, up to an amount of Twenty-Five Thousand Dollars (\$25,000.00) per creditor. Section 675 of the Bill makes directors liable to the corporation and its creditors for improper distribution of assets during dissolution and winding up.

Section 378 of the Bill creates shareholder liability to creditors in the name of the corporation for their knowing receipt of improper dividend payments. Directors are also liable to the corporation for the same transaction. See, § 480(a).

The expansions of liability contained in §675 and 378 are good. Liability of the directors and shareholders in these provisions is directly related to the wrongful or improper acts. Section 480(a)(1) of the Bill should be amended at page 64, line 15, to read:

A director who votes for or assents to a distribution to the corporation's shareholders contrary to the provisions of A.S. 10.06.358, 10.06.360, 10.06.363, and 10.06.365, or contrary to a restriction in the articles of the corporation, is liable to the corporation and to creditors in the name of the corporation, jointly and severally with all other directors voting for or assenting to the distribution....

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This addition will expand the liability of the directors in these to specifically include liability to creditors. Under the bill as written this liability exists pursuant to Section 488. However, the change to Section 480 is appropriate so that the liability continues even if Section 488 is deleted by the legislature or invalidated by an Alaska court.

Section 488 of H. B. 343 creates secondary liability of directors and officers to creditors of the corporation up to an amount of \$25,000 per creditor in the event assets of the corporation prove insufficient. The liability exists only for materials, supplies, inventory or services furnished in Alaska during the period of an officer's or director's service. This provision of the Bill is new and is experimental. It is not based on the concept of wrongdoing by an officer or a director. The provision has the potential of creating conflicts of interest within a corporation and spawning complicated litigation. We believe that the section should be deleted or that alternatives should be considered by the legislature.

If you consider alternatives, these alternatives should be based on the simple principle that liability should not be created unless an officer or director does something wrong. For example, an officer or director should be liable for entering into or authorizing contracts for the provision of services or materials when the officer or director knew or should have known that the corporation would be unable to pay for those services or materials. As presently written, Section 488 creates liability even if a corporation is solvent while receiving material and services. An example illustrates the inequity which may result. Assume that a vice president authorizes a contractor to provide materials to a corporation. At the time the corporation is solvent and intends to pay for the materials. When the materials are delivered, the corporation is not satisfied, believing that the contractor has breached his obligation. A lawsuit results, taking 3 years to resolve, in favor of the contractor. During the interim time, the vice president leaves the corporation and the corporation, as a result of other problems, is unable to pay the contractor's judgment against it. The vice president,

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without doing anything improper, would be personally liable to the contractor.

The following is a list of specific problems which you should consider in evaluating the propriety of Section 488.

Many small corporations in Alaska have titular officers and directors in order to meet the statutory requirements of three directors and that there be a separate president and secretary for the corporation. These individuals usually do not take a direct involvement in the activities of the corporation. Arguably, these individuals should not have liability to creditors for acts that they did not participate in.

Secondary liability under Section 488 arises "to the extent that the assets of the corporate entity prove insufficient...." It is not clear from this language whether a creditor is required to sue and obtain judgment against a corporation and unsuccessfully attempt to execute on that judgment against corporate property prior to asserting liability of officers and directors. As Section 488 is presently written, it is likely that if a plaintiff is suing a financially troubled corporation, that plaintiff will include all officers and directors of the corporation as defendants so that he will have judgment against them in the event the corporate assets are not available to satisfy the judgment. If this inclusion of defendants becomes standard practice, it has the potential of complicating lawsuits and increasing the burden on the courts of those lawsuits. Also this practice will harass officers and directors and may discourage their future participation in corporate matters.

A corporation may seek protection of the bankruptcy laws. When a corporation files for bankruptcy a court enters a stay prohibiting further action by creditors against corporate assets. Arguably, at that point in time, corporate assets would prove "insufficient" to satisfy creditors' debts. The question arises whether or not a creditor would then be permitted to proceed against officers and directors pursuant to Section 488.

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Chapter 11 bankruptcy proceedings allow corporations to rearrange and delay payment of debts. Sometimes the bankruptcy court will order payment of part but not all of debts. If corporate finances deteriorate to the point where Chapter 11 reorganization is a potential solution for financial problems, officers and directors will be faced with a conflict of interest in that filing Chapter 11 bankruptcy will help the corporation but will potentially affect their own financial liabilities. While the corporation benefits by the rearrangement of its debts, the officers and directors will be required under Section 488 to assume obligation for those debts.

Foreign corporations will enjoy some advantage over domestic corporations in the application of Section 488. In all probability, most of the officers and directors of foreign corporations will not be subject to the jurisdiction of the Alaska courts. Thus, even though the section is intended to apply to foreign corporations, as a practical matter it will be very difficult to sue foreign directors and officers in Alaska.

If an officer of the corporation enters into a contract without corporate authority, the other directors and officers of the corporation should not be personally liable for that act.

Directors do not participate in day to day management of a corporation. They might not be aware of the types of contracts which would create personal liability for them. Section 488 would force directors to participate more directly in day to day management of the corporation.

Even if an officer or director dissents from a decision to enter into a contract, that officer or director would have liability under Section 488.

In addition to the type of conflict of interest previously noted, Section 488 could create conflict when an officer or director personally guaranteed an obligation of the corporation. For example, assume the president of the corporation personally guaranteed a loan from a bank and the corporation ran into finan-

cial trouble. The president would want the corporation to pay the loan he guaranteed. Other officers and the directors would want the corporation to pay creditors protected by Section 488, prior to paying the bank loan.

Subsection (b) permits modification of statutory provision in a written contract. This section would be better if it required this modification to be in bold face type set out from the body of the contract so that it would be clearly visible to anyone reviewing the contract.

Section 488 does not apply to directors appointed by the court pursuant to Section 640 of the Bill to break a deadlock in the board of directors. However, Section 488 does apply to other directors appointed during dissolution and winding up of the corporation pursuant to the court's authority granted in Section 650 of the Bill. If Section 488 remains in the legislation, it should not apply to those individuals appointed by the court pursuant to Section 650.

During dissolution and winding up of a corporation, the corporation may obtain assistance from the courts. See §673. If a creditor fails to appear in a court-ordered dissolution proceeding, that creditor's claims against the corporation are waived. See §653. That section should also provide that the creditor's claims against officers and directors pursuant to Section 488 is waived.

The procedures established for judicial dissolution of a corporation insure that at the time of the distribution of assets all known claimants are bound by the terms of the dissolution. Those claimants are not bound by a non-judicial dissolution. They potentially have a claim against present and prior officers and directors pursuant to Section 488. If the situation arose where creditors made a claim after dissolution against prior officers and directors, those officers and directors could sue the dissolution officers and directors claiming they were negligent in failing to protect them from liability to those creditors. To avoid this potential liability, corporate officers should routinely use the court to supervise dissolution. This would unnecessarily crowd court dockets.

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Section 960 exempts officers and directors of Native corporations from the provisions of Section 488. We believe that both corporations and individual officers and directors will be able to challenge this exclusion, arguing that it denies them equal protection of the law. The Fourteenth Amendment to the United States Constitution requires states to treat persons and corporations similarly situated in a similar fashion. A statutory classification which treats people differently based on race or alienage is suspect and will be upheld by a court only if there is a compelling state reason for the classification. If an officer or a director of a non-Native corporation were sued under Section 488, it is probable that individual would contest the constitutionality of Section 488 and Section 960 by arguing that the state has placed greater liability on him than on others who are similarly situated as directors and officers of Native corporations. The individual would argue that the distinction is based on alienage or race and that there is no compelling state reason for the different classification of liability. The official comment to Section 960 does not explain why officers and directors of Native corporations are excluded. We do not know whether there is sufficient justification for this exclusion. Even if the exclusion is justified at present times, its justification might terminate in 1991 when shares of the Native corporations become available to the public.

II. Derivative Actions:

Section 435 of H.B. 343 establishes the right of and procedure for shareholders to maintain a derivative action against the management of a corporation. Unless a majority of the directors of a corporation are implicated in the alleged injury to that corporation, a shareholder must demand corrective action from the board prior to initiating a derivative action. If after a demand is made on the board of directors, the board finds that in its business judgment litigation is not in the best interest of the corporation, the shareholder does not have the right to maintain a derivative suit. The shareholder is barred in this instance unless the shareholder is able to prove to the court that a majority of the directors is implicated in the injury or if the court rejects the board's decision as inconsistent with the directors' duties of care and loyalty to the corporation.

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Once a derivative action is properly begun, a court may dismiss it if a disinterested board of directors petitions the court for dismissal and the court agrees that dismissal is in the best interests of the corporation and consistent with public interest.

