

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672

2639 SLC SB 214 (FILE 3) - SB 246 (FILE 1)

TABLE 2
 DISTRIBUTION OF LEAD IN EARLY MORNING WATER SAMPLES
 TAKEN FROM RANDOMLY SELECTED CARROLL COUNTY HOMES*

Water Lead ppm	Total Number of Samples	Percentage of Total
0.00	119	33
0.01-0.05	153	43
0.06-0.10	24	7
0.11-0.20	28	8
0.21-0.30	9	3
0.31-0.40	6	2
0.41-0.50	6	2
0.51 & Above	5	2
Total	350	100

* All home water distribution systems consisted of copper tubing with lead solder.

67% of the County total random early morning samples have the presence of water lead.

24% of these samples have water lead in excess of 0.05ppm allowed by the Federal Safe Drinking Water Standards.

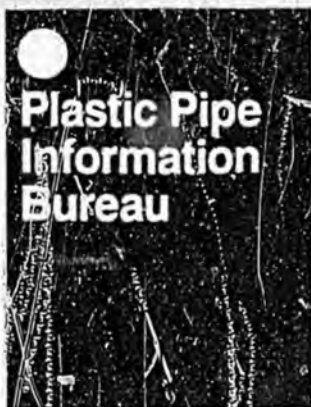
This table is taken from a report prepared by the Carroll County Maryland Health Department entitled, "Control of Lead and Copper in Private Water Supplies". Authors: J. Lovell, R. Isaac and R. Singer.

TABLE 3*
COPPER AND CADMIUM IN WATER
(Levels Expressed as ppb)

Water	Copper	Cadmium	Remarks
Natural Waters			
Connecticut River	-	14.6	Polluted
Brook, Vermont	3	0.5	Clear
Spring, New Hampshire	4	2.5	Clear
Sea Water, Caribbean	-	0.3	Clear
Municipal Waters			
Reservoir Inlet	16	2.1	Clear
Spillway	55	2.5	Clear
Main, Town	150	18.0	Cast Iron Pipe
Tap, Hospital			
Cold, Running	170	8.3	Cast Iron Pipe
Cold, Stagnant	730	77.0	Galvanized and Copper Pipe
Hot, Running	440	21.0	Galvanized and Copper Pipe
Tap, Hard	36	1.0	Galvanized Pipes
Tap, Soft	279	3.5	Galvanized Pipes
Tap, Soft	1240	8.3	Copper Pipes

* Data abstracted from H.A. Schroeder, Trace Elements in Man, 1969.(9)

EPA Drinking Water Standards: Copper = 1000ppb (sec)
Cadmium = 10ppb (prim)



Suite 3140/5900 Wilshire Blvd./Los Angeles/California 90036/(213) 937-7460
Dick Church

Contact:

STUDY REVEALS TOXIC METALS IN SCHOOLS' DRINKING WATER

LOS ANGELES, CALIF., July 29 -- Nearly half of California's public schools surveyed for a study released Thursday contain lead and other toxic metals in their drinking water which exceed federal health standards.

Metal pipe, used by all of the schools in the study, can leach compounds of lead, copper, chromium and nickel which are linked to disabilities ranging from poisoning to long-term neurological and genetic disorders, said Dr. Anthony V. Colucci, the environmental health consultant who directed the study.

Colucci said that his study, although a "pilot" project covering a small number of Bay Area and Los Angeles metropolitan elementary and upper-level schools, leads to the "inescapable conclusion" that metal pipe tests must be expanded to a comprehensive state-wide basis. "The state is not systematically conducting any tests of this sort that I know of," Colucci told a news conference.

Samples from ten schools, taken from drinking water and kitchen taps during the week of July 21, found two facilities with lead compounds, one facility with copper, and one with chromium which exceed the Environmental Protection Agency standards for maximum contamination levels. However, two other schools reported high levels of chromium, a known carcinogen.

In addition, four schools recorded a high nickel contamination level. Colucci described nickel as being a known carcinogen. Schools sampled covered inner city, suburban and rural locations which included students from a variety of economic and cultural backgrounds. Hooper Elementary School, with 1,574 students in South Central Los Angeles, for example, has excessive concentrations of lead and chromium, Colucci said.

The other Los Angeles school which exceeded the lead levels was Oneota Elementary in South Pasadena.

Colucci, a former senior health scientist for the EPA, said that "the problem of toxic metals leaching from pipe does not stop at the school doors." The study found excessive toxic metals contamination at both housing and business locations.

The consequences of excessive lead exposure in humans is well-documented. For example a study in Boston linked high lead concentrations to behavioral problems in almost 100 percent of the inner-city children exposed.

And in England, it has recently been reported that lead contamination of the drinking water is a serious problem. Excessive lead builds up in the body's tissues and causes pathological changes such as headaches, memory loss, delirium and death. Lead, a suspected carcinogen, also causes certain behavioral changes and can lead to mental retardation.

Copper, another metal which builds up in the body, has recently been linked with red blood cell damage, mental diseases, diarrhea and jaundice. "There is one case of an infant dying from excessive copper exposure, with 800 parts per billion," Colucci noted. "One of our schools, Roosevelt Elementary, had copper concentrations nearly twice that level."

Colucci pointed out that plastic pipe is the logical alternative to metal pipe. Plastic pipe is the only system cleared by the National Sanitation Foundation and the East Bay Municipal Utility District, and the plastic pipe industry is the only one which has volunteered to fund an environmental impact report for the California Department of Housing and Community Development that will meet the highest professional standards.

"Metal pipes must be subjected to the same scrutiny as plastic pipes have been with the same rigorous simulated and field tests done on pipes of all ages," Colucci said. He added that it is time for the California Health Department to conduct a systematic survey of school water delivery systems, and that regular testing should be conducted on an ongoing basis.

Michael Dennehy, a director of the Plastic Pipe and Fittings Association, the organization that commissioned the study, and vice president of R&G Sloane Manufacturing Company of Los Angeles said, "We have always contended that plastic pipe is being unfairly singled out for the EIR in California, but we have volunteered to fund an appropriate study. Isn't it time metal pipe is subjected in its own EIR to the same scrutiny, especially in light of this study?"

Dennehy added that the California legislature should call a halt to the proposed Papan legislation concerning plastic pipe, AB2636, and immediately begin a study of the real threat to California homeowners and schoolchildren: metal pipe.

"The Papan bill is a sham because of the provisions for an April 1984 ban, which would go into effect if plumbers or anyone else delayed acceptance of a completed EIR by legal challenge," Dennehy stated. "And it's dangerous because it would deprive Californians of the safest and most economical water delivery system available."

(Editor's Note: A table listing the schools, locations and sample data is attached.)

METAL CONTENT IN DRINKING WATER
Highlights of Environmental Research Laboratory Analysis

EPA's maximum allowable contaminant levels are listed in parts per billion below the column headings of lead, copper and chromium. National Sanitation Foundation's allowable level is listed for nickel, a known carcinogen for which the EPA is currently establishing a standard.

● = Exceeds EPA or NSF level ND = Not Detectable

<u>SCHOOL SITES</u>	<u>Lead</u> 50 ppb	<u>Copper</u> 1000 ppb	<u>Chromium</u> 50 ppb	<u>Nickel</u> 50 ppb
L.A. METROPOLITAN AREA				
1. Roscoe Elem., Sun Valley	ND	86	29	ND
2. Hooper Elem., S. Ctrl. L.A.	●320	200	●64	ND
3. Oneonta Elem., So. Pasadena	●160	43	29	ND
4. Valley View Elem., N. Hillywd.	6	23	ND	ND
BAY AREA				
5. Roosevelt Elem., San Leandro				
Location #1	ND	●1600	ND	41
Location #2	ND	●1900	ND	36
6. Colonial Acres Elem., S.L.				
Location #1	ND	10	ND	24
Location #2	ND	ND	ND	ND
7. Stanton Elem., Castro Vly.				
Location #1	ND	51	ND	ND
Location #2	ND	240	ND	ND
8. Brownell Elem., Gilroy	ND	34	ND	170
9. So. Valley Jr. High, Gilroy	ND	31	ND	ND
10. Gilroy Sr. High, Gilroy	ND	48	ND	52
OTHER SITES				
Residence, L.A.	●390	270	ND	ND
Commercial Site, Sun Vly.	ND	38	29	ND
Residence, Gilroy	ND	19	ND	ND
Residence, Morgan Hill	ND	24	ND	ND
Commercial Site, L.A.	●101	38	ND	ND

after the water thaws with no loss of strength. Polybutylene offers the greatest protection of any plumbing material against splitting or cracking at sub-freezing conditions.

Polybutylene piping systems have been tested under actual installation conditions and found to show no change in performance after numerous freezings. Even though the fittings of acetal copolymer are rigid, the system is protected by flexible polybutylene piping.

As the water begins to freeze in the fitting and expands, the pressure it generates in the direction of liquid flow forces the ice into the pipe, which expands to accommodate the additional pressures. Total internal pressures are thereby relieved and the fitting is protected.

MORE PROTECTION, INSULATION

Because of polybutylene's excellent insulating properties, the flexible plastic piping material also

THE BIG DIFFERENCE—A section of Vanguard polybutylene tubing, top, was unaffected by freezing water. However, a copper water line, below split after water inside froze. Vanguard polybutylene, because of its flexibility, expands to accommodate frozen water and then regains its original

shape after the water thaws with no loss of strength. Thousands of homes plumbing with copper and galvanized steel piping sustained damage when a severe cold snap hit the southern states recently. Vanguard polybutylene piping systems will be on display in NAHB booth No. 3326.

delays freezing of the water supply much longer than either copper or galvanized piping. Copper and galvanized pipe are great conductors and actually dissipate heat rapidly. Laboratory tests have determined that the heat loss factor for polybutylene is 13 times better than copper.

Residents of many southern states wouldn't have been hauling in bottled water and bathing at neighbors' houses if their homes had been plumbed with polybutylene piping. Many of those residents still are without running water — plumbers in some areas still have been unable to answer all service calls because of the unusually large number of freeze problems associated with copper and galvanized piping.

PROVEN IN TESTING

Polybutylene, although a relatively new plumbing material, has been proven as a superior plumbing product in test after test. Many builders in areas where the freeze hit hard this year have decided to use nothing but polybutylene piping in their new construction and remodeling projects.

Following the cold snap, Vanguard was inundated with unsolicited testimonials from builders, plumbers and homeowners whose structures weathered the freezing temperatures without damage to the plumbing.

Dozens of others whose buildings were damaged by water gushing from split metal piping called Vanguard to inquire about the availability of polybutylene.

One homeowner in the

Midwest whose home (plumbed with polybutylene) was left unattended over the holidays returned in early January to find the upstairs plumbing frozen solid. An attic area had been improperly insulated, exposing the piping to temperatures as low as 5 degrees F.

Although water froze solid inside the polybutylene piping, there were no leaks. "I was gone for more than a week, and if the water lines had frozen and split, I could have had \$20,000 to \$30,000 in damage," said the owner of the \$250,000 home.

"As it was, we opened the area to the heated portion of the house and the ice thawed withing several hours," he explained.

Another example of polybutylene's rugged reliability was in evidence at

a new apartment complex in Oklahoma City. The relatively large complex was plumbed with polybutylene and then pressured with water in mid-December. Unprotected against freezing temperatures, water inside the pipes froze solid. But there wasn't one leak in the entire system.

