

ALASKA LEGISLATIVE COMMITTEE HOUSE 1900 1900 0012

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HJUD

HB 493

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HB 494

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1 immediately in accordance with AS 01.10.070(c).

2 * Sec. 76. Section 56, ch. 37, SLA 1985, is amended to read:

3 Sec. 56. Except as provided in sec. 55 of this Act, the sections
4 of this Act and the portions of sec. 54 [SECTIONS 4 - 54] of this Act
5 that relate to a particular occupation take effect on the effective
6 date of the regulations adopted under AS 08.01.065, enacted in sec. 2
7 of this Act, that apply to that occupation.

8 * Sec. 77. This Act takes effect immediately in accordance with AS 01.-
9 10.070(c).

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STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 493
 Title: Corrective amendments to Alaska statutes (revisor's bill)
 Sponsor: Rules by req. of L.C.
 Requestor: _____
 Date of Request: 3/5/86

FISCAL DETAIL

Agency affected: _____
 Program Category Affected: _____
 BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
500 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Hayden Kaden, Committee Counsel Phone: 465-4990
 Division: House Judiciary Date: 3/5/86

Approved by Commissioner: *[Signature]* Date: 3/5/86
 Agency: _____

Distribution (by Agency preparing fiscal note):

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

7/1/84

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : 1/22/86

REQUEST

Bill/Resolution No. : HB 493
 Title : Corrective amendments by revisor of statutes
 Sponsor : Rules by request
 Requestor : Legislative Council
 Date of Request : 1/22/86

FISCAL DETAIL

Agency Affected : Community & Regional Affairs
 BRU : Local Government Assistance and Municipal Revenue Sharing
 Components : State Assessor/State Revenue Sharing/Municipal Assistance

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

The fiscal note applies to Sections 24, 26, 27, 28, 29, and 30 of the bill
 The Department supports the changes in these sections.

Prepared by : Doug Griffin, Deputy Director *D Griffin* Phone : 465-4750
 Division : Municipal & Regional Assistance Date : 1/22/86
 Approved by Commissioner : *JM Smith* Date : 1/24/86
 Agency : Community & Regional Affairs

Distribution (by Agency preparing fiscal note):

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

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 493
 Title : An Act making corrective amendments to Alaska Statutes...
 Sponsor : Rules by Request
 Requestor : _____
 Date of Request : 3/4/86

FISCAL DETAIL

Agency Affected : Community & Regional Affairs
 BRU : Local Government Assistance
 Components : Training & Development

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by : Doug Griffin, Deputy Director
 Division : Municipal & Regional Assistance

Phone : 465-4750
 Date : 3/4/86

Approved by Commissioner : _____
 Agency : Community & Regional Affairs

Date : 3/4/86

Distribution (by Agency preparing fiscal note) :

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

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

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March 4, 1986

POSITION PAPER

RE: House Bill 493

SPONSOR: Rules by Request

Program Effects of Bill

Those amendments of the revisor's bill which affect Departmental programs (Sections 24 and 26 through 31) are clean-up matters and will not affect Departmental programs.

Comments

These amendments are at the request of the Department and the Department supports their passage.



Emil Hgetti, Commissioner

STATE OF ALASKA
THE LEGISLATURE

HOUSE OF REPRESENTATIVES
JUNEAU ALASKA 99801
907 465 1800

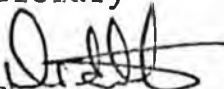
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 5, 1986

SUBJECT: CSHB 493(Judiciary)

TO: Representative M. Mike Miller
Chairman, House Judiciary

FROM: David R. Dierdorff 
Revisor of Statutes

This bill was prepared by the revisor of statutes under AS 01.05.036, which provides, in part, that the revisor of statutes shall

. . . prepare for submission to the legislature legislation for the correction or removal of . . . deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of . . . the statute law of this state.

This memorandum discusses the committee substitute passed out of committee March 5, 1986.

Sections 1, 5 and 6. These sections amend AS 04.11.070, 04.11.537 and 04.11.560(b) to conform the sections to the 1985 amendments to AS 04.11 made by ch. 93, SIA 1985. The 1985 amendments changed the concept of "transfer of location" to "relocation" of a liquor license. The Department of Law requested that we conform the language in 13 sections in AS 04.11, but we believe that the three sections included in the amendment are the only ones that really need to be changed. All of the others speak to "transfer to a new location," "transfer between holders or locations," or other similar phrases that describe "relocation."