This procedure makes it more difficult than present to maintain a derivative action in the State of Alaska. The procedure favors management of a corporation which has the authority, so long as it is not implicated in injury to the corporation, to decide whether or not a derivative action shall be maintained. Since the statute allows a disinterested board to petition the court for dismissal of a derivative action, plaintiffs in a derivative action will be forced to undertake two trials. The first trial would be to convince the court that the petition for dismissal should not be granted. Plaintiff in the action would be entitled to an evidentiary hearing to present its information to the court regarding the problem. If the plaintiff succeeded in that evidentiary hearing in avoiding dismissal, the plaintiff would then incur the additional expense of the second evidentiary hearing at trial on the merits.

Subsection (f) of Section 435 (H. B. 343, page 50, lines 17 and 18) allows the directors of the corporation to "petition" a court to dismiss a derivative action. To be consistent with Alaska Rules of Civil Procedure, the statute should require the directors to appear in the derivative action by a third party complaint against the plaintiff shareholders. The plaintiff shareholders would be third party defendants in the action. Subsection (f) could be amended as follows beginning at line 16:

"Notwithstanding (c) or (e) of this section, disinterested, not involved directors acting as the board or a duly charged board committee may ~~petition~~ intervene in the derivative action as third party plaintiffs against the shareholders and request the court to dismiss the plaintiff's action on grounds that in their independent, informed business judgment the action is not in the best interest of the corporation.

Section 435(h) (H.B. 343, page 51, line 6) provides that if the plaintiffs in a derivative action represent less than five percent (5%) of the outstanding shares of any class of the corporation, the court may require the plaintiffs to give security

for reasonable expense including attorney fees that may be incurred by the defendant corporation in the action. This section may be unenforceable. A.S. 09.60.060 requires non-resident plaintiffs or foreign corporations to post security as a prerequisite to appearing in Alaska courts. The Alaska Superior Court routinely refuses to apply this statutory prerequisite to a non-resident's or foreign corporation's right to appear as plaintiff in Alaska courts. The Alaska Supreme Court has refused to reverse this position by the Superior Court. The prerequisite to a lawsuit is not enforced because right to appear in court is a fundamental right and there is no sufficient rationale for the distinction which conditions that right against non-resident plaintiffs and foreign corporations.

The requirement in Section 435(h) that a derivative action on behalf of less than 5% of the shareholders of the corporation be conditioned upon those shareholders' ability and willingness to pay a bond for costs likewise interferes with the fundamental right of those individuals to have access to the courts. There is no correlation between the size of the group maintaining the derivative action and the merits of their claim. As a result it is unlikely that a court would enforce this condition for maintaining a lawsuit.

III. Dissolution:

Section 628 (H. B. 343, page 101) allows shareholders representing one-third of the total number of outstanding shares to petition for dissolution on the grounds that those in control of the corporation have been guilty of "persistent unfairness towards shareholders...." This language is new to Alaska statutes. We believe that it is too broad and too vague, allowing too much room for judicial interpretation of what constitutes persistent unfairness to shareholders.

Section 628(b)(5) appears to allow a petition for involuntary dissolution of a corporation having 35 or fewer shareholders of record by a single shareholder on the basis that "liquidation is reasonably necessary for the protection of the rights or interests of the complaining shareholder or shareholders." (H.

B. 343, page 102, lines 10 and 11.) We believe this language may also be too broad, allowing too much room for judicial interpretation.

It is not clear from the comments whether or not the code revision committee considered requiring that suits for involuntary dissolution include all shareholders, or a representative of their interests, as defendants to the action. We believe this alternative should be considered so that the interest of other shareholders will be adequately represented in a suit for involuntary dissolution.

Section 630 specifies how a corporation may avoid involuntary dissolution by purchasing the shares of those plaintiffs seeking involuntary dissolution. The corporation is permitted to appear in the lawsuit for involuntary dissolution and offer to purchase the plaintiffs' shares at fair market value. Section 630 would be improved if it required the corporation to make this purchase offer within 90 days of the date the lawsuit was instituted.

Section 630 provides that if the corporation and the plaintiffs cannot agree on the fair value for the shares, the court may appoint three appraisers to determine that fair value. Subsection (c) of §630 would be improved if it specifies that the date of filing the complaint will be the date of valuation for the shares. In its present form, the date of valuation is not clearly stated.

In passing, we would note that in our copy of the official comments there is no official comment for Section 630. The official comment for Section 633 is erroneously printed as the official comment for Section 630. If the legislature intends to adopt the official comment by reference, this typographical error should be corrected.

Under H. B. 343, if a court is directing winding up of a corporation after its dissolution, creditors and claimants may be barred from participation of general assets of the corporation if they fail to make or present claims and proofs within the time ordered by the court. If Section 488 remains in H. B. 343, Section 653 should be amended to also bar creditors' claims against directors and officers if they fail to appear in the winding up proceedings. The amendment may be accomplished as follows:

"In a court-directed winding up of a corporation (A.S. 10.06.618, 10.06.635(b) and 10.06.645) creditors and claimants may be barred from participation in a distribution of the general assets of the corporation, and shall be barred from asserting claims against officers and directors of the corporation pursuant to A.S. 10.06.488 if they fail to make or present claims and proofs within the time the court may order.

Section 655 (H. B. 343, page 114) describes the order the court may enter declaring that the affairs of the corporation are completely wound up. Subsection (c) of §655 states:

"The directors or the persons appointed under A.S. 10.06.648 shall be discharged from their duties and liabilities, except as may be established under A.S. 10.06.488 or except as needed to complete the winding up."

Section 648 allows the court to appoint directors to resolve a deadlock in a board of directors. This provision excepting Section 488 liability for appointed directors should also apply to directors appointed by the court pursuant to its authority under Section 640 and Section 653 of the Bill. We do not believe that any individual appointed by the court to serve as a director or officer for a corporation during dissolution or winding up of the corporation should have personal financial liability for contracts entered into by the corporation during that period of time.

Whenever the Bill permits creditors in the name of the corporation to sue shareholders or directors for improper distribution of dividends (A.S. 10.06.312) or assets (A.S. 10.06.675), the statute should specifically provide that the shareholders and directors may assert any defense to the action available to the corporation.

IV. Miscellaneous Comments:

Section 460 of the Bill permits removal of directors without cause by vote of shareholders. H. B. 343, page 57, line 4. Subsection (a)(2) describes the number of shares which must vote in favor of removal of the director if the corporation has cumulative voting. Subsection 3 describes the number of shares

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within a class which must vote in favor of removal if a director is elected by a class. Subsection 460 should be amended to describe the minimum percentage of shares which must vote in favor of removal of a director without cause if the director was not elected by class and the corporation does not have cumulative voting. This may be accomplished by an amendment to H. B. 343, page 57, line 6 and 7 as follows:

"At a regular or special meeting for which notice is given under A.S. 10.06.410 and this section, any or all of the directors may be removed without reason if the removal is approved by a vote of the majority of the outstanding shares and...."

The Alaska Federation of Natives has proposed an amendment to H. B. 343, page 149 at line 12, as follows:

"Notwithstanding the provisions of A.S. 10.06.574-586, a plan of merger, consolidation or exchange qualified under this section prior to December 19, 1991 shall not include the right of shareholders to dissent."

This amendment should be improved by the addition of the phrase:

".... plan of merger, consolidation or exchange qualified under this section and approved by the proper corporations prior to December 19, 1991 shall not include the right of shareholders to dissent."

This amendment will specify that the merger plan must be approved prior to the specified date; otherwise shareholders will have a right to dissent.

Section 546 provides that a plan of merger, consolidation or exchange for an Alaska corporation must receive approval by a vote of two-thirds of the outstanding shares of each corporation affected. A lower voting requirement applies to corporations established under the Alaska Native Claims Settlement Act. Section 960(c) provides that a plan of merger, consolidation or exchange of ANCSA corporations may be approved by an affirmative vote of holders of a majority of the outstanding shares of each corporation. The official comments do not explain the different

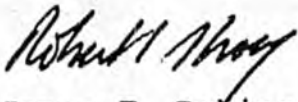
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requirements for these corporations. The different requirements are probably permissible. It would be well to explain the different requirements to avoid confusion in future.

We appreciate this opportunity to comment on H. B. 343.

Sincerely yours,

SMITH, ROBINSON & GRUENING


for James T. Robinson

RIS:ljd

cc: Mr. Ken Johnson
Mr. Merrill Sikorsky

Opinion



1996



"The Olympics is a huge investment over a 12- or 14-year period. But for Anchorage it wouldn't be so much a big financial investment as a human investment. It would take a lot of time and energy." Reyn Bowman, executive director, Anchorage Convention & Visitors Bureau.

Anchorage and the Winter Olympics are a perfect fit.

On the one hand, Anchorage is the right size — not too big, not too small. It has the financial resources, both public and private, to make the venture a success. It's becoming adept at hosting world-class competitions with alpine skiing events at Alyeska Resort; Nordic skiing at Kincaid Park and even the Great Alaska Shootout at Sullivan Arena.

Its lodging accommodations are adequate today and are growing by leaps and bounds. The climate is ideal for winter sports competition. Anchorage is ideally situated for air access both from North America and from Europe and Russia, which provide the vast majority of the athletes participating in Winter Games.