Said one plumber, "If most of the large cities in Texas had been plumbed with polybutylene, freeze damage from the cold snap would have been very insignificant.

Unfortunately, damage cause by frozen piping in Texas alone already has been estimated in the millions. Those plumbing problems were not only costly in terms of damage. They might eventually force insurance companies to raise their rates to compensate for losses.

**SEE VANGUARD IN
BOOTH NO. 3326**

Vanguard
Plastics Inc.
331 North Vanguard Street
McPherson, Kansas 67460
316 241-6369



SB 214 TITLE & SPONSOR SUMMARY
AMENDED TITLE:
AN ACT RELATING TO THE PLUMBING CODE

14:16 5/22/84 PAGE 1 OF 2

PRIME SPONSOR: FISCHER, P. .
CO-SPONSORS:

CURRENT STATUS: 3/29/83 IN (S) LABOR & COM

SB 214 SENATE ACTION

14:16 5/22/84 PAGE 2 OF 2

DATE SEQ PAGE

LEGISLATIVE ACTION

03/29/83 01 0520

FIRST READING -- COMMITTEE REPORTS
LABOR & COMMERCE
RULES

Introduced March 20 and referred to Community & Regional Affairs.

Plumbing
Code
(adopting
updated)

SENATE BILL NO. 214, by Senator P. Fischer. Would adopt as the minimum Plumbing Code for Alaska, the 1982 edition of the Uniform Plumbing Code, adopted at the 52nd Annual Conference of the International Association of Plumbing & Mechanical Officials. Adopts Chapters 1-13 and appendices, useful tables, and installation standards, but excludes Part I, Administration, pages 1a - 6a. The existing minimum code for Alaska is the 1979 edition adopted in September, 1978. (Amends AS 18.60.705, "Plumbing Code," and definitions section for AS 18.60, definition of "code.") Does not provide for an effective date (becomes law 90 days after Governor's signature).

Introduced March 29 and referred to Labor & Commerce.

See also HB 508

FAIRBANKS CENTRAL LABOR COUNCIL

A. F. of L. - C. I. O.

FAIRBANKS, ALASKA

1-

(907) 479-6281

April 22, 1983

Senator Bob Mulcahy
Pouch V
Juneau, Alaska 99811
(Mail Stop 3100)

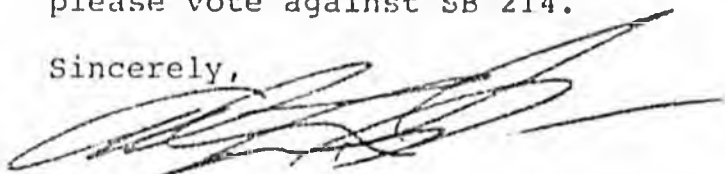
Re: Senate Bill 214

Dear Senator Mulcahy :

The Fairbanks Central Labor Council has unanimously adopted the resolution opposing Senate Bill 214. The gravamen of the bill is to delete the 1975 Uniform Plumbing Code as the official minimum plumbing code for the state. The bill replaces the 1979 edition with a 1982 edition. The 1982 edition was the product of a tremendous amount of lobbying and as a result, it is totally permissive. This means there are almost no standards. Plumbing work done by union plumbing contractors and union men has always been a guarantee of a good functional job. If we reduce to the standards of the 1982 version of the code, every kind of get rich quick short cut will be codified and everyone will have to drop to those standards to meet the competition. The result will be non-thawable pipes, leaks, and tremendous dissatisfaction with the plumbing industry.

For the benefit of the public, who needs the protection, and the plumbing industry, that must maintain its reputation, please vote against SB 214.

Sincerely,



ARTHUR LYLE ROBSON, Secretary-Treasurer
Fairbanks Central Labor Council

ALR:CLM

CENTER FOR SCIENCE IN THE PUBLIC INTEREST

1755 S Street N.W. • Washington, D.C. 20009

(202) 332-9110



July 11, 1983

Rocky Plotnick Weller
Researcher, Senate Labor and Commerce
Pouch V
Juneau, Alaska 99811

Dear Rocky:

We have done zero research on plastic pipe, but the California Department of Consumer Affairs apparently has. The enclosed section is taken from a fairly recent report of theirs. For details, you might want to contact Stephen Gould, Manager, Research and Special Projects, Division of Consumer Affairs, 1020 N Street, Room 501, Sacramento 95814; (916) 322-7674. With the change in administration, Stephen may be gone (I hope not); the last time I chatted with him was over a year ago.

Good luck.

Sincerely,

Kirk

Kirk A. Johnson, M.S.
Staff scientist

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF CODES & STANDARDS Administrative Section
P. O. Box 1407, Sacramento, CA 95807 (916) 445-9471



November 10, 1982

INFORMATION BULLETIN SHL 82-5

TO: CITY BUILDING OFFICIALS
COUNTY BUILDING OFFICIALS
HOUSING CODE OFFICIALS
FIRE OFFICIALS
HEALTH OFFICIALS
ENVIRONMENTAL HEALTH OFFICIALS
INTERESTED PARTIES (SHL)
DIVISION STAFF

RE: PLASTIC PIPING SYSTEMS

The Department of Housing and Community Development has undertaken an Environmental Impact Report under the provisions of the California Environmental Quality Act before authorizing the expanded use of plastic pipe. The Environmental Impact Report is required because a significant controversy exists, and because evidence exists, although disputed, that plastic pipe may cause actual or potential significant adverse environmental or public health effects by leaching hazardous or carcinogenic chemicals, and/or may pose fire safety or worker safety hazards. The types of pipe being studied are PVC, CPVC, and PB for potable water and ABS and PVC for drain, waste and vent.

The Environmental Impact Report will also evaluate existing uses of plastic and metal pipe. Until the Environmental Impact Report is completed and reviewed, the expanded use of plastic pipe is not approved by the state beyond the uses adopted by the state in 1979.

Because of an order of the California Supreme Court, the Uniform Plumbing Code, 1982 Edition, is being distributed in California with a notice inserted by IAPMO which notifies recipients, among other things, that the Environmental Impact Report is being prepared and that the expanded use of plastic pipe "is not permitted in California." This notice of IAPMO, and its manner of insertion in the code, has caused misunderstanding as to the current status of the approved use of plastic pipe in California.

The Department of Housing and Community Development adopted the Uniform Plumbing Code, 1979 Edition, as part of the State Housing Law on December 31, 1979. The 1979 Edition is the current edition being enforced under the State Housing Law.

In accordance with the 1979 Edition, plastic pipe may be used as follows:

Drainage Systems

Section 401 - Materials

(a) Drainage pipe shall be cast iron, galvanized steel, galvanized wrought iron, lead, copper, brass, ABS, PVC, or other approved materials having a smooth and uniform bore, except: 1. That no galvanized wrought iron or galvanized steel pipe shall be used underground and shall be kept at least six (6) inches (152.4mm) above ground. 2. ABS or PVC installations limited to residential construction, not more than two (2) stories in height.

(b) Drainage fittings shall be of cast iron, malleable iron, lead, brass, copper, ABS, PVC, or other approved materials having a smooth interior waterway of the same diameter as the piping served and all such fittings shall conform to the type of pipe used.

Water Distribution

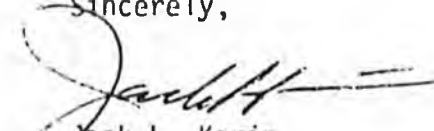
Section 1004 - Materials

(a) Water pipe and fittings shall be of brass, copper, cast iron, galvanized malleable iron, galvanized wrought iron, galvanized steel, lead, or other approved materials. Asbestos-cement, PE, or PVC water pipe manufactured to recognized standards may be used for cold water distribution systems outside a building. All materials used in the water supply system, except valves and similar devices shall be of a like material, except where otherwise approved by the Administrative Authority.

In addition, local jurisdictions may have adopted amendments to the 1979 Plumbing Code allowing additional uses of plastic pipe due to "local conditions" pursuant to their authority under the code. These ordinances are valid only if they were adopted in compliance with CEQA and other requirements of law.

At the present time, local amendments proposing the expanded use of plastic pipe beyond that authorized by the 1979 code should be undertaken with caution and in a manner to ensure strict compliance with applicable law. The State of California has determined that sufficient information has been presented to require the preparation of an Environmental Impact Report. Therefore, for any new application of plastic pipe materials involving water supply for human consumption covered by the EIR (PB, PVC, CPVC), it is the opinion of this department that a negative declaration by a local jurisdiction is not sufficient, and such action would likely subject the jurisdiction to litigation. Local jurisdictions are advised to await the department's completion of its Environmental Impact Report, currently underway. The California Environmental Quality Act must be complied with if a local jurisdiction decides to amend its code.

Sincerely,



Jack L. Kerin
Chief



OFFICE OF THE STATE ARCHITECT
ADVISORY BULLETIN

DECEMBER 31, 1982

TO: ARCHITECTS, ENGINEERS, SCHOOL DISTRICTS AND
COUNTY SUPERINTENDENTS

RE: USE OF PLASTIC PIPE IN PUBLIC SCHOOL BUILDINGS

The Structural Safety Section of the Office of the State Architect (OSA/SSS), which is charged with administering the "Field Act", has responded as follows to inquiries regarding the use of plastic piping in public school construction:

1. The current State Building Standard which applies to plumbing systems in public schools is the State Plumbing Code, Part 5 of Title 24, CAC, issued in Register 68, No. 41 dated November 2, 1968.
2. The restrictions on materials which can be used for piping and fittings for drainage systems, vent systems or water distribution systems are contained in Article P2 of Part 5, Title 24. In addition to the specific materials listed in Section P208, P211, P212 and P215 of Article P2, provision is made for use of "other approved materials" as determined by the enforcing authority.
3. The State Architect had determined in 1974 that in public school projects plastic pipe of the appropriate type and class could be used only for vent piping in buildings; waste lines in portable buildings; drains carrying acid wastes from laboratories; and plumbing lines carrying gas, water and drainage wastes underground outside of buildings. This has been the policy enforced by OSA/SSS since that date.
4. On the 10 November 1982 the Division of Codes and Standards of the Department of Housing and Community Development issued an Informational Bulletin No. SH 82-5 regarding plastic piping systems which states in part:

"The Department of Housing and Community Development (HCD) has undertaken an Environmental Impact Report under the provisions of the California Environmental Quality Act before authorizing the expanded use of plastic pipe.

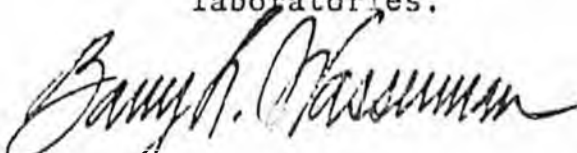
The Environmental Impact Report is required because a significant controversy exists, and because evidence exists, although disputed, that plastic pipe may cause actual or potential significant adverse environmental or public health effects by leaching hazardous or carcinogenic chemicals, and/or may pose fire safety or worker safety hazards. The types of pipe being studied are PVC, CPVC, and PB for potable water and ABS and PVC for drain, waste and vent.

The Environmental Impact Report will also evaluate existing uses of plastic and metal pipe. Until the Environmental Impact Report is completed and reviewed, the expanded use of plastic pipe is not approved by the state* beyond the uses adopted by the state in 1979**."