Sec. 2 and 3. Under current law, the holders of brewery and winery licenses are allowed to give a person small samples of their products on their premises, unless the recipient is intoxicated. They are permitted to give samples to minors, to any person on an election day, or at any hour of the day or night. Our analysis of the two provisions proposed for amendment in secs. 2 and 3 of the bill suggests that this

was an oversight. The Department of Law and the executive director of the Alcoholic Beverage Control Board concur in our analysis and have asked that the statutes be amended to make breweries and wineries subject to the same prohibitions that other licensees are subject to.

Sec. 4 This section proposes an amendment to AS 04.11.370, which sets out the grounds for the suspension or revocation of a liquor license. The 1978 revision of the criminal laws substituted "promotion of prostitution" for "pimping" in the provisions relating to crimes connected with prostitution. The amendment proposed by this section updates the language of AS 04.11.370(7) to reflect this fact. The amendment was suggested by the Alaska Women's Commission. See the commission's "Review of the Alaska Statutes for Sex Discrimination", May 1985, at page 43.

Sec. 7. This section deletes an obsolete reference to senate districts and replaces it with a reference to the judicial districts of the state. The amendment was suggested by the Department of Law.

Sec. 8. This section conforms AS 08.18.081 to the changes made in AS 21 by ch. 26, SLA 1985. That law authorized the director of the insurance division to establish by regulation fees for the various services provided by the division. The intent of that legislation was to provide flexibility in the fee structure to allow the state to recover through fees the cost of the services provided. The proposed amendment substitutes a fee set under AS 21.06.250" for the old fee of \$5.00 charged when the director acts as an agent of the surety on a contractor's bond for service of process. The amendment was requested by the insurance division.

Sec. 9. AS 08.20.150, proposed for repeal by this section, requires licensed chiropractors to record their licenses with the clerk of the superior court. Since 1966, the state has had centralized licensing and the division of occupational licensing maintains all of the records. The chief counsel of the court system and the regulations attorney in the Department of Law have requested that this archaic provision be repealed to eliminate an unnecessary burden on the court system and a source of confusion among licensees.

Sec. 10. The sentence proposed for deletion by this section refers to filing certificate "with the board" (of

chiropractic examiners), which, as the revisor's note to this section has pointed out, is a nonexistent requirement. The intent may have been to refer to filing with the court, which has been required under AS 08.20.150, proposed for repeal by the preceding section of the bill. This amendment was suggested by the regulations attorney in the Department of Law.

Sec. 11. The amendment proposed by this section updates AS 08.54.142(b) to reflect changes in the regulation of air carriers made by the 1983 initiative and related action by the first session of the 14th Legislature.

Secs. 12-15. In these sections of the bill, AS 08.64.280 and 08.64.350, relating to physicians' licenses, are proposed for repeal; AS 08.64.350, AS 08.72.120 and AS 08.72.125(b) are amended; and AS 08.72.130, relating to optometrists' licenses, is proposed for repeal. The reasons for these proposals are the same as those set out above in the discussion of sec. 9 of the bill.

Sec. 16. The section proposed for amendment, AS 08.88.421, lists the persons and entities who are exempted from the laws regulating real estate brokers and salesmen. Paragraph (9) describes certain corporations, partnerships, and individuals as exempt, but those provisions conflict with AS 08.88.161, which sets out the requirement that certain corporations, partnerships, and individuals must be licensed under the laws. The source of the conflict is that the exceptions set out in AS 08.88.421(9)(B) relate only to that subparagraph, when they should probably relate to AS 08.88.421(9)(A) as well. The Department of Law suggested that AS 08.88.421(9) be amended as proposed in sec. 16 of the bill in order to eliminate the conflict and conform the provision to apparent legislative intent.

Sec. 17. This section and sec. 42 of the bill reflect recommendations of the Alaska Women's Commission (see pages 15 - 17 of their "Review of the Alaska Statutes for Sex Discrimination") relating to change of name in domestic relations actions. The amendment to AS 09.55.010 proposed in sec. 17 simply updates the basic statute relating to jurisdiction in an action to change a person's name, by adding a reference to "dissolution" in the last sentence. This provision was adopted before dissolutions were established in Alaska and was not amended when dissolutions were provided for.