Anchorage would add a new dimension to the cultural aspects of the Olympic Games, and in a state where the number of visitors and tourists annually doubles and triples the population, playing host has become an art more than a chore.

Those are just a few of the things Anchorage has to offer the Winter Olympics. The other side of the question — what does the Olympics have to offer Anchorage, and the entire state of Alaska, for that matter — is equally compelling. And the facts are equally one-sided.

The Winter Games would give Anchorage worldwide exposure and a massive economic boost at the time of year when it needs it most. Tourism, one of the mainstays of the Alaskan economy, always has sagged during the winter; nothing could turn that situation around faster than the Olympics. Officials from the Lake Placid area in New York say that area still is on a high from the 1980 Winter Games, and in the words of one economist, "We don't know how long it will take for that to wear off or if it ever will."

Most important is what would be left behind after the Olympics are gone: world-class winter sports facilities that would establish Anchorage as a winter sports mecca and benefit everyone in Southcentral Alaska who would have easy access to those facilities for years to come.

Unquestionably, construction of some of those facilities would be an expensive proposition. Most notably, those

House Bill 343, pending before the Alaska House of Representatives, is "An act revising the corporation code." This bill was prepared by the Alaska code Revision Commission, and it proposes sweeping changes in Alaska's corporate law.

Rep. John Cowdery has been taking a hard look at the proposed bill. The Alaska Code Revision Commission held extensive hearings and spent a great deal of time and money preparing the revisions.

My review of the proposed revisions indicates they did a good job. Cowdery, however, has quite correctly realized that the revisions are very expansive and may have long-range side effects.

The bill is lengthy and complex. While the proposed revisions may add a degree of certainty to Alaska's Corporation Law, there are some areas of real concern.

For example, the proposed revisions extend personal liability of directors and officers to certain creditors of the corporation up to the amount of \$25,000 per officer or director.

Thus if the corporation lacks the assets to pay bills the officers and directors are liable.

The exposure of the directors and officers is irrespective of any wrongdoing, irrespective of the degree of involvement in the affairs of the corporation and irrespective of whether the individual dissented from incurring the debt.

In addition, not all creditors have the same right as the commission decided to only protect the "little guys."

There also is a serious question as to whether the effect of the revisions will be to prefer foreign corporations.

While the code attempts to



From Courtroom to Board Room

By TONY SMITH

Senior partner, Smith, Robinson & Gruening

impose liability on foreign corporations, as a practical matter the corporate codes of the other states will apply to the internal affairs of corporations incorporated in their jurisdictions.

Thus some of the more novel concepts may very well disadvantage Alaska corporations in the long run.

There are other aspects of the proposed bill which have wide-range effects. The Alaska Code Revision Commission has stated it attempted to find a middle ground between pro management and pro shareholder states. In so doing it has developed some rather esoteric concepts.

For example, the bill allows minority shareholders to petition a court to dissolve a corporation on the grounds that those in control have been guilty of "persistent unfairness towards shareholders."

That language may become one of the principal sources of

litigation in the State of Alaska.

It is evident that a great deal of thought has been devoted to the proposed revisions. However, Cowdery and others have focused on the danger of attempting to legislate in a broad sweeping manner problems which may or may not exist.

There are some advantages to trying out ideal solutions but I question whether this is the right time or place.

A critical review of House Bill 343 is a real service. The effort to solve all Alaska's potential corporate problems in one piece of legislation appears to open up a Pandora's box.

It would be well if those involved in the business community took the time to familiarize themselves with this important piece of legislation.

Perhaps no other legislation effects the rules of the game as much as Alaska's Corporation Code.

Deak-Perera

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Australian 100 Crown	Bid-Asked	Bid-Asked	Bid-Asked	Bid-Asked	Bid-Asked
(.9802 Troy Ounce)	380-396	385-401	388-404	389-404	383-399
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STATE OF ALASKA

Committee Secy.



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HOUSE LABOR AND COMMERCE COMMITTEE

M E M O

TO: HOUSE LABOR & COMMERCE COMMITTEE MEMBERS
HOUSE JUDICIARY COMMITTEE MEMBERS

FROM: HOUSE LABOR & COMMERCE STAFF

RE: JOINT HOUSE LABOR & COMMERCE AND JUDICIARY COMMITTEE
HEARING ON HB 343-REVISE THE CORPORATION CODE
VERBATIM TESTIMONY

DATE: MARCH 7, 1984

ATTACHED FOR YOUR INFORMATION AND REVIEW YOU WILL FIND THE
VERBATIM TESTIMONY ON HB 343. THIS WAS THE LAST HEARING
HELD IN ANCHORAGE, FEBRUARY 24, 1984.

THIS TRANSCRIPT IS PROVIDED FOR US COMPLIMENTS OF THE CODE
REVISION COMMISSION AND WAS TYPED BY CATHERINE WALSH OF THE
COMMISSION.

JOINT HOUSE LABOR AND COMMERCE AND JUDICIARY
COMMITTEE HEARING ON HB 343/SB 246--FOR PROFIT CORPORATIONS
FEBRUARY 24, 1984 - LEGISLATIVE INFORMATION OFFICE, ANCHORAGE
10:00 a.m.

COWDERY: Will the meeting please come to order. It's 10:07 a.m., February 24th. We are in Anchorage, the Labor and Commerce Committee joining with the House Judiciary Committee. I'd like to make note of those present here in Anchorage is Representative Wendte, Representative Pestinger, Representative Furnace, Representative Uehling and also Representative Koponen is in Fairbanks on the teleconference network and Representative Ringstad is in Juneau. I'd like to check in and make sure that Representative Koponen and Ringstad, first in Fairbanks and then to Juneau. Representative Koponen.

KOPONEN: This is Representative Koponen right here. We have two people in the audience at this time.

COWDERY: Representative Ringstad.

MODERATOR: This is the moderator in Juneau and Representative Ringstad has stepped out for a moment. Can you come back to us?

COWDERY: Yes. O.K. We have a quorum and I would like to maybe turn it over to Representative of the Judiciary Committee to establish his quorum. Representative Bussell.

BUSSELL: Thank you, Mr. Chairman. The Judiciary Committee does have a quorum. Representative Wendte is present with us, Representative Hayes, Representative Liska, Representative Malone, and Representative Barnes is someplace on her way here.

WENDTE: Mr. Chairman.

COWDERY/BUSSELL: Representative Wendte.

WENDTE: I just want to know as a matter of deference to my dear friend the Chairman of the Judiciary Committee, I've been placed on this side of the table. It's not that I don't care to join the Judiciary Committee today. But since I am the only member of both committees, maybe I should run back and forth.

BUSSELL: You are sitting in the witness chair.

COWDERY: The House Labor Committee meets in the morning and so at noon you can move to the other side. The Judiciary meets . . .

WENDTE: It's probably a good way to do it, Mr. Chairman. Thank you.

COWDERY: We are here this morning to hear HB 343 to revise the corporate code. And we have had a joint hearing on this with the Senate Labor and Commerce in Juneau and we've got quite lengthy testimony, had quite lengthy testimony to review, and it is the intent of this committee to not be critical of the code or the bill, but to bring some areas that are not clear, perhaps help clarify some of the areas and to discuss some of the areas that seem appropriate now that we clear up rather than later if it ever comes to a court decision that perhaps we can by clarifying some of the areas of concern we can maybe keep that later court date to a minimum. I was wondering, I know that Mr. Dick Black of the Alaska Bar Association, or Block. Would you care to comment or have comments. Or I could go on an overview of some of the areas of concern . . .