* (For residential uses.)

** (Uniform Plumbing Code, 1979 Edition)

5. Because of the particular concerns raised regarding the potential health hazards that may exist when plastic pipe is used in transporting potable water for use by school age children the Office of the State Architect is recommending that plastic pipe not be used on school sites for potable water distribution systems until the Environmental Impact Report being prepared by HCD is completed and reviewed.
6. Until the results of the Environmental Impact Report are reviewed and evaluated the OSA/SSS will continue to limit the use of plastic pipe for plumbing systems in public school projects to vent piping in buildings, waste lines in portable buildings and drains carrying acid wastes from laboratories.



Barry A. Wasserman
State Architect
(916) 445-4167

DKJ:dw

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF CODES AND STANDARDS - Administrative Office
P. O. Box 1407, Sacramento, CA 95807
(916) 445-9471



September 22, 1982

Plastic Pipe Task Force Members:

The contract between the Department and the Society of the Plastic Industry (SPI) has been signed by SPI and is in the mail to the Department. The contract between the Department and SRI International is in final form awaiting SRI's signature. A copy of both contracts, when signed, will be entered into the record and mailed to you.

The Department's Contracts Office estimates full state approval of the SRI contract and will occur by October 25. Consequently, a new EIR timetable reflecting an October 25 starting date has been prepared. We should know by October 14 if this latest revision will be the actual schedule.

There has been some question as to the procedure for submitting information to SRI. The task force has agreed that all information from task force members or the public should be submitted to the Department. The information will then be entered into the record and forwarded to SRI as well as other task force members. (Information submitted by task force members should be in 16 copies or reimburse the Department at 10 cents per page for reproducing 16 copies). Unsolicited information should not be submitted directly to SRI.

Thus if you have information on plastic pipe that you feel is important for SRI to have, submit a copy into the record. SRI will be provided a complete set of all items in the record for the duration of the project.

If you have any questions on the status of the EIR, please give me a call (Sacramento: (916) 445-3338 or El Sobrante: (415) 223-0160).

Sincerely,

Michael C. McMillan
EIR Coordinator

September 22, 1982

Plastic Plumbing Pipe EIR

EIR Timetable

1982

- Oct. 25 Contractor begins work on environmental review document.
- Nov. 8 Department and contractor progress report meeting.
- Nov. 23 Department and contractor progress report meeting (morning).
Task Force meeting with contractor (afternoon).
- Dec. 6 Contractor submits first draft of Public Health section
of the environmental review document.
- Dec. 21 Task Force meeting with contractor regarding Public Health
section.

1983

- Jan. 20 Complete copy of environmental review document, including revised
Public Health section, submitted to Department.
- Feb. 7 Department distributes draft RFP to Task Force for testing identified in
environmental review.
- Feb. 22 Task Force meeting with contractor on environmental review (morning).
Task Force meeting on draft RFP for testing (afternoon).
- Feb. 23 Task Force meeting on draft RFP for testing continues (as needed).
- Mar.-Aug. Possible six-month period to select testing laboratory, complete
testing, and interpret results.
- September (A timetable for activity following the testing period will be prepared
in September 1983.)

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR

LABOR STANDARDS and SAFETY DIVISION
MECHANICAL INSPECTION

3301 EAGLE STREET
POUCH 7-020
ANCHORAGE, ALASKA 99510
(907) 264-2447

January 23, 1984

FILE: AKMI (IR 3)

Dear Sirs:

Several items of the Uniform Plumbing Code should be brought to your attention. All of these sections are covered by the 79 edition of the Uniform Plumbing Code, which is published by IAPMO and adopted by AS 18.60.705. For clarity we refer to the Uniform Mechanical Code, which is adopted by 13 AAC 50.020.

1. Sec. 404 - 405. Fixture crosses are required in all back-to-back installations, as per these sections. Fixture crosses are not double LTTY'S or sanitary crosses.
2. Sec. 405. Changes in direction of drainage flow. Enclosed are four drawings which illustrate approved fittings of equivalent sweep.
3. Sec. 405. Cleanouts. A cleanout is required two feet outside of the building, and inside at the furthest end of the building drain (Sec. 103). A readily accessible (d) cleanout is required on all sink drains, first floor only (preferably either above or below the trap arm inlet.)
4. Sec. 506 (f). Calls for minimum size vent of three inches in diameter. This means all vents. This applies to all of Alaska except southeastern.
5. Sec. 604. Indirect Waste Receptors. Indirect wastes (floor sinks) work very well in restaurant and bar applications and will avoid a lot of problems in these applications.
6. Sec. 613. Vertical Wet Venting. Proper application of this section appears to be very difficult in the field, and we urge you to be very careful in its application.
7. Sec. 804 (e). Special Joint. Unions are required on all pieces of equipment as per this section.
8. Sec. 1005. Valves. Water shall be piped individually to each apartment with a main cut off valve OR individual stops on all outlets. This means tubs, shower valves, and all hose bibbs, and to be readily accessible.
9. Sec. 1006. Supply Tanks. All holding tanks of potable water shall conform to this section.

10. Sec. 1007. Water Supply. Check water pressure. Provide floor drains where tanks, boilers, etc. are installed. Crawl spaces require equipment pads.
11. Section 2119. UMC requires a floor drain.
12. Section 2104. 404 UMC, a hot water heater, is covered in the scope of these definitions. In areas where freezing occurs, discharge of relief valves cannot be run to the outside. The discharge shall be in an area where it is visible.
13. Sec. 1215 (e). Do not install any liquified petroleum gas appliances in pits or basements. We consider this a life and death hazard and will shut off upon discovery. Also see Section 504 UMC.
14. Sec. 1310. All spark or flame items must be at least 18 inches above floor in locations outlined in this section.
15. Sec. 1305 and Sec. 1306 require a separate hi-limit control on all energy fired units.
16. Appendix C. This section outlines minimum restroom requirements for all buildings. It is your duty to bring any deficiencies to the attention of the owner/builder to avoid changes in the middle of the job.

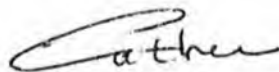
If we may be of further service to you, please contact:

Dave Barce, Plumbing Inspector
3301 Eagle Street
Pouch 7-020
Anchorage, Alaska 99510
264-2447

Al Anaka, Plumbing Inspector
Box 2385
Sitka, Alaska 99835

Adele Bacon, Plumbing Inspector
675 7th Avenue, Station J
Fairbanks, Alaska 99701
452-8105

Sincerely,



Don Cather
Chief
Mechanical Inspection

CHANGE IN DIRECTION OF DRAINAGE PIPING

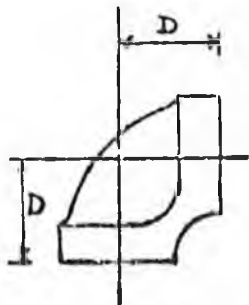
While Section 405 of the U. P. C. specifies certain fittings that may be used in making a change of direction in drainage lines, the appropriate use of 90° bends or elbows can be related only to "equivalent sweep."

The sweep or radius of a drainage fitting must be correlated with its position or function in the system in order to prevent excessive turbulence and maintain adequate flow velocities.

The following 90° fittings in both Cast Iron and plastic should be used as indicated:

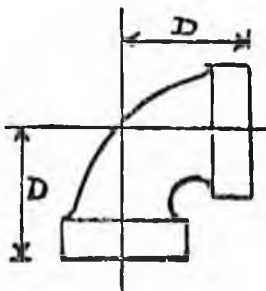
FOR DURHAM

A
90° Elbow



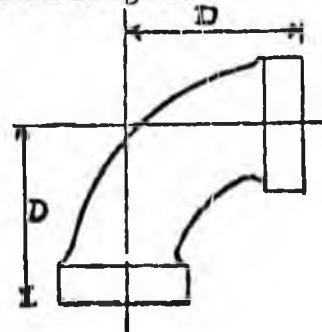
<u>Size</u>	D
1-1/2"	1-15/16"
2"	2-1/4"

B
90° Elbow
Long turn



D
2-1/2"
3"

C
90° Elbow
Extra long turn



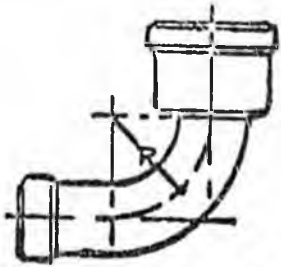
D
3-1/2"
4"

- A Use of 90° elbow -- Vent only
- B Use of long turn 90° elbow
Horizontal to vertical (OK also in trap arms)
- C Use of extra long turn 90° elbow
Horizontal to vertical
Horizontal to horizontal
Vertical to horizontal

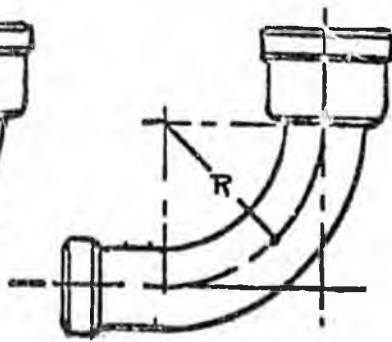
FOR CAST IRON SOIL PIPE

Note: Since the dimensions given apply to both bell and spigot and No-Hub, radii are shown because center to end dimensions vary.

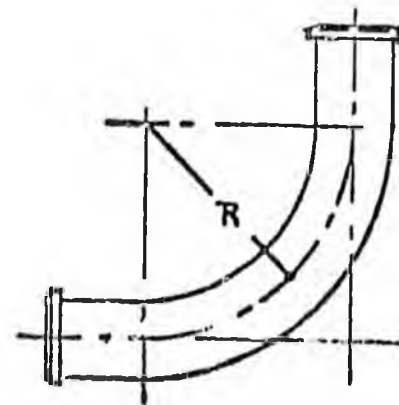
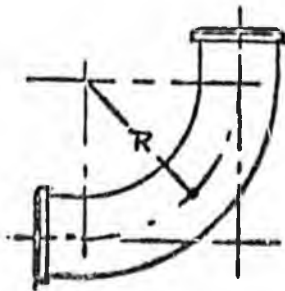
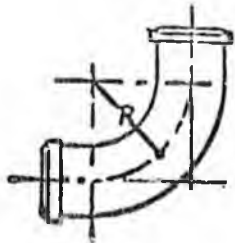
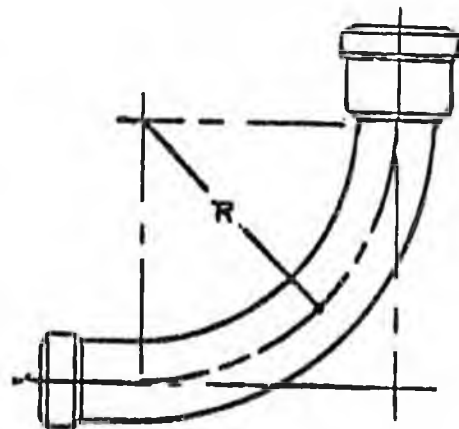
A--1/4 Bend



B--Short Sweep



C--Long Sweep



<u>Size</u>	R	R	R
2"	3"	5"	8"
3"	3-1/2"	5-1/2"	8-1/2"
4"	4"	6"	9"
5"	4-1/2"	6-1/2"	9-1/2"
6"	5"	7"	10"