Sec. 18. This section authorizes a professional corporation to use the abbreviation "P.C." in its name. That abbreviation is in fact frequently used by professional corporations in Alaska and throughout the country. The fact that the abbreviation is not authorized has apparently been overlooked in the past. The amendment to authorize its use would eliminate a potential problem between the Department of Commerce and Economic Development, professional licensing boards, and professionals. This amendment was requested by the Department of Law. The amendment also authorizes the use of "Limited" or "Ltd." to conform this section to AS 10.05.021, dealing with names of for-profit corporations generally.

Secs. 19 and 20. These sections update provisions relating to the classification of offenses to reflect legislative changes to the underlying provisions in 1982 and 1983.

Sec. 21. Section 21 responds to a problem that was addressed in Kuvaas v. State, 696 P.2d 684, discussed at page 48 of the November 1985 "oversight" report examining court decisions construing Alaska statutes. The court construed AS 12.55.55(c)(20), listing one of the many aggravating factors a court may consider in imposing sentence, as relating only to prior convictions of crimes that were felonies under Alaska law, or in the case of convictions in another state, convictions of crimes that would have been considered felonies if committed in Alaska. The amendment places in the statutes the court's interpretation of the statutes, and the legislature's apparent intent.

Sec. 22. Recall elections in REAA's are conducted under the municipal recall provisions of AS 29.26. Although the statutory references within AS 14.08.081 were changed as a part of the municipal code revision (ch. 74, SLA 85), there is a minor problem remaining that is addressed in sec. 22 of the bill. The new municipal code requires the director of elections to use the last regular election in the municipality to determine the number of signatures required on the recall petition. The municipal code, however, excludes REAA's from the definition of a municipality. The suggested amendment makes it clear that the election to be used as the basis for signature requirements is "the last regularly scheduled election held within the regional educational attendance area."

Sec. 23. This proposed amendment is made to conform a section to the provisions of the new municipal code (ch. 74, SLA 1985). Under new AS 29.20.300, members of a school board "are elected at large unless a different method of election has been approved by the voters in a regular election." The last sentence of AS 14.12.030(b) is inconsistent with that provision and is proposed for deletion.

Sec. 24. The language in AS 14.20.160 proposed for deletion is contrary to both federal and state law relating to age discrimination. The amendment was requested by the Department of Education to avoid misunderstanding and confusion.

Sec. 25. The provision proposed for repeal is obsolete and should have been repealed in 1984 when other provisions made obsolete by changes in the relationship between the state and public schools were repealed. AS 14.20.220(f) established the minimum salary for substitute teachers as a percentage of the "base salary" for the appropriate area of the state. The state no longer establishes base salaries for teachers. The Department of Education requested the repeal of this obsolete provision.

Sec. 26. The paragraph proposed for repeal required the commissioner of health and social services to adopt regulations covering "the notification of engagement or release of a physician assistant under AS 08.64.170(b)." In 1974, AS 08.64.170(b) was repealed, rendering the paragraph proposed for repeal obsolete.

Secs. 27 - 29. These sections propose amendments that will delete obsolete material related to initial appointments.

Sec. 30. This section amends the statute governing the registration of live births by eliminating a statutory preference given to fathers. This amendment was requested by the Alaska Women's Commission. See page 32 of their "Review of the Alaska Statutes for Sex Discrimination."

Sec. 31. The 1980 rewrite of AS 37.10.070 made obsolete the reference to subsections (a), (f), (g) and (i) of that section in the next to last sentence of the section proposed for amendment.

Secs. 32 and 33. These sections propose an amendment to AS 18.55.570(a) and the repeal of AS 18.55.695 - 18.55.698, 18.55.700(e)-(h), 18.55.945 and 18.55.950(19). All of the

provisions proposed for repeal relate to the 1964 earthquake and are no longer needed. The amendment to AS 18.55.570(a) is required if the other sections are repealed. The action proposed by secs. 32 and 33 was requested by counsel for the Alaska State Housing Authority. The amendment to AS 18.55.570(a) is also supported by the state assessor's office.