BLOCK: Mr. Chairman, it's your pleasure. I am prepared to testify if you like or any order you that you would like. Good morning to the Chairmans of both committees. My name is Richard Block. I actually come before you I suppose more officially as a representative of one of the sections of the Alaska Bar Association. And I will refer back to that in a moment. I would also like to say, however, I am an attorney admitted to practice in the State of Alaska and have to only a small or modest degree done corporate work for clients. I also am an owner and investor in a business enterprise in the State of Alaska which is in corporate form, and we have in our corporation five separate corporations. So I believe that from the standpoint of its practical application as well as its legal concerns, I do have some familiarity with what the impact of the bills before us might have in this Alaska community. And I also said from a more official standpoint, I am representing one of the sections of the Alaska Bar Association. About a week and a half ago, I was asked by the chairman of the business law section of the Alaska Bar Association, the chairman of the executive committee, to chair a task force which has just recently been appointed to study and undertake a review of these bills and the work that has been done by the code revision commission and by Professor Fessler. It is the charge of our task force not to engage in an extensive, shall we say academic type review or even a legal analysis of the bill, since we believe that has been extensively done and well done by Professor Fessler and by the code revision commission and by the staffs of the legislature. But we do believe that in the interest of better understanding, the impact that such a bill would have on the business community and on the practice of business and corporate law, that you might say kind of a business impact report is deserving. Exactly what will be, or not exactly but at least to the extent that we can

foresee it, what are some of the economic interests and factors in the state that could be affected by what this bill contains that may not have been brought before your committees. And when I am through here in a few moments, I am going to ask or suggest that the committee in its deliberations at least not move so quickly that our task force would not be given the time to present to you what we regard as our you might say economic legal impact report of this bill. We do not believe it will take a lot of time, we'd like, say, about 30 days to finish our work and present it to you. As I indicated, I think we can do that because we are not going to reinvent the fine work done by those that have gone before us. A very brief review of the bills and the commentary that accompanies the bills would indicate that one of the things you typically find in a significant revision of a law of this type, that is to say that it is a technical revision, it is a language revision, that it is a modernization of tone or tenor is certainly a part of this bill. But this bill really has substantial substantive changes in it, and I think that one of the things that is unfortunate, and I have to say that for myself I take upon myself the responsibility for making some of the same assumptions I am going to charge to a larger class of people and that is I think a lot of people thought that the revision of the law was going to be a revision of the words and not a lot of substantive change. And as you get into it, there are some significant changes in this bill, and I don't think the business community broadly based is widely aware of it. And I think they need to be and you need to be aware of what that means to them. I think, for example, that my brief reading of the analysis and the bill would seem to change the character of the articles of incorporation from a simple organic document that kind of brings the corporation into existence, which is now and would in the future if this bill were adopted, be its function. But the articles become in addition more or less a disclosure statement, a rather complete disclosure statement to anyone who becomes involved in the corporation. And I gather that notion from the fact that an awful lot of things which today are kind of put into articles by a one line reference or by absence of any reference and then incorporating statutory provisions to the requirement that if certain things are going to be ever done in a corporation, it needs to be specifically allowed for disclosed in the articles of incorporation. Now I am not here nor do I think our section takes a view that that's good or bad, but only that it becomes a fact that's contained in this law and if a lawyer is going to do an adequate job of protecting a corporate client, they are going to have to do a more careful analysis and a more careful job of drafting to make sure the corporation is permitted by its articles of incorporation, or in this disclosure document if you will, to do those things which it now intends to do or might in the future wish to do. And I suggest that one of the things that we would like to measure in our impact report is how much additional legal work is going to be required by lawyers

asked by their clients to form a corporation and what's going to have to be done in order to make sure that they never get into a situation which under this bill would become an ultra vires or an act outside the ambit of their agreed authority. Another significant aspect of this bill is that it clearly seeks to change the relative protections among classes of people involved in a business relationship. I think it's fair to say that the code revision commission and Professor Fessler recognizes that current Alaska law is, if you want to assign an appellation to it, is a vested, corporate ownership protection approach. And I think it is clear that the approach taken in this bill is to move away from that and to provide some protections for creditors and for outside stockholders. Now again, I don't think this is the responsibility of the bar association, or do we wish to take a view that that's good or bad, but only that it is in fact a significant change in our law. It is a substantive change, and the way in which that's done, and the fact that it is being done, I think needs to be recognized by a broader base of the business community and the effect of that, if any, presented to your committee. There are a number of impacts that we see this potentially having. One I've alluded to and that's simply the cost effectiveness. We think there is going to be some significant changes in just legal costs informing the corporation, because I think lawyers are going to have to be a lot more careful and a lot more explicit in what they do. That may not be that, that may be public policy desire that the cost of that needs to be thought out. I suppose there are going to be some changes in trade costs. By trade costs, I mean that if you are going to change the respective protections of creditors and the protections of superiorly postured investors, then there may be changes in interest rates or rates of return to stockholders and to officers and directors and creditors in view of the changing positions. And I would imagine that one of the things that's going to have to be considered by any officer or director of a corporation, that because of one of the provisions in the law subject it to potential personal liability in the event of the failure of the corporation is the possibility of additional indemnification costs in order to attract people to be officers and directors of complex business operations. I think we also want to suggest to the committee the need to evaluate the impact, what I would call the business impacts. For example, would the potential exposure of many, potentially millions of dollars to an individual officer or director, and as I read this there is a right to go against certain officers and directors for up to \$25,000 per creditor. So the \$25,000 is multiplied by as many of these trade creditors as there may be in a corporation. What is it going to take to attract a person to become an officer or director of a corporation when he's got that potential exposure. Now I don't think anyone can quarrel with the proposition advanced by the advocates of this bill that you are trying to encourage responsible action by corporate officers, and the

threat that they may by dissipation in corporate assets or inappropriate business actions leave creditors unprotected and they should be aware of that. That may be a valid public policy. But I do think we need to think out if that is going to chill business entrepreneurship in the State of Alaska or freeze out or preclude access to the most qualified executives to come in and operate corporations because of this concern. And I would be even more particularly concerned if it were necessary to attract a highly qualified person to come in and run a troubled corporation. And if you have a corporation that is salvageable but in financial difficulty and you want to attract someone to come in and involve himself with that enterprise, is he doing so at such a great peril that you cannot attract that kind of individual to your company. Finally, I think I would want to suggest to the committee that one needs to consider the broad based economic impacts. I don't think it, I realize we may be focusing an unwarranted amount of attention on one section of a bill that contains several hundred sections, but nonetheless, when you start getting in to where the dollars go and whose pocketbook is exposed, it becomes important. And the question I would raise with respect to economic impact is we are trying in this state, and I believe it's the professed posture of the legislature, that we are trying to encourage investment in economic activities in the state which so far have proven to be less certain than other types of investments. We don't need to encourage people to get involved in the oil industry. It's a rather certain profitable return on that investment. But what about business enterprises around the fishing industry, around the timber industry, around the agricultural industry, and other industries where we are trying to encourage investment, but where the opportunities for absolute certainty of return are less known to us. Are we going to chill business entrepreneurship because the person is unwilling to commit \$100,000 and put that into a corporation and see if I can may a go of it in one of these marginal industries. But if I have to further expose my resources beyond that investment because through circumstances that I may control or may be beyond my control, I expose myself to liability beyond what I am prepared to commit, I am not willing to do it and thus, preclude the type of access, the type of business enterprise that you're trying to encourage in these marginal industries. Those are the kinds of things we need to think about. Again, I know that there is a great amount of good in this bill. Not only do I know it because of the caliber of people who have worked on it, I've gone through it and I know having worked in the existing corporation code, that there is room for improvement and the desirability, just the general advisability of getting into the corporations code and cleaning it up I think is meritorious. But I would urge the committees to move with great caution when you start making substantive changes that aren't well understood by the business community but could have a tremendous economic impact on them, on the economy

generally and on businesses specifically. It is the request of our task force which is just created that you would give us time to more particularly analyze the bill from those kinds of aspects and submit, you might call it our impact report to you for your consideration. Thank you.

COWDERY: Thank you, Mr. Block. It is our intention to hear testimony on this and maybe ask questions and then possibly development some amendments for a substitute bill for review by another committee I think or maybe two more committees to be referred to before final action. I would like to ask one question. In your capacity as knowledge, it is my understanding that many small corporations, particularly small ones, have honorary directors or maybe family members appointed for one reason or another, if I understand some of the language in this bill, that it could possibly maybe even attorneys I understand are noted in some corporations, but I think the attorneys probably have insurance to cover any liability, but some of the other areas I've mentioned may not be aware of this insurance. But it's my understanding the bill reads that even these people could be liable at a later date for some of the liabilities of a corporation that went bad.

BLOCK: Representative Cowdery, I think that's one of the points I am trying to make is that I think there is a lot of people who are maybe sleeping in bliss with respect to this and will some day wake up to the fact that they have exposures they didn't know they had. But that may not be bad. I am not saying that the proposition that officers and directors shouldn't stand behind their actions. That maybe a valid public policy. I am not saying it is or is not. What I am saying is I don't think too many people are aware that that's what you're talking about. Number one. And number two I think we need to go beyond just the consideration of do we need more protection for creditors and less protection for the corporate entrepreneurs and consider what could be the impact once everybody understands this and getting people to go into business and involve themselves in business enterprise. Let me add one further point, since you I think, perhaps, somewhat accidentally touched me in a soft spot when you mentioned insurance. I do not believe at the present time, certainly under most officers and directors policies, and once this bill were changed I am certain there would be amendments to the policies to talk about the exposure of this particular type of exposure. That's not to say that I can tell you we can make anything insurable. Some of the more, I am looking around I think Joe you were the only one who was here in those days, we made a lot of uninsurable things insurable. And this might be one of them. But as a general proposition, I don't think it's contemplated in the risk that for E & O protection for officers and directors.

UEHLING: Thank you, Mr. Chairman. In going back to the liability question on the directors of the corporation and you mentioned another party, the directors and . . .

BLOCK: And certain named officers.

UEHLING: And certain named officers. What about in the case where you have a situation where a corporation is purposely bankrupt and goes down the tubes, and then where is the liability in present law right now? Who holds the liability on that? Then they set up another corporation and then go on and do this as a chain reaction.