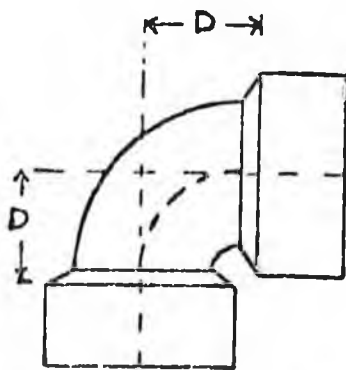
A Use of 1/4 bend -- Horizontal to vertical

B Use of short sweep -- Vertical to horizontal
Horizontal to vertical
Horizontal to horizontal

C Use of long sweep -- Same as short sweep

FOR PLASTIC

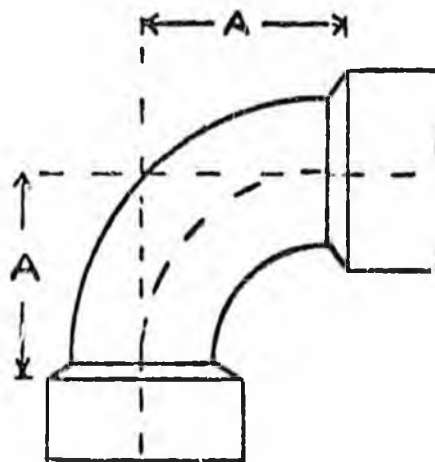
1
1/4 Bend Vent



Size D

1-1/2"	1-3/16"
2"	1-1/2"
3"	1-7/8"
4"	2-1/2"

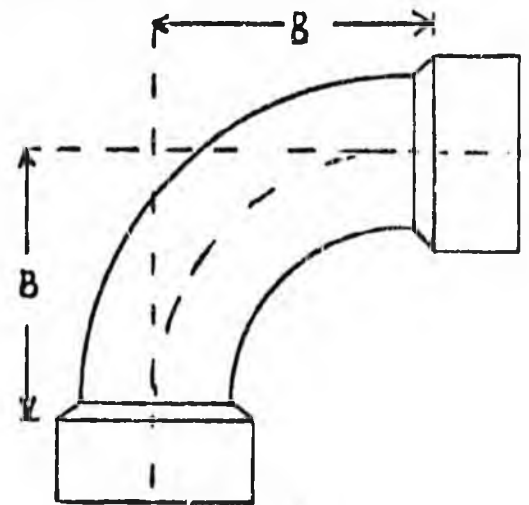
2
1/4 Bend



A

1-3/4"
2-5/16"
3-1/16"
3-7/8"

3
Long Sweep 1/4 Bend

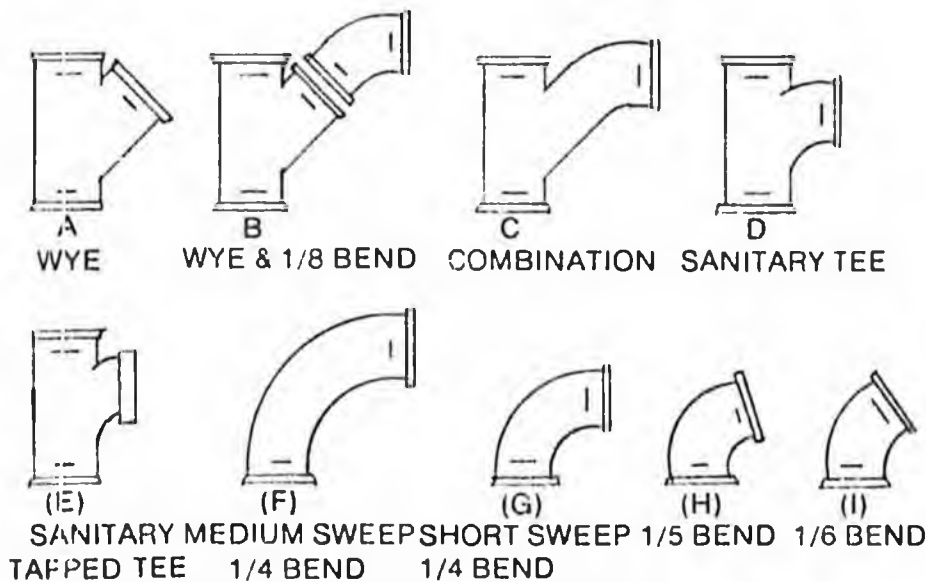
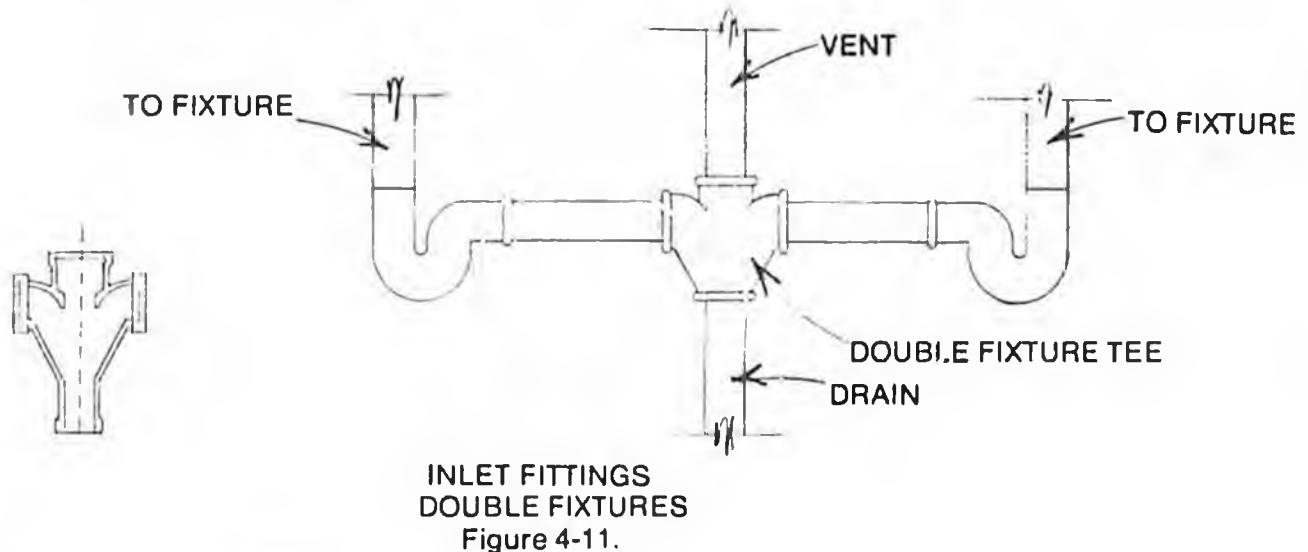


B

2-3/4"
3-1/4"
4-1/16"
4-14/16"

- 1 Use of 1/4 bend vent
 Vent fitting only
- 2 Use of 1/4 bend
 Horizontal to vertical (OK also in trap arms)
- 3 Use of long sweep 1/4 bend
 Horizontal to vertical
 Horizontal to horizontal
 Vertical to horizontal

flow in a horizontal pipe is dependent on the slope or grade of the pipe. If the pipe is sloped or graded one-fourth (1/4) of an inch per foot (20.8 mm/m) the velocity of flow will be approximately two (2) feet per second (0.6 m/s). Any interruption to the flow presented by short or abrupt changes of direction will slow down the velocity flow. The adverse effects of this slowdown are: pipes flowing full causing air pressure changes within the drainage system in sufficient velocity to carry away solids, etc.



HORIZONTAL TO VERTICAL
Fittings "A" to and including "E" may be used for vertical drain piping picking up horizontal branches

Fittings "F" to and including "I" may be used for horizontal drain piping changing to a vertical direction.

VERTICAL TO HORIZONTAL
Fittings "A", "B" and "C" may be used for this type of change in direction. Fitting "I" may be used when installed in a true vertical position.

HORIZONTAL TO HORIZONTAL
Fittings "A", "B" and "C" may be used for this type of change in direction

CLEANOUTS

Horizontal drainage piping is required to have cleanouts at specific locations. In the event of a stoppage, a point of entry is provided where special tools may be used to remove stoppages. Essentially, the upper end of all horizontal drainage piping is the most logical point. The only exception to this is short horizontal runs of drain piping less than five (5) feet (1.5 m) in length.

This exception does not apply to horizontal runs serving sinks or urinals. Once a cleanout is installed at the upper end of a horizontal drainage line additional cleanouts are required if the length is a straight run which exceeds one-hundred (100) feet (30.5 m) and in which case a cleanout is required at intervals of not more than one hundred (100) feet (30.5 m) between cleanouts. Also, a cleanout is required for each change of direction if the total aggregate change exceeds one hundred and thirty five (135) degrees.

S

B

223

SB 223 TITLE & SPONSOR SUMMARY 14:18 5/22/84 PAGE 1 OF 2
AMENDED TITLE: SSSB 223
AN ACT RELATING TO MOTOR VEHICLES, AND PROVIDING FOR AN
EFFECTIVE DATE

PRIME SPONSOR: JOSEPHSON.

CO-SPONSORS:

CURRENT STATUS: 6/26/83 IN (S) LABOR & COM REFERRAL FINANCE

SB 223 SENATE ACTION 14:18 5/22/84 PAGE 2 OF 2
DATE SEQ PAGE LEGISLATIVE ACTION

06/26/83 01 1529 FIRST READING -- COMMITTEE REPORTS
LABOR & COMMERCE
FINANCE
RULES

*** ** ** ** **

Sectional Analysis SB-223

"An Act relating to motor vehicles, and providing for an effective date."

Sec 1 Boiler plate language to indicate purpose of legislation. Similar to AS 28.20.010.

Sec 2 This change to AS 28.10.011 is also included in CSHB-184 (State Affairs). We feel the public would be better served if it read "a mobile home as defined in 13 AAC 40.010(27)." The regulation also covers mobile units used as "places of business, storage or other off-highway purpose."

Sec 3 Probably necessary language if bill is enacted. All references in this and following units should refer to "motor vehicles" versus "vehicles". AS 28.35.260(7) and (17) read:

(7) "motor vehicle" means a vehicle which is self-propelled except a vehicle moved by human or animal power.

(17) "vehicle" means a device in, upon, or by which a person or property may be transported or drawn upon or immediately over a highway or vehicular way or area except devices used exclusively upon stationary rails or tracks.

If passed as "vehicle" we would require proof of insurance on utility trailers, boat trailers, horse trailers, cargo trailers, etc.

It does not provide for self-insurers. AS 28.20.400

Sec 4 Corrections would have to be made to Sec 3 to make this section workable.

Sec 5 Same comment as Sec 4.

Sec 6 This same change is contained in CSHB-184.

Sec 7 We are not sure all family members are listed on a motor vehicle liability policy. For example a 16 year old applying for their first license. This could cause the public a lot of frustration.

Sec 8 This would be expensive as the departmental notice would have to be by registered mail. AS 28.05.121

Sec 9 This is a cost increase item. We would have to enlarge the Alaska Drivers Manual to adequately cover (4), (5), and (6). We would also have to change our written tests by enlarging, i.e. adding more questions or deleting some driving knowledge questions. We would have to buy additional new slides and reprogram our test machines for a longer test.

Sec 10 Raises liability limits from \$25,000/50,000/10,000 to \$100,000/300,000/50,000 in the F.R. law to conform to new chapter AS 28.22. The increased cost to the public would be a burden to the economically disadvantaged.