Sec. 34. Deletes obsolete material related to initial appointments.

Sec. 35. AS 18.56.090(1), referenced in the second sentence of the section proposed for amendment, was repealed in 1981. The reference is amended to reflect that.

Sec. 36 and 37. There are two definitions of "obligation" in AS 18.56.210. Section 36 of the bill would repeal the first definition of the term, and sec. 37 amends the second definition to incorporate material that was in the repealed definition.

Sec. 38. The amendment deletes obsolete material related to initial appointments.

Sec. 39. The "boiler fund" and AS 18.60.380, referred to in AS 18.60.370, were repealed in 1968. The proposed amendments delete the obsolete references.

Sec. 40. The amendment deletes obsolete material related to initial appointments.

Sec. 41. The term "public office", defined by AS 24.45.171(12), does not appear in AS 24.45 and is not defined in AS 39.50.200(a) as suggested by the existing language of AS 24.45.171(12). The amendment substitutes "public officer" for "public office". The term "public officer" is used in AS 24.45, so the substitution of that term for "public office" is appropriate.

Sec. 42. This section proposes a technical amendment to AS 25.24.160 relating to the change of a party's name by the court in connection with a divorce. The change was requested by the Alaska Women's Commission (see the discussion for sec. 17 of this bill).

Sec. 43. The provision proposed for repeal directed the state to reimburse local governments for revenue lost

through the operation of the senior citizens' exemption for certain motor vehicle taxes. AS 29.45.030(j), enacted in the new municipal code, now covers the subject and makes AS 28.10.411(d) redundant. The repeal of this provision was requested by the state assessor's office.

Sec. 44. The amendment to AS 28.10.502(b), proposed in this section, deletes language that was made obsolete by the passage of the initiative deregulating transportation.

Sec. 45. Chapter 92, SLA 1985, amended AS 29.13.010(b), effective June 6, 1985. Chapter 74, SLA 1985, repealed AS 29.13, effective January 1, 1986, and did not incorporate the changes made by ch. 92 in the equivalent provisions in AS 29.10.040 enacted as a part of the municipal code revision. The amendment to AS 29.10.040(a) proposed by sec. 45 incorporates the substantive amendment of ch. 92 and makes a minor style change to clarify the language of the subsection. The amendment proposed by sec. 45 is made retroactive to January 1, 1986, by sec. 51 of the bill.

Sec. 46. The proposed amendment to newly enacted AS 29.45.030(a)(4) clarifies that it is the organization of certain veterans that must be composed entirely of those veterans, not the auxiliary of such organization. The sentence construction proposed is identical to that found in former AS 29.53.020(a)(4), which was repealed when the new municipal code was enacted. The amendment was requested by the state assessor's office.

Sec. 47. AS 29.60.120(f) defines a "health facility" as one that is "licensed or certified by the state or approved under regulations adopted by" the Department of Community and Regional Affairs. The term "licensed health facility" is, however, used in AS 29.60.120(a)(3). The Department of Community and Regional Affairs believes that this was an oversight in the new municipal code and has requested a correction that deletes "licensed" from AS 29.60.120(a)(3).

Secs. 48 - 51. The legislature last session enacted ch. 90, providing for state aid to certain municipalities organized under federal law. The law was effective July 1, 1985. However, the legislature also enacted ch. 74, the new municipal code, effective January 1, 1986, and, ch. 74 included the repeal of the old state aid to municipalities provision (AS 43.20.016) and the enactment of new provisions in AS 29 that continued the old program without substantive

change. The new provisions, however, did not take into account the changes in AS 43.20.016 made by ch. 90. Sections 48 - 51 would reenact the substantive provisions of ch. 90 as part of AS 29 and make the enactment retroactive to January 1, 1986, the date that AS 43.20.016 was repealed. In sec. 48, an additional amendment to the first sentence of AS 29.60.360(a) is made to clarify a reference to AS 43.70.080. That minor clarification was requested by the Department of Law. With respect to the amendments made in secs. 48 - 50, the Department of Law is of the opinion that the result can be achieved through interpretation of the two enactments of the 1985 legislature and has issued a memorandum to that effect. However, we do not share their opinion and believe that the amendments should be adopted to ensure that both ch. 90 and ch. 74 are given effect.