BLOCK: Rep. Ueling, you made a comment and I'm not quite sure what you meant by it. I'll try to interpret it when you said deliberately bankrupt, purposely bankrupt. If you are talking about people who with intent to defraud creditors forms a corporation and either fails to properly capitalize it, or capitalizes it incurs the obligations and strips the capital or the assets out of it. There are already remedies, the deliberate fraud of a creditor is already actionable. An improperly capitalized corporation subjects the stockholders of that corporation to the doctrine of piercing the corporate veil to reach behind a corporate shell and get at the individuals. So, if you're really talking about a malicious act to try and fraud the creditors, you have already got existing case and statutory law to protect you. I think the concern here is that this goes beyond that, and we are talking about what happens if you have a properly capitalized, legitimately run operation and either at some point down the road there are some stripping out of assets or maybe not but simply the corporation is just unsuccessful because of economic conditions or for whatever other reason. That's the new impact of this bill.

UEHLING: And then, also, a follow up question. The \$25,000 liability question, what about in that case, how does that relate to what we presently have in law right now. There is not a \$25,000 per creditor liability right now, is that correct?

BLOCK: Well, as I indicated I think current law does provide that if there is a deliberate or fraudulent, you know, fraud against the creditors, there is a protection, but, of course, then it is unlimited as to amount. You go after them for the full amount of your obligation. For the circumstances that I am concerned about, I don't believe there is anything in the statute. This would be the new provision. It says that these particularly specified officers and directors are exposed for up to \$25,000 per creditor in the event the corporation. You have got to, according to the statute that's proposed here, exhaust the assets of the corporation. So it is not relevant if you have a successful corporation. But if the thing, the liabilities

exceed the assets and you paid out all of the assets proratably or whatever other way to creditors and there are moneys left due and owing, then each creditor would be entitled to go against these individuals up to \$25,000 as I read the statute.

COWDERY: Rep. Furnace.

FURNACE: Thank you, Mr. Chairman. I have three questions. The first has to do with the secondary liability. In your opinion, should that be an average of \$25,000 rather than a per creditor, is that an alternative?

BLOCK: Well, Rep. Furnace, I think the point I'm making is that I am not sure the concept is valid, and I think that's what we want to look at is whether there should be any statutory exposure for officers and directors beyond obviously in the case that Rep. Uehling talked about, fraud, or the investment that the entrepreneurs put into the corporation. Once you get over that, once you say it is to be the public policy and whatever it may cost in business impact that we are going to make officers and directors responsible, then you are only talking about how much. I haven't really thought out the right way to do that, this may be as good as any.

FURNACE: The second question, often times we say if it's not broke, don't fix it. In your opinion, is the present code broke?

BLOCK: I've got two answers to that. Guess that's why I am a lawyer. One answer is no, it's not broke in the sense that if you look outside you can see the State of Alaska is filled with business enterprises that are operating successfully. Corporations are being formed and business going on all in the context of our existing code. So in that sense I don't see a burning need to jump in and change the law. I do have to acknowledge, however, that our law is like so many of our codes, we just kind of lifted out of another state and plunked it in here without a whole lot of thought as to what it means in the State of Alaska. There are a lot of things in our code that, you know, having worked with it, I find are difficult to interpret and work with. And I would say that it is appropriate that our code be reviewed, modernized, made relevant to the economic conditions in our state, so I certainly don't oppose the effort going forward. My concern isn't that we not review our code, only that we consider what the substantive changes mean to the business community.

FURNACE: The last question, Mr. Chairman, and asking an opinion. I agree that this code revision has a significant impact, philosophically, on commerce in the State of Alaska. In that light, in your opinion, how to we better involve the

business community in understanding the various implications of this bill?

BLOCK: Well, that's perhaps the most fair question and most difficult to answer. I do know there has been a very affirmative effort by the code revision commission and particularly Professor Fessler to reach out and explain the bill. I know that he has given a number of seminars and continuing legal education presentations to the bar, so that most lawyers ought to be aware of it, and hopefully lawyers representing business clients will be passing that information back to their clients. I do not know that there has been an equal effort in the non-bar business community. Now, I am aware, for example, I saw a bulletin issued by the Alaska State Chamber of Commerce very recently bringing the attention of its membership to the existence of this bill. But as far as a lot of education, I am really not sure what's going on. I have to say, Rep. Furnace, the responsibility of the chambers of commerce and the business groups, and the, you might say, the special trade associations to dig in and learn these things. I don't know how much more the legislature can do. I know you've run ads and one thing and another letting people know of this going on, but nonetheless, I still think you may have to reach out a little more and make sure you are getting a true study of what the impact is on the business community. Beyond that I'm not sure I can give you a definitive answer.

FURNACE: Good. Thank you, Mr. Block. Mr. Chairman, I think Mr. Block has made a very valid point. Perhaps what we should do is hold a teleconference specifically with chambers of commerce throughout the State of Alaska. That's probably one of the most direct ways that we can involve the business persons. I am concerned about this here today.

COWDERY: I have one question to touch on and then I'll, Rep. Fussell has some questions too. You touched on an area there it seems to me that directors, present day directors or past directors, could obligate a company and then to a point where maybe it proved to be a financial, real difficult for the company, and then the directors could leave and new directors come in. It is my understanding that this bill would, the new directors would assume liabilities, is that your interpretation?

BLOCK: I'm not sure that that's the correct interpretation. I am not sure I could tell you what the correct interpretation is as I read the statute. It says is liable for materials, goods and services provided to the corporation at the time they were in office. I think, it's not the exact wording, but essentially the thrust. How that would be interpreted in practical fact when generally cash flow goes to pay the oldest

debts. I'm not too sure. But, again, that's one of the things that needs to be thought out.

COWDERY: A question that possibly a director could order something that wouldn't be delivered for a year or two or later, and I was wondering that at the time of the delivery if the liability was, the commitment was made earlier, but the time of delivery would the liability incur at that time, and I was just wondering if that would be a grey area in your opinion?

BLOCK: Well, the most I could say to that, Rep. Cowdery, is it would be a grey area. Probably it's more grey in my mind than it may be in Professor Fessler's or in the code commission's mind. They may be able to specifically address that. I'm not sure I know the answer.

COWDERY: Thank you. Rep. Bussell.

BUSSELL: Thank you, Mr. Chairman. Are there members of the Judiciary Committee that wish to ask Mr. Block a question? Rep. Wendte.

WENDTE: Thank you, Mr. Chairman. I gather from your testimony you seem to emphasize two main points in terms of what you call significant or substantive changes in legislation. One being that there will be substantial additional legal work in terms of impact on any corporation and secondly, you particularly focused on the liability between classes of people, particularly the impact on directors. Those are the only two significant changes in this document?

BLOCK: Oh, no, sir. They are not. What I tried to do was sort of classify the changes, but not to delineate them, give some examples. There are other changes. Another very significant area of change is the authority to pay dividends, to distribute corporate assets to the stockholders. There is a significant change in that. There is also a significant change which, incidentally, may be an appropriate and beneficial change, I don't know, but it needs to be thought out. In bringing the corporation code provisions for classification of equity accounts more up to the way that the generally accepted accounting procedures would choose to have those equity accounts relected. And as I say there may be a beneficial change in the code to do that, but it is a significant and substantive change and in so doing, it changes to some degree the permissible opportunities in which to distribute assets or profits to stockholders. So there is a substantive change there. I'd have to tell you that I have not completely analyzed this to exactly see what the true impact is, because I think in order to understand it I need to sit down with an accountant and understand how they interpret it, which I haven't done and one of the things I think would be part of our

study in understanding the economic impact of this. But I think that's a substantive area I didn't mention before.

WENDTE: In the area of director and officer liability, are there major problems in litigation in the state right now that has either not been accommodated by the court or indicate there is need to correct statutes? Are there major changes or volumes of those types of cases within the court system in Alaska right now? I guess what I am trying to get at is it broken . . .

BLOCK: Are you asking me are there a plethora of E & O cases against officers and directors in the State of Alaska? I guess I'd have to say I don't know whether there are or are not. I am not aware of them, but there could well be some that I am unfamiliar with.

WENDTE: The bar through your task force indicates that they need more time to . . . when do you expect to complete that.

BLOCK: It is my expectation we have scheduled our work activities so we could have our impact report back to you in about 30 days.

WENDTE: You are aware, of course, this bill was introduced ten months ago in April of last year. Given the responsibility of the bar to their clients and I guess the relationship between the bar and the state, that has not provided enough time for review?

BLOCK: I am not, I don't wish to try to either explain or try to apologize for the responsiveness of the bar. I would have hoped that the bar association would have taken a more early look at this, and indeed tried to get a better understanding of it by inviting Professor Fessler to conduct continuing legal education program for the business law section I guess it's about a year ago. So we have been studying it, but certainly not directing it toward legislative action, and perhaps we should have been. As far as our task force is concerned, our task force only came into existence as I say about a week, week and a half ago, in response to recognition that the legislature was just now becoming concerned with the bill.