Sec 11 Raises F.R. liability to 100/300/50 to conform.

Sec 12 Raises F.R. liability to 100/300/50 to conform.

Sec 13 Raises F.R. liability to 100/300/50 to conform.

Sec 14 Adds "or underinsured..." We have no problem with this.

Sec 15 There are several grey areas here (1). This places an additional burden on the insurance company, which they can do, but they will pass the cost to the customer in increased premiums for all.

The department would have to establish a computer program to trigger a response what policy abuses appear in a person's record.

If the motor vehicle is owned by more than one person, do we suspend all licenses. Could be wife, children, etc. At present, we do not have the ability to correlate all these to a policy or a vehicle.

(m) Experience of other jurisdictions is that an "insurance card" only means that the person or vehicle was insured on the day the card was issued. It does not guarantee it is insured when shown to someone.

Sec 16 Change in monetary limits to 100/300/50.

Sec 17 New Chapter

AS 28.22.010(b) does not say the policy will list everyone covered, i.e., Family, by the policy. How can we know who can be given a drivers license under Sec. 7. A person could bring in anyones policy and get a drivers license, then drive his own uninsured car.

AS 28.22.010(1). The department does not have the capability to determine a correlation between drivers licenses and motor vehicle registration. There are too many duplicate or similar names in the files. Alaskans are a highly mobile population so the address is often not a valid identifier. We would have to add another identifier to the vehicle registration such as date of birth (DOB) of primary owner(s) or social security number (SSN). Although we do have the authority to require these (AS 28.10.211(b)(2) and Public Law 94-455, October 4, 1976), many citizens indicate great resentment when asked for their SSN. We have no way of knowing who all were insured under the terminated policy. What the section says is we suspend the owners driver's license but the rest of the family can continue to drive uninsured in other vehicles.

AS 28.22.010(m). As stated previously, the only validity an insurance card has is on the day it is issued.

AS 28.22.020. No comments.

AS 28.22.500(a). No comments.
(b). No comments.
(c). No comments.
(d). No comments.

AS 28.22.510

510(c) provides for the opportunity for a hearing under AS 28.05.131. This would require added hearing officers and a greatly increased travel budget in order to allow for timely hearings.

AS 28.22.520. No comments.

AS 28.22.536. No comments.

AS 28.22.540. No comments.

AS 28.22.550. If bill is enacted, this section is a very valid action.

Sec 18 See Administration Position paper for suggested wording and supplement.

Sec 19 See our comments on Sec. 7.

Sec 20 No comments.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 1/3/84

REQUEST

Bill/Resolution No.: SSSR 223
 Title: "An Act Relating to Motor Vehicles" (Liability Insurance)
 Sponsor: Sen. Josephson
 Requestor: Sen. Labor & Comm.
 Date of Request: 1/9/84

FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Public Protection and Administration of Justice
 BRU Program or Subprogram(s) Affected: Alaska State Troopers/Det. & CIB
 Div. of Motor Vehicles/Vehicle Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	45.8	188.4	578.0	612.7	649.5	688.5
200 TRAVEL	1.5	6.0	34.5	36.5	38.7	41.1
300 CONTRACTUAL	20.0	41.8	424.6	450.1	477.3	505.6
400 SUPPLIES	3.1	9.9	38.7	41.0	43.5	46.1
500 EQUIPMENT		60.0				3.0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	70.4	307.0	1,075.8	1,140.3	1,209.0	1,284.8

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE			(120.0)	(127.2)	(134.8)	(142.9)
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FUNDING: (Thousands of Dollars)

GENERAL FUND	70.4	307.0	1,075.8	1,140.3	1,209.0	1,284.8
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	3	3	13	13	13	13
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not indicated by sponsor of bill

ANALYSIS: Attach a separate page for analysis

Prepared By: Marcia Lynn McKenzie Phone: 465-4349
 Division: Administrative Services Date: 1/3/84

Approved by Commissioner: [Signature] Date: 1/8/84
 Agency: Department of Public Safety

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

DIVISION OF ALASKA STATE TROOPERS
FISCAL NOTE ANALYSIS
SSSB 223

Motor Vehicle Liability Insurance

Passage of this bill will require a statewide enforcement effort to ensure compliance. This will require numerous Troopers all over the State to spend patrol time enforcing provisions of this particular law. The bulk of the activity will take place in the Anchorage area, Fairbanks, and Juneau. One additional Trooper is requested for each of these locations to absorb the increased work load.

(A) First Year Costs - FY 84 (3 months only)

	<u>Three Troopers</u>	<u>Academy(1)</u>	<u>Totals</u>
Personal Services	\$ 45,833		\$45,833
Travel	1,500		1,500
Contractual Services	10,446	9,540	19,986
Supplies and Materials	2,475	636	3,111
TOTAL	<u>\$ 60,254</u>	<u>10,176</u>	<u>70,430</u>

(1) The Public Safety Academy is budgeted only for costs of training replacement Troopers based on normal turnover of personnel. Any new Troopers required due to new legislation need additional funding.

(B) Second Year Costs - FY 85 (full year costs)

Personal Services	\$188,415	\$188,415
Travel	6,000	6,000
Contractual Services	41,784	41,784
Supplies and Materials	9,900	9,900
Equipment (2)	60,900	60,900
TOTAL	<u>\$306,999</u>	<u>\$306,999</u>

(2) -Equipment costs are incurred during the second year only.

(C) Costs Beyond FY 85 - include a 6% inflation allowance

Special Note: If this legislation is not enacted into law for the three new Troopers to enter the upcoming Academy scheduled to begin in April, 1984, the Academy costs shown for FY 84 would need to be added to the FY 84 costs, for a revised FY 85 total of \$317.2.

Division of Motor Vehicles

The basic assumption of this fiscal note is that for this bill to be effective there must be an adequate system of enforcement and compliance. Other states with mandatory insurance laws estimate that 5-15% of their vehicles are operating without insurance as owners find ways to circumvent the law. We find that our present Financial Responsibility Law, AS 28.20, is practically as effective and far less costly both to the state bureaucracy and to the citizens directly.

For this bill to be effective the Division of Motor Vehicles must create a compliance unit of 10 employees. The compliance unit must be located with division headquarters since there must be ready reference to the existing ownership and registration records. The present headquarters location will not accommodate any expansion, therefore the fiscal note provides for relocation and lease of new space for the Division of Motor Vehicles headquarters in FY-86.

A further breakdown by object code is attached. The reason for such a large figure in the 310 category is because of statutory requirements that all suspension notices must be sent by registered or certified mail, return receipt requested. If action is taken on 30,000 uninsured vehicles, at \$1.55 postage per notice, that cost alone is \$46,500.00.

Section 5 of the bill exempts certain locations not on the highway system from vehicle registration. The loss of revenue from these locations where vehicles are currently being registered will be \$120.0 in FY-86. The total number of division employees will not be affected since these locations are being served by commission agents rather than state employees.

The FY-36 costs for the compliance unit are as follows:

100 PERSONAL SERVICES

1 Insurance Compliance Unit Supervisor (Range 18, new classification)	54.8
2 Hearing Officers (Range 16, new classification)	95.5
1 Clerk V	35.2
5 Clerk IV	158.5
1 Microfilm Equipment Operator	33.3

TOTAL 378.3

200 TRAVEL

Hearing Officers to travel to various cities to conduct suspension hearings	28.2
--	------

300 CONTRACTUAL

310 - phones, tolls, postage	57.9
320 - forms, advertising, public notices	16.8
330 - headquarters space lease (6,000 sq. ft.)	182.0
360 - equipment rental (4 AJIS terminals)	33.7
382a - DF Chargeback-programming and maintenance	89.9

TOTAL 380.3

400 COMMODITIES

Normal office supplies	28.2
------------------------	------

500 EQUIPMENT

Office Equipment (10 employees)	31.8
Word Processing Station (Wang)	21.2
Microfilm Camera and Printer	42.4

TOTAL 95.4

910.3

Inflation for subsequent years is figured at the 6% level.

1.	POSITION TITLE State Trooper				RANGE/STEP 76/A	BARG. UNIT A	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 13.85	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE				AMOUNT					
	1		2		3					
	PERSONAL SERVICES									
5.	Salary		44,279							
6.	Benefits		11,217							
7.	Supplemental Benefits		2,550							
8.	Fixed Benefits		2,612							
9.	TOTAL PERSONAL SERVICES		01		60,658					
10.	Travel		02		2,000					
11.	Contractual		03		13,928					
12.	Commodities		04		3,300					
13.	Equipment		05		20,300					
14.	Other									
15.	TOTAL COST				100,186					
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003		100.2						
18.		General Funds 1004								
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR B&M USE ONLY										
4A KEY NUMBER _____										

Passage of this bill will require additional enforcement activity, especially in urban areas, to make the legislation effective. It is more efficient to increase staffing rather than increase existing overtime for current personnel.

Costs include 25 hours of overtime monthly and a fully equipped patrol vehicle.

13 REQUEST FOR
NEW POSITION

AGENCY Department of Public Safety
 PROGRAM Crime I.D. and Apprehension
 BRU Alaska State Troopers
 COMPONENT Detachments & CIB

Page 1 of 3
 Revised Date _____

FY 85

1.	POSITION TITLE State Trooper			RANGE/STEP 76/A	BARG. UNIT A	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 13.85	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT	LEG.	
3.	CONTINUATION LEVEL	ADDITION	X	JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT					
	1	2	3						
	PERSONAL SERVICES								
5.	Salary	49,418							
6.	Benefits	12,519							
7.	Supplemental Benefits	2,550							
8.	Fixed Benefits	2,612							
9.	TOTAL PERSONAL SERVICES	01	67,099						
10.	Travel	02	2,000						
11.	Contractual	03	13,928						
12.	Commodities	04	3,300						
13.	Equipment	05	20,300						
14.	Other								
15.	TOTAL COST		106,627						
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts 1002							
17.		G.F. Match 1003							
18.		General Funds 1004		106.6					
19.		I-A Receipts 1005							
20.		Program Receipts 1028							
21.		Other							
FOR B&M USE ONLY									
4A KEY NUMBER									

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13 REQUEST FOR
NEW POSITION

AGENCY Department of Public Safety

PROGRAM Crime I.D. and Apprehension

BRU Alaska State Troopers

COMPONENT Detachments & CIB

Page 2 of 3

Revised Date

FY 85

1.	POSITION TITLE State Trooper			RANGE/STEP 76/A	BARG. UNIT A	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 13.85	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT	LEG.	
3.	CONTINUATION LEVEL	ADDITION	X	JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT					
	1	2	3						
	PERSONAL SERVICES								
5.	Salary	44,279							
6.	Benefits	11,217							
7.	Supplemental Benefits	2,550							
8.	Fixed Benefits	2,612							
9.	TOTAL PERSONAL SERVICES	01	60,658						
10.	Travel	02	2,000						
11.	Contractual	03	13,928						
12.	Commodities	04	3,300						
13.	Equipment	05	20,300						
14.	Other								
15.	TOTAL COST		100,186						
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts 1002							
17.		G.F. Match 1003							
18.		General Funds 1004		100.2					
19.		I-A Receipts 1005							
20.		Program Receipts 1028							
21.		Other							
FOR B&M USE ONLY									
4A KEY NUMBER _____									

Passage of this bill will require additional enforcement activity, especially in urban areas, to make the legislation effective. It is more efficient to increase staffing rather than increase existing overtime for current personnel.