Sec. 52. The amendment to AS 32.05.020 proposed by this section substitutes "surviving spouse" for "widow" to ensure that the determination of a partnership is not dependent upon the sex of the recipient of an annuity. This amendment was requested by the Alaska Women's Commission.

Sec. 53. This amendment would delete references to dower and curtesy, legal doctrines that have been abolished in Alaska, and substitute the term "a surviving spouse" for "widows". It does not change the nature of a partner's interest in specific partnership property. The amendment was requested by the Alaska Women's Commission. For a discussion of their recommendation, and the recommendation behind sec. 52 of the bill, see pages 50 - 51 of "Review of the Alaska Statutes for Sex Discrimination."

Sec. 54. This section proposes an amendment to delete references, in the chapter dealing with fraudulent transfers, to provisions that were repealed in 1972 when the new probate code was enacted. It is not believed necessary to substitute references to the new code.

Sec. 55. This section proposes for repeal a paragraph in the competitive bid law that was rendered obsolete by the passage of the initiative deregulating air carriers.

Sec. 56. This section would add a reference in the law describing the partially exempt service to a position placed in the partially exempt service by AS 44.47.365. The amendment was requested by the division of personnel in the Department of Administration.

Secs. 57 - 64. Following the passage of ch. 95, SLA 1982, several discrepancies were discovered in the legal descriptions of the land to be included in the Chilkat Bald Eagle Preserve. The commissioner of natural resources has requested that these descriptions be corrected in the revisor's bill. In the memorandum to the revisor that transmitted the corrections, the commissioner stated:

The Eagle Preserve legislation was written according to a reference map. When the legal description was written, correct land description notations were not utilized in defining the river, portions of previously surveyed land, and one mapped section of land was inadvertently left out of the description.

At the January, 1983 Eagle Preserve Advisory Council meeting, an explanation and presentation was made to request changes to correct the legal description. The Eagle Preserve Advisory Council and Department of Natural Resources review has concluded that these changes are valid and in keeping with the legislative intent and documentation.

Therefore, I request that these corrections be incorporated into your 1986 revisor's bill.

The backup material for the revisor's bill includes maps of the areas involved and a description of the source of the error where that was ascertainable, and will be made available to the committee or any member upon request.

Secs. 65 and 66. These sections would repeal two programs, the Alaska Industrial Incentive Act and the Industrial Incentive Tax Credit Act, which have been fully executed. By the terms of AS 43.25.110, the former program was closed to new participants on June 30, 1968. AS 43.26.070 closed the latter program on June 30, 1971. The repeal was suggested by the regulations attorney in the Department of Law.

Secs. 67 and 68. These sections deal with obsolete provisions in AS 45. The section proposed for repeal, AS 45.50.110, had no application after July 1, 1966. It dealt with the expiration of trademark registrations filed before July 1, 1961. The amendment to AS 45.55.030(d) deletes transitional provisions from the subsection. The provisions have been obsolete since May 1960.

Sec. 69. In 1983, the legislature repealed AS 44.33.040. However, the reference to that section in the definitions for AS 45.89 (the Residential Energy Conservation Fund) was not amended to reflect that. This section proposes the deletion of the reference in the same manner that similar references were deleted in the 1983 Act (ch. 79, SLA 1983).

Sec. 70. The amendment would make the liability for burial expenses dependent upon relationship to the deceased rather than upon a combination of relationship and sex. This amendment was requested by the Alaska Women's Commission and was discussed on page 59 of their "Review of the Alaska Statutes for Sex Discrimination."

Sec. 71. This section corrects a reference to the office of alcoholism and drug abuse.

Secs. 72 and 73. Chapter 37, SLA 1985 replaced statutory license and other fees connected with occupational licensing with fees established by regulation. The authority to adopt the fees was made effective immediately, but all of the amendments relating to specific occupations were made effective upon the adoption of regulations. At the time the bill was enacted, it was assumed that the department would adopt the regulations for all occupations at the same time. However, the regulations are in fact being adopted on an occupation by occupation basis. For example, the first regulations to be adopted, relating to guides and to nurses, will be effective March 6, 1986, and the balance of the regulations will be adopted and become effective at various times during 1986.