WENDTE: You seem to endorse the concept of the code revision process in terms of reviewing the statutes to bring them into conformity with the reality of the state. One other action to this bill may be to just dump this whole thing and then try and crack individual problems, piecemeal . . . Would you suggest that?

BLOCK: Well, I neither endorse nor oppose or unendorse the code revision concept. That is a way to make a comprehensive revision of a major statute such as the corporation code. I am of the view that it is probably an appropriate time for the corporations code as well as other codes in our statutes to receive a wholesale review, and I am not suggesting that we ought to just scrap this bill. There is a tremendous amount of work involved in putting this together. A lot of very careful thought and ball corporation of ideas from numerous other states which have studied a lot of these other issues and I don't think that should be wasted. And I am not arguing that we ought to scrap the bill, nor am I suggesting let's take out the important points and piecemeal changes throughout the existing corporations code. It may be appropriate to start over. My only suggestion to this committee is that this goes beyond just language and organizational changes and modernization, it makes some significant substantive changes, and we need to be careful that we know what those are and what the impact of that is before we adopt them. That's my only point.

WENDTE: In regard to process and need for additional review, Should we suppose that I pick up my chamber of commerce bulletin and it mentions a page, a bill of this magnitude, 150, 160 pages, is it likely that that businessman is going to call his attorney to review? Is it the normal businessman corporate businessman to sit down and then rely on his attorney to address this issue?

BLOCK: My suspicion is, Rep. Wendte, he would probably do neither. He would be overawed by the number of pages and say somebody else must be taking care of this. I think that's unfortunate, but I think it's the fact. I don't think you can expect nor do you really, would it be appropriate for the people engaged in business enterprises say to sit down and do a careful analysis of this bill. I do think it's important that they understand what the significant, substantive impact is on their business, and perhaps address that in a general way. Beyond that, I think you are going to have to look to the technicians for guidance.

WENDTE: With your background, for the most part are small corporations in this state able to get errors and omissions insurance?

BLOCK: I would venture to say that the small the corporation the less necessity there is for it. I would imagine few corporations even try to get it, a few

small corporations try to get it. It is very expensive and really its predominant functions is to protect officers, primarily directors, officers and directors from actions brought by dissident stockholders, and generally where you have a family held or modest size corporation, or a corporation with people who know one another, you generally just assume that risk.

WENDTE: In your judgment, would most of the corporations in the state other than the major corporations be able to obtain coverage to cover the type of liability you have addressed to this legislature?

BLOCK: Would most of them be able to? Well, I am trying to find an analogy to another coverage that may be useful here. I would suppose what you are talking about here is the kind of exposure, probably the most analogous exposure would be surety and performance bonding of contractors. Really what you are talking about is a management and credit risk. And you are indemnifying whoever provides the insurance is indemnifying the insured that all of the bills are going to get paid. And I guess the most analogous existing insurance would be performance and payment bonding. And you should be pretty familiar with who has that, its availability and its costs and complications. And it's not readily available and only certain people can get it and only after a very lengthy qualification process.

WENDTE: I have a number of other questions and I think we are probably going to find, Mr. Chairman, that with all these witnesses we are going to cover them today . . .

BUSSELL: Thank you, Rep. Wendte. Particularly in light of Mr. Block's statement that he's heading the task force that's going to give a report here in a few days, I think it's unfair to grill him too much on what the task force may or may not decide to talk to us about the bill. Rep. Liska.

LISKA: Mr. Block, a lot of the questions I had were partially answered by the other committee. As you know, normally when a piece of legislation has started.

VOICE: We can't hear Rep. Liska here in Fairbanks.

BUSSELL: Turn your mike on.

LISKA: Now, Mr. Block, normally when a piece of legislation is submitted for study, a lot of different people have input into it. Now the way I read into this here, this apparently is directed to the small business. You know there is a \$25,000 liability on the insurance and so forth . . . My basic question to you is, you made a statement that we'd have to change the articles of incorporation, and I am not going to ask you what's wrong with it because any attorney can change the law of a corporation if it has to be. Disclosure statement is another

subject altogether, but usually a public or businessman plays a major part in introducing or changing any new piece of legislation.

In your opinion, what does this piece of legislation actually do? I mean is it changing that much to the radical side where it's going to make it inoperative, or are we so far off, for example, from other states. A lot of laws are based on Oregon law. A lot of them have been put on us up here, and we more or less have copied them. Are these other states working under concepts this bill addresses, any ways near it?

BLOCK: Rep. Liska, I really think that I would urge you to put that question to Professor Fessler who is here this morning, because that is his profession is analyzing what's going on in all the states, and he can better answer the degree to which this is a departure from the norm in the other states, the degree to which other states are working on making modifications. And he studies it and I don't. So he's the better expert on that. My brief reading of his commentary, however, is that this is a substantive departure from the current state of law in most other states. There may be two other states, New York and California, which he suggests are rethinking and changing. But, yes, this is a substantive departure from where we are in Alaska and a substantive departure from where the law seems to be currently in most other states, as near as I can tell.

BUSSELL: Are there questions from other Judiciary Committee members of Mr. Block? If not, all right . . . Rep. Koponen.

KOPONEN: Thank you, Mr. Chairman. One question or suggestion. If the task force were to examine the problem with current statutes to see what sort of economic chilling effect it has on investments by passive investors or people who are going to be minority stockholders, I know there is a tendency for people to invest capital that has been created in Alaska and invest them in what are considered more stable . . . [TAPE CHANGE] into that and that's the protection of the minority stockholder, the dispersion of their assets in this city where stockholders up to 49 have been wiped out by the majority under procedures which are legal under the current code and which they felt don't give them sufficient protection.

BUSSELL: Is that a question or statement?

BLOCK: Well, Mr. Chairman, I think Rep. Koponen's points are well taken, and it's not the position of the task force that we want to show you all the negative impacts. We want to show you what the economic impacts are both ways, and I think the points raised by him are very valid.

BUSSELL: Are there other questions of Judiciary Committee members of Mr. Block? If not, Mr. Block, I'd like to ask you just one or two questions in a complete and other vein if I could, although they pertain to this. Are you aware of the membership of the Alaska Code Review Commission?

BLOCK: I can't recite it now. I reviewed it at one time. I know that one of its esteemed members is here, but beyond that I am not sure I know the total composition of it.

BUSSELL: My reasoning for asking you is that you are an active member of the Alaska Bar Association, and this commission does do a variety of things. Are you aware of other work that they have in hand right now that they are doing?

BLOCK: I was led to believe that there was another project that they were considering getting into, but I am not sure they are actually working on it. Beyond this I really don't have a specific knowledge of the activities they are engage in.

BUSSELL: Well, again because of your unique position associated with the bar association, I would think that it would be one of the responsibilities of the code review commission, and since I am a member of that group and we haven't done a very good job of reaching out and telling you and others what they are doing. They do have a . . . in fact, almost everything they do seriously affects the bar association. And I'm somewhat ashamed, at least on my part, of not telling you about it. What connection, or how does the Alaska Bar Association connect with other states' bar associations? Obviously, this present review, or this present portion of the review, affects attorneys that practice in other states. Does the Alaska Bar Association or the Anchorage Bar Association have any connection with bar associations in other states who would be intimately involved in enforcement or work with the code?

BLOCK: I know of no official connection that the Alaska Bar Association would have with the bar associations in other states. Perhaps the most effective interstate communication would be that you would expect most of the lawyers that are in the business law section, for example, which is perhaps the section most affected by this. The business law section of the Alaska Bar are undoubtedly also members of the business or corporate law section of the American Bar Association. And in that way could communicate back and forth with their counterparts in other states.

Now I actually would ask that you address that to Mr. Kelly who is chairman of the business law section this year. He may know of more connections with other states than I am familiar with.

BUSSELL: Thank you. I didn't mean to put you on the

spot there, I just wanted to know because as you were speaking it came to my mind. And that's what happens, of course, when you get sections of state government like the code review commission that are off on a tangent of their own, largely removed not only from you folks, but removed from the legislature too. And I personally am opposed to that kind of thing and think this should have been a matter done by you folks with legislators instead of the way it was handled. And I will immediately as the Judiciary chairman embark on a program of letting other bar associations across the country know what's happened here so we can get their very valuable input.

COWDERY: Rep. Ringstad.

RINGSTAD: I've got a question for Mr. Block if I could, please.

COWDERY: Yes, John, we have about ten witnesses so if you could keep that in mind.

RINGSTAD: Mr. Block, if I understand you correctly in your saying that you feel that most of this isn't a real imminent problem and we should proceed slowly to make sure we get it right rather than having parts of this that need to be done immediately?

BLOCK: Well, I would, I think Rep. Bussell said correctly, I hate to prejudge the outcome of the task force. I would say at least for the next 30 days, I'd adopt that view, yes, sir.