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13 REQUEST FOR
NEW POSITION

AGENCY Department of Public Safety

PROGRAM Crime I.D. and Apprehension

BRU Alaska State Troopers

COMPONENT Detachments & CIB

FY 85

Page 3 of 3
Revised Date _____

S

B

244

SB 244 TITLE & SPONSOR SUMMARY

14:19 5/22/84 PAGE 1 OF 2

AMENDED TITLE:

AN ACT RELATING TO SECURITY INTERESTS IN REAL PROPERTY,
AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: SENATE RULES COMMITTEE.

CO-SPONSORS:

CURRENT STATUS: 4/12/83 IN (S) LABOR & COM REFERRAL: JUDICIARY

SB 244 SENATE ACTION

14:19 5/22/84 PAGE 2 OF 2

DATE	SEQ	PAGE	LEGISLATIVE ACTION
04/08/83	01	0634	FIRST READING -- COMMITTEE REPORTS
04/08/83	02	0635	COMMENTARY SEN JOINT SUPPL #9
04/12/83	03	0674	L&C CMTE REFERRAL ADDED
04/12/83	04	0674	MOVED FROM S.A. TO L&C BY UNAN CONSENT LABOR & COMMERCE JUDICIARY RULES

**** ** ** *** ** *

HB 341 SB 244
on
Security Interests in Real Property

Summary

The bill provides uniform procedures for secured real estate transactions. Without making large changes from existing law on deeds of trust, it incorporates some concepts of secured personal property transactions under the Uniform Commercial Code. Foreclosure is made uniform for deeds of trust, mortgages, and contracts of sale.

The bill provides for expanded options for resale after foreclosure borrowing the UCC concept of commercially reasonable resale.

The commentary in this binder contains further description of the general features of the bill followed by a section-by-section analysis.

Status

The bill is introduced in both houses for greater flexibility and for the possibility of joint hearings should that be the choice of the house and senate committees.

Status going into the Second Session of the Thirteenth Legislature: In House and Senate Labor and Commerce Committees, the first committees of reference. Second reference: House and Senate Judiciary Committees.

Senate

ALASKA CODE REVISION COMMISSION



*In Supp
HB 341 #9
SB 244*

COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
JAMES L. BALDWIN - VICE CHAIRMAN
PATRICK M. RODEY
CHARLES G. ANDERSON
L. S. KURTZ, JR.
JUDGE (RET.) THOMAS B. STEWART

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4879

EXECUTIVE SECRETARY
BILLY G. BERRIER

MEMORANDUM

TO: Chairman, Alaska Legislative Council
FROM: John W. Abbott, Chairman *JWA*
Alaska Code Revision Commission
DATE: March 17, 1983
RE: Bill on security interests in real property

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

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

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

A commentary on the bill as revised is attached also.

JWA:chw

Attachments

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

HB 341
SB 244

MARCH 1983

ALASKA CODE REVISION COMMISSION

COMMENTARY TO ACCOMPANY

DRAFT BILL ON SECURITY INTERESTS IN REAL PROPERTY

BILL NO.

General Features of the Bill

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

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

Persons familiar with the present Alaska law on both

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

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

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

CHAPTER 21. SECURITY INTERESTS IN REAL PROPERTY

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

Other Amendments:

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

Repeal of AS 09.45.200 and AS 34.20.010--34.20.135

Transitional provisions

Effective date

STEPS IN SUMMARY FORECLOSURE
UNDER EXISTING SECTIONS 34.20.070 - 34.20.135
(Deeds of Trust)

DEFAULT
(including the running of any grace period)

[wait 30 days or more]



Record notice of default and sale

[within 10 days]



Transmit copy to (1) debtor, his known successor, recorded successor, or successor in possession; (2) any other person in possession; (3) recorded subsequent lienholders, and (4) state (special notice re its liens)

[no wait necessary]



Post copy in three public places and publish once a week for four weeks



(Right to cure default and resume payment schedule until auctioneer's hammer falls)



SALE AT PUBLIC AUCTION

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

*A-wait
90 days
or more

*B-wait 30
days or
more fol-
lowing
posting

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

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

STEPS IN SUMMARY FORECLOSURE
UNDER PROPOSED SECTIONS 34.21.090 - 34.21.280

(Any security agreement containing a power of sale)

DEFAULT

[wait 30 days or more]



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

[wait 30 days or more]



Record notice of intent to sell

[no wait necessary]



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

*A-wait
60 days
or more

[no wait necessary]



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

*B-wait 45
days or
more fol-
lowing
transmit-
tal post-
ing and
start of
publica-
tion

[wait 10 days or more]



SALE

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

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

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

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

Section Analysis

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

Section 1

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

Section 2

AS 34.21.010

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

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

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

AS 34.21.020

SOURCE: AS 45.09.104(8).

COMMENT: The exclusion in this section is consistent

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

AS 34.21.030

SOURCE: AS 45.09.112.

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

AS 34.21.040

SOURCE: This section was taken from ULTA § 3-209 which is based upon § 9-208 of the UCC (AS 45.09.208).

Language is added to allow a debtor to request statements from the bank to which he actually makes his payments.

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

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

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

AS 34.21.050

SOURCE: AS 45.09.311.

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

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

AS 34.21.060

SOURCE: AS 45.09.405(c).

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

AS 34.21.070

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

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

AS 34.21.080

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

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

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

AS 34.21.090

SOURCE: RCWA 61.24.030.

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

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

AS 34.21.100

SOURCE: Original drafting.

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

AS 34.21.110

SOURCE: RCWA 61.24.030.

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

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

AS 34.21.120

SOURCE: RCWA 61.24.040(1)(a):

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

AS 34.21.130

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

There are changes from the original forms.

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

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

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

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

AS 34.21.140

SOURCE: Original drafting.

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

AS 34.21.150

SOURCE: Original drafting.

COMMENT: The section clarifies intent.

AS 34.21.160

SOURCE: Paraphrased from RCWA 61.24.030(6).

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

AS 34.21.170

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

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

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

AS 34.21.180

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

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

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

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

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

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

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

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

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

AS 34.21.190

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

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

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

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

AS 34.21.200

SOURCE: Original drafting.

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

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

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

AS 34.21.210

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

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

AS 34.21.220

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

COMMENT: This section is little changed from existing law.

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

AS 34.21.230

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

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

AS 34.21.240

SOURCE: AS 45.09.507.

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

AS 34.21.250

SOURCE: AS 45.09.201.

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

AS 34.21.260

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

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

AS 34.21.290

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

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

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

Section 3

AS 06.05.175

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

Section 4

AS 09.45.170

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

Section 5

Repeal of AS 09.45.200 and AS 34.20.010--34.20.135

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

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

Section 6

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

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

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

Section 7

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

S

B

245

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2/15/84

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

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

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

ANALYSIS: Attach a separate page for analysis

Prepared By: Warner T. May *W.T.M.* *JLB* Phone: 766-2296
Division: Technical Services Date: 2/15/84

Approved by Commissioner: *Thomas D. Arnold, Deputy* Date: _____
Agency: _____

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

SB 245 and HB 342, FISCAL ANALYSIS

Assumptions

1. As stated in the memo from the Code Revision Commission, dated February 22, 1983 and Journal Supplement #10, dated April 8, 1983, the general purpose of the bill is to gather and clarify provisions on recording that are scattered throughout the Alaska Statutes, and lays a suitable framework for future use of technological advances in a centralized recording system. It also establishes two classes of documents, Class A for constructive notice recording and Class B for other documents for safekeeping.
2. Based on a feasibility report, the current recording system, which is computerized in a batch mode system, does not allow for anticipated growth in the workload. The current computerized recording system is in desperate need of having its program rewritten to correct current problems.
3. A new computer program, whether written for the current recording system or the new recording system, would be approximately the same cost and would provide cost savings to the State by reducing data entry, processing, systems maintenance, manhour and paper costs.
4. A new system must have a centrally located data base with on-line access from the three copy centers in Anchorage, Fairbanks, and Juneau.
5. In the 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 ten positions statewide. Not included in this figure is a \$50.0 one-time cost for writing of comprehensive regulations. On the capital side, with a department priority ranking of 7 out of 13, \$350.0 has been requested for study, design, update and expansion of existing or a new computer system whichever is cost effective. Data conversion dollars are not included.
2. Analysis of SB 245 and HB 342 in relationship to FY 85 budget submissions, which appear to be reasonable for approval, indicate there are several areas where the bills will additionally impact the department.

A. One Time Costs:

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

SB 245 TITLE & SPONSOR SUMMARY

14:19 5/22/84 PAGE 1 OF 2

AMENDED TITLE:

AN ACT RELATING TO FILING AND RECORDING AND TO RECORDABLE DOCUMENTS; AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: SENATE RULES COMMITTEE.

CO-SPONSORS:

CURRENT STATUS: 4/12/83 IN (S) LABOR & COM REFERRAL: JUDICIARY

SB 245 SENATE ACTION

14:19 5/22/84 PAGE 2 OF 2

DATE	SEQ	PAGE
04/08/83	01	0635
04/08/83	02	0635
04/12/83	03	0674
04/12/83	04	0674

LEGISLATIVE ACTION

DATE	SEQ	PAGE
04/08/83	01	0635
04/08/83	02	0635
04/12/83	03	0674
04/12/83	04	0674

FIRST READING -- COMMITTEE REPORTS
 COMMENTARY SEN JOINT SUPPL #10
 L&C CMTE REFERRAL ADDED
 MOVED FROM S.A. TO L&C BY UNAN CONSENT
 LABOR & COMMERCE
 JUDICIARY
 RULES

XXXX

XX

XX

XXX XXX XXX

HB 342 SB 245
on
Recording

Summary

The bill deals with the recording system and with documents that may be recorded.

Although its purposes have been expanded over time, primarily the recording system provides a record of documents affecting real property; that is, land and things fixed to land.

The bill does not change this basic purpose, nor does it change the legal effect of recording a real property document, or failing to record it.

The bill (1) gathers together and clarifies state law on recording, and (2) provides a structure that will make possible the use of advanced technology for transmitting, indexing, storing, retrieving and searching title documents.

The goal to be reached eventually under the bill is central storage from which the image of a document may be called up on a remote terminal, viewed, and copied.

Each existing recording district may be included in the central system as it is ready and as funds are appropriated for the transition.

The bill corrects fuzzy statutory language on filing (storing original documents) and recording (copying and storing copies).

Because of the many uses of a subdivision plat, the bill provides for filing and retaining an original plat in the recorder's office or other office under the recorder's authority. However, a plat that is filed is also to be recorded. In that way the recorded plat, like any other recorded document, can be viewed and copied at a remote terminal.

The bill provides for recording two classes of documents. Class A documents are conveyances of interests in real property, and other documents presently recordable. Class B documents, separately stored and indexed, are all other documents capable of being copied by the recorder's equipment. Class B recording is solely for the convenience of persons who wish a permanent repository. Class B recording would have no legal

effect.

The commentary in this binder contains further description of the general features of the bill followed by a section-by-section analysis.

Status

The bill is introduced in both houses for greater flexibility and for the possibility of joint hearings should that be the choice of the house and senate committees.

Status going into the Second Session of the Thirteenth Legislature: In House and Senate Labor and Commerce Committees, the first committees of reference. Second reference: House and Senate Judiciary Committees.