This may be an orderly way to adopt the regulations, but it plays havoc with the effective date provisions of ch. 37. The problem is further complicated by the fact that the fee for one occupation covered by ch. 37, explosives handlers, is not set by regulations of the Department of Commerce and Economic Development under AS 08.01.065, referred to in the effective date provisions, but by the Department of Labor. The amendment proposed by sec. 72 of CSHB 493 makes the amendment relating to explosives handlers effective immediately (it would be effective at the same time CSHB 493 is effective).

The amendment proposed by sec. 73 would tie the effective date of ch. 37's amendments and repealers to the adoption of regulations for the specific occupation governed by the

Representative M. Mike Miller
Page 11
March 5, 1986

affected statutory provisions. The problem and the proposed solutions have been discussed with the Department of Law and it is agreed that secs. 72 and 73 present the most practical solution.

Sec. 74. This would make the Act effective immediately.

DRD:mkr
M3:004

Enclosure

cc: Art Peterson
Department of Law

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99801
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 10, 1986

SUBJECT: CSHB 493(Judiciary)

TO: Representative M. Mike Miller
Chairman, House Judiciary

FROM: David R. Dierdorff 
Revisor of Statutes

This bill was prepared by the revisor of statutes under AS 01.05.036, which provides, in part, that the revisor of statutes shall

. . . , prepare for submission to the legislature legislation for the correction or removal of . . . deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of . . . the statute law of this state.

This memorandum discusses the draft committee substitute.

Sections 1, 5 and 6. These sections amend AS 04.11.070, 04.11.537 and 04.11.560(b) to conform the sections to the 1985 amendments to AS 04.11 made by ch. 93, SLA 1985. The 1985 amendments changed the concept of "transfer of location" to "relocation" of a liquor license. The Department of Law requested that we conform the language in 13 sections in AS 04.11, but we believe that the three sections included in the amendment are the only ones that really need to be changed. All of the others speak to "transfer to a new location," "transfer between holders or locations," or other similar phrases that describe "relocation."

Sec. 2 and 3. Under current law, the holders of brewery and winery licenses are allowed to give a person small samples of their products on their premises, unless the recipient is intoxicated. They are permitted to give samples to minors, to any person on an election day, or at any hour of the day or night. Our analysis of the two provisions proposed for amendment in secs. 2 and 3 of the bill suggests that this was an oversight. The Department of Law and the executive

director of the Alcoholic Beverage Control Board concur in our analysis and have asked that the statutes be amended to make breweries and wineries subject to the same prohibitions that other licensees are subject to.

Sec. 4 This section proposes an amendment to AS 04.11.370, which sets out the grounds for the suspension or revocation of a liquor license. The 1978 revision of the criminal laws substituted "promotion of prostitution" for "pimping" in the provisions relating to crimes connected with prostitution. The amendment proposed by this section updates the language of AS 04.11.370(7) to reflect this fact. The amendment was suggested by the Alaska Women's Commission. See the commission's "Review of the Alaska Statutes for Sex Discrimination", May 1985, at page 43.

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Sec. 10. The sentence proposed for deletion by this section refers to filing certificate "with the board" (of chiropractic examiners), which, as the revisor's note to

this section has pointed out, is a nonexistent requirement. The intent may have been to refer to filing with the court, which has been required under AS 08.20.150, proposed for repeal by the preceding section of the bill. This amendment was suggested by the regulations attorney in the Department of Law.

Sec. 11. The amendment proposed by this section updates AS 08.54.142(b) to reflect changes in the regulation of air carriers made by the 1983 initiative and related action by the first session of the 14th Legislature.

Secs. 12-15. In these sections of the bill, AS 08.64.280 and 08.64.350, relating to physicians' licenses, are proposed for repeal; AS 08.64.350, AS 08.72.120 and AS 08.72.125(b) are amended; and AS 08.72.130, relating to optometrists' licenses, is proposed for repeal. The reasons for these proposals are the same as those set out above in the discussion of sec. 9 of the bill.