RINGSTAD: Thank you.

COWDERY: Thank you, Mr. Block. Rep. Wendte.

WENDTE: Another question for the witness, but I would have a question for you, Mr. Chairman. We have been requested by the code revision commission and since the topic of other works of the commission has come up, is it your intent to not pursue the nonprofit code revision?

COWDERY: That is true. We have been asked to give our attention to this and that's our primary goal.

VOICE: For information of those present, we do have another document similar to this on nonprofit corporations. We've had hearings throughout the state and they subsequently recommended that we drop that consideration. But I assume we can serve notice that it comes back, we have made the decision apparently to not pursue that, that's it's likely to raise its head again at some point in time. I assume that document would be a working document again, and it might behoove everyone here that deal in that area to begin to look at that as well.

COWDERY: I don't believe it's been referred to at least my committee yet. Thank you. I'd like to ask Mr. Paul Kelly to come forward.

VOICE: We have Commissioner Brown here.

COWDERY: Commissioner Brown.

BROWN: Yes, Mr. Chairman.

COWDERY: Does he want to testify, or observe or what?

BROWN: Yes, Mr. Chairman, this is Fred Brown. I'm here just as an observer as a member of the Alaska Code Revision Commission. If anyone wishes to address any questions to me, may I assume Professor Fessler is also available?

COWDERY: Yes, they are in the audience. Craig Stowers and John Abbott and Dan Fessler in the audience here.

BROWN: They are physically in Juneau?

COWDERY: We're in Anchorage.

BROWN: Well, I'll figure out all these different places in Alaska.

COWDERY: Mr. Paul Kelly.

KELLY: I was considering the number of witnesses, could we go ahead and take two witnesses at this time?

COWDERY: Yes, sure, please come.

KELLY: This is Bruce Frenzel from ARCO.

BUSSELL: Since we are recording electronically, this thing is being done by teleconference, could you state your name for the record and for the committee's information prior to proceeding with remarks on the subject.

KELLY: My name is Paul Kelly, speaking this morning on behalf of the, I'm chairman of the business law section of the Alaska Bar Association, and the views I'm expressing are on behalf of that section.

FRENZEL: My name is Bruce Frenzel, and I am an attorney with ARCO Alaska, Inc., here in Anchorage, representing ARCO Alaska, Inc.

KELLY: The first point, just with regard to the history of the bill right here, I do recognize the fact that we are

addressing the issue in February of 1984, ten months after the bill was introduced, and acknowledge that maybe we should have been involved earlier. But the point is that we are trying to provide this body here with the input from the clients we represent, the small corporations mainly the mom and pop corporations are a lot of the ones I represent who are going to be significantly affected who don't have an in-house attorney or attorney on staff as a consultant on a regular basis. And I am trying to work with them right now and explain to them what's going on. But these are the people who do not have that daily input from an attorney to explain to them what's happening, what this code is going to do to them. And there are many more out there who will have that problem, I think.

Secondly, the bill as it's proposed is an excellent, very well thought out obviously bill, and it represents many important changes I think to the code. And many of them are beneficial, and we don't want to represent to the committee today that we are opposed to the bill. The primary purpose of the business law section anyway in appearing here today is to request that we be given a period of time to complete a quick review and an impact report so that you could have that in your file and you can refer to that when decisions are being made at a later time. We are not here this morning to debate the merits and demerits of the proposed code. We are not in a position at this point until we have completed our study. But I think we should address just a couple of points to explain why we have this concern, and why we need this extra time.

With regard to this section 488, section which I think was proposed primarily to deal with the collapsible corporation problem for people who are setting up corporations, conducting a business and then absconding leaving the laborers, materialmen, suppliers without any funds. That is an important aspect which I think needs to be addressed, but I don't think it necessarily needs to be addressed when we are dealing with the broad spectrum of corporations. We're dealing not only with ARCO but Continental Airlines that they're doing business in Alaska, and the corner grocery store and the Native corporations or at least their subsidiary corporations, which are not Native corporations. They are business making corporations and so all of the Native corporations have certain provisions applicable to them, their profit making ventures are going to come under this code. And they are still going to have the officers and directors being liable for activities of their subsidiaries.

Another point that needs to be made is the commentary is the case law on this code right here, and comprises the amalgamation of California case law, Model Business Corporation Act, New York case law and the New York Act. The one point I'd like to make as we've developed it, under the present code that we've got, we've got very few cases since statehood that have explained what a lot of the problems in that law mean. There has

been a very slight development of the case law under the present Business Corporation Act. I doubt if there is going to be any significant expansion of case law development of this new proposed act when it's finally enacted.

So the point is we are developing under this new proposed code a new body of law that's not going to have any concurrently developing case law in other jurisdictions, which you do have, at least we are able to refer to Oregon or Washington as having some similar case law development. And if we were to adopt the Model Business Corporation Act revisions, which are being done at this time, if we were to adopt those we would then have a concurrently developing case law in other jurisdictions. What we are doing here is we are going to have unique case law development in Alaska which is, there has been very little development in Alaska under the present Act anyway.

And finally, one issue that was addressed on sec. 488 as I recall, this was sold as an idea that would protect fishermen and other people dealing say with fish purchasers. And I do a lot of work out in the Bay and I understand that problem. The problem is that I also know there is a contract provision that allows your corporation to contract out of liability by having an exculpation clause that says we are not liable. You are not going to hold us liable, the officers and directors, for the debts of the corporation. You can contract out of the liability, and I can assure you when you've got an unequal bargaining power, like the fisherman versus a fish purchaser. Every contract is going to have an exculpation clause in it.

The problem is that I think the issues put forth probably would be, or the issue more properly addressed, may be in terms of a fisheries bond that we have readily available. We do have a present fisheries tax bond that buyers have to post, and that could be expanded if that's felt to be the solution. So there are other ways of possibly dealing with this issue that would not affect all the corporations from ARCO down to the corner grocery store. And I think that that's something that also should be looked at.

But finally, I guess the bottom line is we would just like to have another 30 days to complete our study and make some report to the committee.

FRENZEL: Good morning, my name is Bruce Frenzel. I am an attorney with ARCO Alaska, Inc. I am also a member of the corporate code revision task force referred to here previously with the business law committee of the Alaska Bar Association. I am speaking today on behalf of ARCO Alaska, Inc., a wholly owned subsidiary of Atlantic Richfield Company.

Proposed HB 343 envisions a completely new corporate code. As noted in the House and Senate Joint Journal Supplement

No. 11, dated April 8, 1983, major portions of this bill are "without major precedent in Alaska law." Any such major changes deserve adequate time for persons affected by this bill to review and comment. We recognize that the bill was introduced last April, but has layed dormant until now.

We especially appreciate the hard work of the Alaska Code Revision Committee which has gone into the preparation of this bill, but are strongly opposed to certain portions of it and are uncomfortable with others. ARCO respectfully requests that consideration of this bill be deferred for 30 days so that specific, constructive comment on the precedent-setting portions of this bill can be made. With constructive changes to the bill, ARCO may be able to support it.

As currently drafted, one specific objectionable provision allows individual liability for corporate officers which destroys the basic purpose of incorporation which is to limit liability for corporate officers and shareholders. For a large corporation such as ours, the proposed provision combined with the very large number of creditors, would amount to completely unlimited liability for a few of our high level employees. Such a provision is also likely to be the more onerous for small or closely held corporations.

We will commit ourselves to recommend specific language changes to make the bill acceptable. Unless consideration is deferred, however, we must strongly oppose the bill as drafted.

COWDERY: Thank you. If that's prepared testimony, could you make that available for the committee. Any questions of the witness? I would like to touch on Paul's area of fishermen, or in the fishing industry it would seem to me that a corporation could have many very quick liabilities and if the runs are heavy could create some problems, if that was what you were alluding to, the \$25,000 limit could get very small. The aggregate of limits could actually get very large, if I understood what you were saying. Basically, that possibility . .

KELLY: Well, under the present bill right now it's \$25,000 per creditor so it's an unlimited liability in the sense that one company I dealt with, we have 200 fishermen delivering. I was representing the fishermen on that joint venture. So it's 200 times \$25,000, if they caught that much. But speaking of salmon season, that would not be that unusual.

It's an uninsurable risk, I think. According to Mr. Block, he was alluding to it as a performance bond, his analogy. To me it would be an uninsurable risk. I cannot imagine an insurance company unless they put limits on the risk. Obviously, they'd have to. You would have an uninsurable risk because you would have an unknown liability, depending on how large your

company is. An electric company which has a lot of contracts, an engineering company which has tremendous potential liability regarding the projects they are dealing with.

So to me I think it would be technically an uninsurable risk. And it would affect the mom and pop businesses all the way up to ARCO. And, again, when you've got this unequal bargaining power, when you've got a big company that can tell its suppliers you're going to deal with us, we're not going to have liability. But the people on the other end, the suppliers are going to get stuck for the people further down the line because they are not in the same bargaining position. They cannot impose these conditions because they need the business to continue in business.