ALASKA CODE REVISION COMMISSION



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JAMES L. BALDWIN - VICE CHAIRMAN
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CHARLES G. ANDERSON
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JUDGE (RET.) THOMAS B. STEWART

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465.4878

EXECUTIVE SECRETARY
BILLY G. BARRIER

MEMORANDUM

TO: Senator Richard I. Eliason, Chairman
Senate Labor and Commerce Committee
ATTN: Sheila Peterson

FROM: Dick Regan, Research Director
Alaska Code Revision Commission. *Dick Regan*

DATE: April 13, 1983

RE: SB 244, 245, 246

Enclosed is a memorandum dated April 11, 1983, addressed to Representative Walt Furnace, Chairman, House Labor and Commerce Committee.

A copy went to Senator Vic Fischer. Since his State Affairs Committee has waived referral to your committee, I provide you a copy of what Senator Fischer received.

DR:chw

Enclosure

ALASKA CODE REVISION COMMISSION



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EXECUTIVE SECRETARY
BILLY G. BERRIER

MEMORANDUM

TO: Representative Walt Furnace, Chairman
House Labor and Commerce Committee

Senator Vic Fischer, Chairman
Senate State Affairs Committee

FROM: Dick Regan, Research Director
Alaska Code Revision Commission *Dick Regan*

DATE: April 11, 1983

RE: Bills referred to your committees

Bills were introduced for the code revision commission in both houses, largely on the assumption that joint hearings of the corresponding House and Senate Committees could be held on them.

As it developed the first referrals of the bills were not to the same committees in the Senate and House. Here are the referrals:

Common Law Property Rules

Labor & Commerce/
HB 340--Judiciary
SB 243--~~Labor & Commerce~~Judiciary

Real Property Security Interests

HB 341--Labor & Commerce/Judiciary
SB 244--State Affairs/Judiciary

Recording

HB 342--Labor & Commerce/Judiciary
SB 245--State Affairs/Judiciary

Corporations

HB 343--Labor & Commerce/Judiciary
SB 246--State Affairs/Judiciary

Regarding the bill for a revision of the corporations code, especially, joint hearings seem desirable to the commis-

Representative Walt Furnace
Senator Vic Fischer
April 11, 1983
Page 2

sion because the consultant who developed the bill with the commission should be at hearings for the continuity and expertise he would provide. He is Professor Daniel Wm. Fessler, an authority on corporations law, a professor at the University of California, Davis, and frequently a visiting professor at leading law schools. Aside from the cost factors in having Fessler here for duplicated hearings, there are class schedules and conflicts with other obligations to be considered whenever he is called upon.

Perhaps there are problems in scheduling joint hearings, considering the referrals given these bills. But I would like to talk with you about the prospect for this kind of committee work to assure efficient exposure of the bills at as low cost as is practicable.

There is also a question whether a meeting of the code revision commission can be scheduled at the same time the bills are taken up in committee so commission members could answer questions about the bills. And I am available any time to answer questions about the bills, although I have not been intimately involved in preparation of the corporations code.

To condense this memorandum: The commission's members, Professor Fessler and I will be happy to assist as we can. I would like to discuss at some time convenient for you how this best can be done.

DR:chw

S B

246

#1

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GREGORY J. MOTYKA
JAMES B. FRIDERICI

April 19, 1984

MEMORANDUM

To: Senate Judiciary Committee:
Bill Ray, Chairman
Joe Josephson, Vice Chairman
Richard I. Eliason
Fritz Pettyjohn
Robert H. Ziegler
Senator Jalmar M. Kertulla, President of Senate

From: Stanley H. Reitman

Re: SB 246
An Act Revising the Corporate Code

It is my understanding Senator Josephson will conduct a subcommittee session in Anchorage on

Saturday, April 21, 1984
at 9:00 a.m.
1024 West Sixth Avenue

to consider SB 246, An Act Revising the Corporate Code--a bill sponsored by the Alaska Code Revision Commission largely utilizing the work product of Professor Dan Fessler from California.

To assist you in evaluating the subject bill, I am enclosing for your convenience, the following materials previously made available to Senator Josephson (including a self explanatory letter of Senator Josephson) regarding the prospective subcommittee hearing in Anchorage:

(1) March 12, 1984 letter of the undersigned to Senator Josephson, regarding (i) the background of Alaska's existing corporate statute, (ii) the Revised Model Act released in 1983 by the American Bar Association, (iii) close corporations, and (iv) the purported or alleged needs of Native

corporations for a revision of the existing statute, plus (v) other relevant comments

Exhibit A

(2) March 16, 1984 letter of Senator Josephson to the undersigned

Exhibit B

(3) March 30, 1984 letter of undersigned to Senator Josephson (accompanied by a position paper or memorandum by Professor Fessler to the Alaska Code Revision Commission dealing with the topic of close corporations)

Exhibit C

(4) March 30, 1984 transmittal letter of undersigned to Senator Josephson accompanied by the March 30, 1984 report to the (i) House Judiciary and (i) House Labor and Commerce Committees, by a Task Force¹ of Alaskan lawyers critiquing Professor Fessler's Code (SB 246, HB 343)

Exhibit D

As you will note, the Alaskan lawyer task force suggests (page 4 of letter of Richard Block, Task Group Chairman), action on the subject SB 246 (HB 343) be deferred until next session to:

(a) give the Legislature, Code Revision Commission, and the public a meaningful opportunity to fully consider the revised Model Act (of the American Bar Association);

(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 Group is prepared to work with the Alaska Legislature, the Alaska Code Revision Commission and one or more economist(s), business leader(s), investor(s), jurist(s), academician(s) plus actual and potential entrepreneurs, to

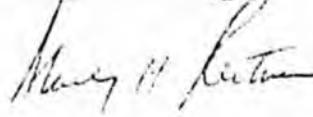
1. David Bendell, Richard Block, Julius Brecht, Brian Brundin, Mark Copeland, Ken Eggers, Bruce Frenzel, Ray Gardner, John Norman, Stan Reitman, Richard Rosston.

Memorandum (Continued)
Page -3-

carefully and comprehensively review the existing Alaska statute, the proposed Alaska Code Revision Commission/Fessler Code (SB 246), the American Bar Association Revised Model Act² and any and all other relevant sources to develop a modern, flexible and comprehensive new corporation code for Alaska.

Before we discard the existing statute, we should be sure we are adopting, consistent with Alaskan interests and needs, the very best code for Alaska.

Respectfully,



Stanley H. Reitman

2. Developed over a period of approximately four years (1979-1983) by a nationwide group of extremely able and prestigious practitioners and academicians with varied and extensive experience.

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JAMES B. FRIEDICI

March 12, 1984

Senator Joseph P. Josephson
Alaska Senate
Capitol, Room 508/510
Juneau, Alaska 99811

Re: Senate Bill 246
An Act Revising the
Corporation Code

Dear Senator Josephson:

As a follow-up to my telephone call to you on Friday, March 9, 1984 regarding SB 246, "An Act Revising The Corporation Code", ~~below~~ in summary form are the reasons I suggested the Judiciary Committee of the Senate should delay acting on this bill until at the minimum, the end of March 1984, to allow a group of lawyers (the Alaska Task Group) who are currently reviewing SB 246 and related HB 343, time to make a report to the legislative committees considering the subject corporation code bill.

(1) Goals.

I am sure the (i) Alaska Legislature, (ii) Alaska Code Review Commission (ACRC), (iii) Alaska judiciary, (iv) Alaska Bar, and (v) Alaska public, will readily agree that we want the best available legislative product for Alaska. If the existing statute is ripe to be updated and overhauled (and I concur in such conclusion), let's get the best code we can--irrespective of who gets the credit, plaudits or gold stars--consistent, of course, with related objectives of predictability, flexibility and cost.

(2) Background of Alaska's Existing Statute/Model Business Corporation Act.

Alaska's existing corporation code is essentially the Model Business Corporation Act (MBCA) as it existed in or about 1953, with a number but by no means all of subsequent amendments or embellishments thereto.

Senator Joseph P. Josephson
March 12, 1983
Page -2-

Some of the most able and prestigious practitioners and academicians throughout the nation, developed the MBCA. The Act containing a number of optional and alternative provisions has since been revised from time to time, largely in piecemeal fashion. A volume of official forms for the MBCA prepared under the auspices of the Committee on Continuing Legal Education of the American Law Institute has also proven to be helpful to practitioners and the public.

In 1960 under the guidance of the American Bar Foundation and the ABA Committee, the MBCA Annotated¹ was published. At such time the MBCA had been used as the basis for the new business corporation acts of:

Wisconsin	1951	Virginia	1956
Oregon	1953	North Dakota	1957
D.C.	1954	Alaska	1957
Texas	1955	Colorado	1958
		Iowa	1959

By 1970, the editors of MBCA Annotated (then in its Second Edition) noted that twenty-one (21) states (including Alaska and Oregon) had by such time utilized the MBCA as the basis for their acts and another nine (9) states had employed significant portions thereof.

In 1969 the Model Act itself was revised because of the then accumulated amendments. In or about 1979, a further and comprehensive (the first in roughly 30 years) revision project was undertaken by the ABA Committee, culminating in the release of an exposure draft (with comments) in March 1983. Attached hereto as Appendix 1 is the "Introduction" to the ABA Revised MBCA. The May 1983 issue of the Business Lawyer² called attention to and reported on such ABA revision project.

1. contains a comprehensive analysis of the business corporation acts of all states, annotations thereto and comparisons to the MBCA, together with commentary and bibliographical notes.
2. product of the Section of Corporation, Banking and Business Law of the American Bar Association.

Senator Joseph P. Josephson
March 12, 1983
Page -3-

In telephone conversations with Messrs. Hamilton³ and Goldstein,⁴ the authors of Appendix 1, here is the anticipated timetable for the finalization of the ABA revision project:

(i) April 1984 - the Revised MBCA will be approved on or about April 7, 1984, with a few anticipated minor changes from the March 1983 exposure draft;

(ii) June 1984 - the revision will go to the printer for publication by the end of June 1984.

Accompanying the Revision will be two (2) optional supplements intended to complement and augment the Revision, in two vital areas:

(a) close corporations - see Appendix 2 for report of the ABA Committee;

(b) professional corporations (forming part of the March 1983 exposure draft).

Although Alaska has not kept up to date with all of the amendments to the MBCA since 1953, the Alaska statute (i) has nevertheless been reasonably effective and (ii) it has been comforting to "outside" investors, lenders and business concerns to be advised that we have the basic MBCA in Alaska.

(3) The Two Projects--ACRC and ABA.

In 1979, the ACRC began a major project--revision of Title 10 - Corporations and Associations⁵ - utilizing to a fair degree an outside consultant.⁶ A draft of a new corporate code for Alaska was completed in November 1980 and embodied into a bill introduced in the Twelfth Legislature and again in the current Thirteenth Legislature (SB 246).

3. Professor of Business Law at the University of Texas School of Law.

4. Chairman of the Committee on Corporate Laws.

5. 1981 Annual Report of ACRC.

6. Professor Daniel Fessler from California.

The unofficial position of two members of the ACRC, as enunciated in a meeting with four (4) members of the bar group studying SB 246, is that it is simply too late for the Revised MBCA to be considered. Such position is wrong--why should Alaska not have an opportunity to have the very latest and best thinking, draftsmanship, experience and policy embodied in its new code. Anything less is a disservice to Alaska.