Sec. 16. The section proposed for amendment, AS 08.88.421, lists the persons and entities who are exempted from the laws regulating real estate brokers and salesmen. Paragraph (9) describes certain corporations, partnerships, and individuals as exempt, but those provisions conflict with AS 08.88.161, which sets out the requirement that certain corporations, partnerships, and individuals must be licensed under the laws. The source of the conflict is that the exceptions set out in AS 08.88.421(9)(B) relate only to that subparagraph, when they should probably relate to AS 08.88.421(9)(A) as well. The Department of Law suggested that AS 08.88.421(9) be amended as proposed in sec. 16 of the bill in order to eliminate the conflict and conform the provision to apparent legislative intent.

Sec. 17. This section and secs. 43 - 45 of the bill reflect recommendations of the Alaska Women's Commission (see pages 15 - 17 of their "Review of the Alaska Statutes for Sex Discrimination") relating to change of name in domestic relations actions. The amendment to AS 09.55.010 proposed in sec. 17 simply updates the basic statute relating to jurisdiction in an action to change a person's name, by adding a reference to "dissolution" in the last sentence. This provision was adopted before dissolutions were established in Alaska and was not amended when dissolutions were provided for.

Sec. 18. This section authorizes a professional corporation to use the abbreviation "P.C." in its name. That abbreviation is in fact frequently used by professional corporations in Alaska and throughout the country. The fact that the abbreviation is not authorized has apparently been overlooked in the past. The amendment to authorize its use would eliminate a potential problem between the Department of Commerce and Economic Development, professional licensing boards, and professionals. The amendment was requested by the Department of Law.

Secs. 19 and 20. These sections update provisions relating to the classification of offenses to reflect legislative changes to the underlying provisions in 1982 and 1983.

Sec. 21. Section 21 responds to a problem that was addressed in Kuvaas v. State, 696 P.2d 684, discussed at page 48 of the November 1985 "oversight" report examining court decisions construing Alaska statutes. The court construed AS 12.55.155(c)(20), listing one of the many aggravating factors a court may consider in imposing sentence, as relating only to prior convictions of crimes that were felonies under Alaska law, or in the case of convictions in another state, convictions of crimes that would have been considered felonies if committed in Alaska. The amendment places in the statutes the court's interpretation of the statutes, and the legislature's apparent intent.

Sec. 22. Recall elections in REAA's are conducted under the municipal recall provisions of AS 29.26. Although the statutory references within AS 14.08.081 were changed as a part of the municipal code revision (ch. 74, SLA 85), there is a minor problem remaining that is addressed in sec. 22 of the bill. The new municipal code requires the director of elections to use the last regular election in the municipality to determine the number of signatures required on the recall petition. The municipal code, however, excludes REAA's from the definition of a municipality. The suggested amendment makes it clear that the election to be used as the basis for signature requirements is "the last regular election held within the regional educational attendance area."

Sec. 23. The sections proposed for repeal relate to the "public school facilities construction advance account." AS 14.11.115(a) sets out the basic requirement for payments under these sections. The Department of Education has

suggested the repeal of these provisions because no school district has qualified for the payments during the seven years the law has been in force, nor is it likely that any district will qualify in the future. The presence of these unused provisions has created some confusion in connection with both legislative consideration of other, viable provisions in AS 14.11, and with the administration of those provisions.

Sec. 24. This proposed amendment is made to conform a section to the provisions of the new municipal code (ch. 74, SLA 1985). Under new AS 29.20.300, members of a school board "are elected at large unless a different method of election has been approved by the voters in a regular election." The last sentence of AS 14.12.030(b) is inconsistent with that provision and is proposed for deletion.

Sec. 25. The language in AS 14.20.160 proposed for deletion is contrary to both federal and state law relating to age discrimination. The amendment was requested by the Department of Education to avoid misunderstanding and confusion.

Sec. 26. The provision proposed for repeal is obsolete and should have been repealed in 1984 when other provisions made obsolete by changes in the relationship between the state and public schools were repealed. AS 14.20.220(f) established the minimum salary for substitute teachers as a percentage of the "base salary" for the appropriate area of the state. The state no longer establishes base salaries for teachers. The Department of Education requested the repeal of this obsolete provision.

Sec. 27. The paragraph proposed for repeal required the commissioner of health and social services to adopt regulations covering "the notification of engagement or release of a physician assistant under AS 08.64.170(b)." In 1974, AS 08.64.170(b) was repealed, rendering the paragraph proposed for repeal obsolete.

Secs. 28 - 30. These sections propose amendments that will delete obsolete material related to initial appointments.