So these are all problems that need to be dealt with, and I hate to get side tracked by this one issue because I think there are a lot of other issues in the bill, too.

COWDERY: I just wanted to bring that one point up.
Rep. Furnace.

FURNACE: Thank you, Mr. Chairman. In your opinion, should the secondary liability be \$25,000 aggregate as opposed to per creditor?

KELLY: If that was the only position left, I'd say yes. I think, you know, what I'm looking at right now is what essentially you'd be doing if your corporate officers and directors would be sureties for the corporation debt of \$25,000. Maybe the possibility would be to require a minimum funding of \$25,000. Minimal capitalization. That might be another possibility. So at least you would have a corporation with a minimum capitalization of \$25,000. Maybe that's an issue, would that affect your small mom and pop corporations that are trying to start up and they just want to start a little printing business down the road, or they want to.

There's a lot of small businesses with liability, initial liability, that wouldn't seem to be that much. And they want to start a minimal investment program to see, you know it's an entrepreneurship that Mr. Block was alluding to earlier.

FURNACE: You indicated perhaps a minimum capitalization of the corporation at \$25,000. It doesn't appear to properly address the question. The question is, heretofore, we have considered there being a limited liability of corporate officers. And you're indicating that under the present bill, the liability is uncertain. There is no limit on it. It appears there should be some effort to at least cap that in some way. Put a dollar figure so as to make it predictable. Or, if no more, at least make it insurable. That's why my thinking was to have at least an aggregate amount of secondary liability that is

certain and predictable as opposed to having it unlimited all the way through. That would be the major concern.

KELLY: I'd say, yes, you know, that again if the public policy is going to be adopted that we are going to make corporate officers and directors liable for corporate activities. If that's the public policy change we want at this point beyond what our present case law says, there is a present case law liability that goes through the courts. It's going to take extensive litigation, and I'm aware of all those problems. But aside from that, if our public policy change is going to be we are going to have a \$25,000 surety bond by the officers and directors from now on then, yes, that would be much more palatable than an unlimited, unknown liability.

COWDERY: Rep. Uehling.

UEHLING: Thank you, Mr. Chairman. I know you talked about California case law and also New York case law. And if this code revision were passed and becomes part of the statutes, how do you feel, don't you feel that you can take precedent on other states as far as how they followed the same sort of approach that we have in Alaska, as far as other case law in other states. You said you had to have a new, this would be a new precedent, and it would be awfully difficult to be able to gauge it because you never had this kind of new effect.

KELLY: Yes, definitely you would be able to refer to other jurisdictions who have a similar statute and try to analogize there and say, well, look what they did over here in California. Yes, there would be that capability all the time. But I am saying that again Alaska is amalgamating this case law from at least three bodies of case law. California, New York and the Model Act. And I am saying that maybe we ought to look, a possibility we are going to explore is maybe adopting the provisions of the Model Act, which has its own commentary and which will be developing in other jurisdictions that are adopting the Model Act at the same time. I am saying you'd have a greater developing case law along those lines.

VOICE: Can you hear me, Anchorage?

COWDERY: Yes, we can hear you. Go ahead.

UEHLING: Another follow up question. If, in fact, we were to clean up this liability section, and considering that the present code is in many people's terms, ambiguous, do you feel that if this particular section was cleaned up that you would have no problem with the rest of the code?

KELLY: You ask a lawyer a question like that? We just need our 30 days. And to be honest with you, I've read through the Act. I've tried to understand a lot of the provisions. I see

some excellent changes, really well thought out changes. And I think we should adopte them today, but there are other things that definitely we need to have further consideration and input from a larger segment of th community.

We have attorneys here representing insurance companies, banks, mom and pop grocery stores, fishermen, oil companies, and to get the input from this broader base might be helpful at this point.

COWDERY: Any more questions of the House Committee?
Rep. Bussell.

BUSSELL: Thank you, Mr. Chairman. Are there questions of Judiciary Committee members? Rep. Malone.

MALONE: Thank you, Mr. Chairman. So far it seems like most of the testimony we've heard has focused on two points. One of which is this 30 days, and I'd like to ask of people who are testifying now, is 30 days, when do you envision the starting and when do you envision it ending? As Mr. Wendte pointed out, the bill has been introduced in the legislature for, well, he said ten months. I'd say close to a year, but I can understand it because the committee is seriously getting work on it, it's getting people's attention. When do you envision this 30 days would be completed and this task force report would be finished? Is there a specific date we are looking at, or 30 days from whenever you start on it?

KELLY: Well, we've already started. We had our organizationel meeting yesterday morning at seven, in fact. Mr. Block called it. I'd say by the end of March we'll have the report in your hands. That's our goal. We wanted to give the committee a palatable, you know, something they could accept. And I think 30 days, by the end of March, you'll have a written report in your hands. And I hope that doesn't cause any problems with your concerns about this bill, getting it passed this year.

MALONE: I think that with the additional 30 day delay that the likelihood of the legislation be adopted by the legislature this year is, starts to become very remote. Nonetheless, I'd still like to have the information, and if we could have it by the end of March, it might well be worth waiting for.

BUSSELL: Are there other questions or comments by other Judiciary Committee membership?

KOPONEN: Question from Fairbanks, one question. ARCO Alaska. Where is ARCO Alaska and its affiliate corporation organized? What state?

FRENZEL: ARCO Alaska, Inc. is a Delaware corporation,

and Atlantic Richfield Company is a Pennsylvania corporation.

BUSSELL: Are there further questions of other people wanting to talk on the network that are here today. If not, I would like to ask both of you just a brief question. How long have each of you been in Alaska?

FRENZEL: I've been in Alaska almost three years.

KELLY: Continuously since '76.

BUSSELL: Have either of you asked or had conversations with anybody in the legislature to bring about this type of change in the corporation law, or ask any member of the legislature to submit legislation changing corporate law?

KELLY: I, myself, no.

FRENZEL: No, we have not.

BUSSELL: Have either one of you been aware of the code review commission's work on this document, or on this or any other work that the code review commission does?

KELLY: I heard about it last year on this particular bill right here. And then in February I got a call explaining that there was a goal this year I guess to pass this bill. And since that time, in other words, I'm explaining my understanding anyway of what happened. And that's when I called Mr. Block and said we have an obligation I think to provide the commission itself with some type of input right away if they are going to pass this thing this year.

FRENZEL: I was aware last year that the revision of the corporate code was proposed. I was not aware of the director/officer liability issues.

BUSSELL: Do either or both of you know about the other work that the code review commission is doing right now with regard to other corporate law that is contained in statute, i.e., the nonprofit part and the cooperative corporations.

KELLY: I am generally aware that there are proposed code revisions to both of those areas.

FRENZEL: And I was not.

BUSSELL: Thank you, gentlemen. I almost have to apologize to both of you, too. I've been very inactive for this last year. I don't personally attend any of the meetings, but I do have staff that goes to them. As a legislative member, if I don't have any other part of the thing I should be telling people about what they're doing. I am ashamed of my part of it. Thank

you.

KELLY: Let's hope we can also catch up and assist you in providing input on this.

WENDTE: Mr. Chairman.

COWDERY: Rep. Wendte.

WENDTE: Again, to clarify the point on the other work of the commission. The Labor and Commerce Committee does have HB 437 in it dealing with the nonprofit code revision. And it has gone from the commission to the legislature. It was introduced eight months ago, in June of last year. And that's the bill I was referring to, although the chairman didn't seem to recall we had that committee. But that is another piece of legislation, and I would ask, although it's clearly not going to go anywhere this year, it probably would be good for you to keep in contact with with commission or get a copy of that bill. Again it's 437 in the House, and begin a review of that, so we're not caught in a similar situation next year.

KELLY: I'd like to thank the respective committees for their interest, and we hope to be able to be a better source of information and cooperate better with you in the future. Thank you.

COWDERY: The next one, witness up, Mr. Jack Thompson.

THOMPSON: Yes, my name is Jack Thompson. I'm the vice president of Air Van Lines and the secretary-treasurer of Craftsman Associates, Inc. One of the few people here today that's probably not an attorney, so I'll try to keep my remarks short. I'm involved with two companies. One is a fairly good sized moving company and the other is a small furniture repair business. So contrary to what somebody said, I read the whole bill, and being a nonattorney, I didn't understand most of it.

However, I did read carefully sec. 488 because some friends of mine had mentioned it to me. And I guess I'd have to agree with Mr. Block in one respect that this would be a public policy philosophy position. It's either going to be or it's not going to be. I personally believe that officers of corporations should have some kind of responsibility, fiscal responsibility for their corporations.

In Europe you've got, in some countries, you've got two kinds of limited liability corporations. Some where you have no liability like we do here and some where you have some liability. So I'm not sure how to address the idea that Mr. Furnace has mentioned about the, as an aggregate. That might be an idea. But I certainly think that there should be something in there to make people think twice before they do certain things