(4) Close Corporations.

A number of jurisdictions including California and Delaware have in recent years enacted comprehensive close corporation provisions intended to accommodate the needs and expectations of entities where membership and management is substantially identical and the owner/managers view each other as partners in an incorporated partnership setting.⁷ Some states have blended their close corporation provisions throughout the business code--other states employ a separate compilation of integrated sections to accomplish their objective.

The close corporation patterns allow deviation from statutory norms that to a fair degree have been historically directed at the large publicly owned enterprises, including among other provisions:

(a) greater informality on the part of shareholders and directors;

(b) downgrading the importance of the board of directors in its management of the business of the corporation, or even eliminating the need for a board altogether;

(c) greater or lesser than normal quorum or voting requirements for shareholder or director powers;

(d) enforcement of non-judicial dissolution by the holders of fewer than 2/3 of the shareholders or whatever the prescribed statutory norm is;

(e) restrictions on disposition of shares;

(f) buy-sell compacts among shareholders.

7. For example--(i) the family corporation and (ii) the corporation with a minimal number of shareholders all or part of whom are active in management.

Senator Joseph P. Josephson
March 12, 1983
Page -5-

Some or all of the foregoing provisions have historically been utilized by sophisticated practitioners in shareholder agreements (and sometimes in by-laws and articles of incorporation) with or without express statutory or judicial blessing.

The enclosed draft of the Close Corporation Supplement (the incorporators need not utilize it) is also worthy of careful consideration by the Alaska legislature before any new code is enacted, given the significant number of small closely held corporations in Alaska. Note for example the codification in the Supplement of customary practices used by experienced practitioners to achieve the objectives and expectations of investors in close corporations, plus these other features (not intended to be exhaustive):

- (a) reduction in amount of legal drafting that will have to be done in routine incorporations of close corporations;
- (b) set of statutory or standardized transfer restrictions (if you want them);
- (c) standardized buy-sell agreements (if you want them);
- (d) election not to have a board of directors;
- (e) power in the shareholders, akin to that of a general partner in Uniform Partnership Act, to dissolve the corporation.

(5) The Purported Needs of Alaska Native Claims Settlement Act (ANCSA) Corporations and Alleged Current Problems with Existing Statute.

In a letter⁸ to Senator Ray on May 3, 1983, plus public testimony by representatives of the ACRC on February 24, 1984 in Anchorage, and in a number of informal conversations

8. Transmittal letter under signature of the chairman of the ACRC accompanying a draft of the subject bill.

Senator Joseph P. Josephson
March 12, 1983
Page -6-

with two members of the ARRC, the support of an Alaska Federation of Natives (AFN) Subcommittee (apparently created to consider the subject bill) for the new ACRC code, has been vigorously asserted. Moreover, we are told, various native corporations have found the existing Alaska statute inadequate for their current needs and clearly inadequate for the forthcoming 1991 events embodied in the existing ANCSA statute.

I have within the past week personally talked with a number of lawyers who work every day on legal matters of one or more ANSCA entities, and the message I got from them is this in essence:

(a) they have not perceived any significant overwhelming problems in, or created by, the existing Alaska statute, as it pertains to native corporations or interests;

(b) the support given to the ACRC bill by the AFN Subcommittee was grounded on their being advised enactment was a relatively sure thing and on a number of trade-offs they received;

(c) the native lawyers further indicated a national act with the opportunity for development and evolution based on nationwide experiences can be very beneficial to all Alaskans including ANSCA and other Native corporations.

(6) The Inadequate Disclosure and Explanation of the History of the MBCA.

The ACRC in the May 3, 1983 transmittal letter under signature of its Chairman, to Senator Ray, in identifying and characterizing the current Alaska Statute, as taken "off the rack", "never intended for Alaska", and based on Oregon law, failed to accurately and fairly inform the reader of the background of the act, including the high degree of scholarship, craftsmanship and varied experience of lawyers and scholars throughout the nation, brought to bear on the original model act (as well as on subsequent amendments and the current ABA revision project).

The current ABA revision clearly exemplifies, once again, the benefit of bringing to bear on the subject matter the collective experience, scholarship, skills and wisdom of people from all over the country. Incidentally, the March 1983 ABA

Senator Joseph P. Josephson
March 12, 1983
Page -7-

Committee exposure draft including comments, is available from the ABA office in Chicago for \$15 per copy including shipping costs.

(7) Summary.

(a) Alaska should have the best product obtainable--one that if at all possible is national in approach and scope (in part to encourage the free flow of business, commerce, investors and lenders between Alaska and other jurisdictions).

(b) There simply are no urgent or immediately foreseeable need(s), of either native or non-native corporations, or groups in Alaska, for the revision of our corporate code before carefully and fully considering the ABA revision together with the related close corporation and professional corporation supplements thereto.

(c) The ACRC has the resources and the duty to review and carefully consider the proposed corporation code revision of the American Bar Association, before vigorously promoting its own product (the Fessler Code).

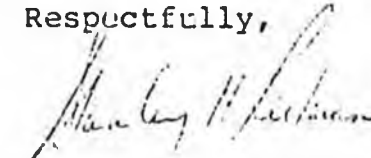
The Alaska Bar and more particularly, the members practicing in the corporate area, have clearly not been diligent over the years in helping to keep our Act up to date, or in appropriately responding to the ACRC revision project. Nonetheless, personal pride and dollars spent to date should not be determinative--what is vital is to get Alaska the best product obtainable.

If after a comprehensive, even handed evaluation of the ABA Revision of the MBCA is made by (i) Professor Fessler, (ii) the ACRC, (iii) the Alaska Bar, (iv) the AFN, and (v) other interested groups, and suitable comparisons vis-a-vis the current ACRC product (the Fessler Code) effected, it is entirely possible the Fessler Code will be deemed superior--if such is the case, I

Senator Joseph P. Josephson
March 12, 1983
Page -8-

am all for the Fessler Code; provided Section 488⁹ thereof is eliminated. One last thought--nothing contained here is intended to downgrade the scholarship or craftsmanship of Professor Fessler,¹⁰ substantially relied on by the ACRC, nor of the laudable motives of the ACRC. I am simply saying--before we leap, we should be reasonably sure we have the very best for Alaska.

Respectfully,



Stanley H. Reitman

SHR:jf

cc: Alaska Code Revision Commission
John W. Abbott, Chairman
L. S. Kurtz, Jr.
Judge Thomas B. Stewart
Alaska Bar Association
Paul E. Kelly

Postscript - After preparing this letter, I talked with Judge (Ret.) Thomas B. Stewart of Juneau, a member of the ACRC. Judge Stewart I believe is willing, albeit the effort by the Alaska Bar is very late in coming, for an evaluation of the ACRC Code vis-a-vis the ABA Revised MBCA to be made, but appeared concerned

9. Section 488 imposing secondary liability on corporate officers and directors is unfair to management people (officers and directors) who likely will be unwittingly trapped, will create litigation, overturns traditional principal/agent concepts and represents an overly broad complicating solution to the perceived problem of aggrieved corporate creditors allegedly frustrated by corporate manipulation(s).
10. After the February 24, 1984 hearing in Anchorage on the proposed Code, I had the opportunity to discuss on the telephone a number of the features thereof with Professor Fessler. He was most gracious in answering questions posed, and in correcting my misreading or inadequate reading of a number of specific provisions thereof. Professor Fessler appears more than willing to consider comments and suggestions directed toward his work product.

Senator Joseph P. Jcsephson
March 12, 1983
Page -9-

about the ability to complete such study by the end of March 1984--apparently to facilitate enactment in this session or legislature of a new code. My personal view is that a delay to the next legislature to get a better code for Alaska is neither unpalatable, nor fraught with danger, to affected Alaskans.

INTRODUCTION

THE 1983 REVISED MODEL BUSINESS CORPORATION ACT*

by

Elliott Goldstein** and Robert W. Hamilton***

The Committee on Corporate Laws has completed a major revision of the Model Business Corporation Act.**** The Committee is also in the process of overseeing the preparation of a third edition of the multivolume Model Business Corporation Act Annotated. The revised Model Act, in its final form, will also appear in these volumes.

* This is an edited version of an article describing the revised 1983 Revised Model Business Corporation Act prepared for publication in the Business Lawyer.

** Member of the Georgia and District of Columbia bars. Mr. Goldstein practices law with Powell, Goldstein, Frazer and Murphy; he is the Chairman of the Committee on Corporate Laws.

*** Benno C. Schmidt Professor of Business Law, The University of Texas School of Law, Austin, Texas. Professor Hamilton is the Reporter for the Model Business Corporation Act Revision Project.

**** The 1983 revised Model Act includes two supplements, the Model Professional Corporation Supplement and the Model Statutory Close Corporation Supplement. The former was first adopted by the Committee on Corporate Laws in 1976; it has been revised as part of the Model Act project and is available for comment with the exposure draft. The Model Statutory Close Corporation Supplement was published in the November 1981 issue of the Business Lawyer for comment (37 BUS. LAW. 169), and adopted by the Committee in June 1982. Notice of adoption and of changes made in the comment draft appear in the March 1983 issue of the Business Lawyer. Because of its recent publication, the Close Corporation Supplement is not included in the exposure draft.

This article describes the 1983 revised Model Act, the reasons for its development at the present time, and the principal innovations that have been made in the Model Act since it was last published as a complete statute in 1971 in the Model Business Corporation Act Annotated (Second Edition).

1. Description of the revised Act

The 1983 revised Model Act is designed to be a convenient guide for revision of state business corporation statutes, reflecting current views as to the appropriate accommodation of the various commercial and social interests involved in modern business corporations. The Model Act is designed for use by both publicly held and by closely held corporations, and takes into account the rights and duties of their shareholders, investors, directors, and management, as well as the interests of the state.

The 1983 revised Model Act represents the first complete revision of the Model Act in over 30 years. The creation and review of this revised Act has been a major project that has largely occupied the attention of the Committee for the last three years. All sections and provisions of the Act were reviewed and analyzed in light of the experience with similar provisions in important commercial states. In addition, the suggestions of several corporation service companies were solicited. To improve the usefulness of the Act, Official Comments have been prepared for each section that describe the substantive decisions made in the drafting of the section and

often further explain the meaning and purpose of the section. The Official Comments also contain suggestions as to possible use of options provided in the Act. Statutory cross-references have also been added after each section.

2. Reasons for the development of a new Model Act

Several factors entered into the decision to develop a revised Model Act at this time. First, a new edition of the Model Business Corporation Act Annotated was under serious consideration. The Second Edition of these volumes had been published in 1971, and supplements had been published as separate volumes in 1973 and 1977; there was a need to further update these volumes, either by a revision and republication of the entire set or by publication of another supplement, in order to comply with the guidelines of the American Bar Association. However, publication of a third supplement would make the use of these volumes even more unwieldy, so that creation of a new third edition was an attractive alternative. Revisions of the Model Act could be readily coordinated with the development of a new edition of the Model Business Corporation Act Annotated.

Second, the Committee had received the report of a subcommittee appointed in 1979 to review portions of the Act that had not been studied in detail since the Model Act was first published in 1950. This study revealed numerous additional areas in which state experimentation had produced significant simplifications and innovations which were appropriate for inclusion in the Model Act.