Sec. 31. This section amends the statute governing the registration of live births by eliminating a statutory preference given to fathers. This amendment was requested by the Alaska Women's Commission. See page 32 of their "Review of the Alaska Statutes for Sex Discrimination."

Sec. 32. The 1980 rewrite of AS 37.10.070 made obsolete the reference to subsections (a), (f), (g) and (i) of that section in the next to last sentence of the section proposed for amendment.

Secs. 33 and 34. These sections propose an amendment to AS 18.55.570(a) and the repeal of AS 18.55.695 - 18.55.698, 18.55.700(e)-(h), 18.55.945 and 18.55.950(19). All of the provisions proposed for repeal relate to the 1964 earthquake and are no longer needed. The amendment to AS 18.55.570(a) is required if the other sections are repealed. The action proposed by secs. 33 and 34 was requested by counsel for the Alaska State Housing Authority. The amendment to AS 18.55.570(a) is also supported by the state assessor's office.

Sec. 35. Deletes obsolete material related to initial appointments.

Sec. 36. AS 18.56.090(1), referenced in the second sentence of the section proposed for amendment, was repealed in 1981. The reference is amended to reflect that.

Sec. 37 and 38. There are two definitions of "obligation" in AS 18.56.210. Section 37 of the bill would repeal the first definition of the term, and sec. 38 amends the second definition to incorporate material that was in the repealed definition.

Sec. 39. The amendment deletes obsolete material related to initial appointments.

Sec. 40. The "boiler fund" and AS 18.60.380, referred to in AS 18.60.070, were repealed in 1968. The proposed amendments deletes the obsolete references.

Sec. 41. The amendment deletes obsolete material related to initial appointments.

Sec. 42. The term "public office", defined by AS 24.45.171(12), does not appear in AS 24.45 and is not defined in AS 39.50.200(a) as suggested by the existing language of AS 24.45.171(12). The amendment substitutes "public officer" for "public office". The term "public officer" is used in AS 24.45, so the substitution of that term for "public office" is appropriate.

Secs. 43 - 45. These sections propose amendments to AS 25.24.160 and 25.24.230 to make uniform the provisions in the divorce and dissolution laws relating to the change of a party's name by the court in connection with a divorce or dissolution. These changes were requested by the Alaska Women's Commission (see the discussion for sec. 17 of the bill).

Sec. 46. The provision proposed for repeal directed the state to reimburse local governments for revenue lost through the operation of the senior citizens' exemption for certain motor vehicle taxes. AS 29.45.030(j), enacted in the new municipal code, now covers the subject and makes AS 28.10.411(d) redundant. The repeal of this provision was requested by the state assessor's office.

Sec. 47. The amendment to AS 28.10.502(b), proposed in this section, deletes language that was made obsolete by the passage of the initiative deregulating transportation.

Sec. 48. Chapter 92, SLA 1985, amended AS 29.13.010(b), effective June 6, 1985. Chapter 74, SLA 1985, repealed AS 29.13, effective January 1, 1986, and did not incorporate the changes made by ch. 92 in the equivalent provisions in AS 29.10.040 enacted as a part of the municipal code revision. The amendment to AS 29.10.040(a) proposed by sec. 48 incorporates the substantive amendment of ch. 92 and makes a minor style change to clarify the language of the subsection. The amendment proposed by sec. 48 is made retroactive to January 1, 1986, by sec. 54 of the bill.

Sec. 49. The proposed amendment to newly enacted AS 29.45.030(a)(4) clarifies that it is the organization of certain veterans that must be composed entirely of those veterans, not the auxiliary of such organization. The sentence construction proposed is identical to that found in former AS 29.53.020(a)(4), which was repealed when the new municipal code was enacted. The amendment was requested by the state assessor's office.

Sec. 50. AS 29.60.120(f) defines a "health facility" as one that is "licensed or certified by the state or approved under regulations adopted by" the Department of Community and Regional Affairs. The term "licensed health facility" is, however, used in AS 29.60.120(a)(3). The Department of Community and Regional Affairs believes that this was an

oversight in the new municipal code and has requested a correction that deletes "licensed" from AS 29.60.120(a)(3).

Secs. 51 - 54. The legislature last session enacted ch. 90, providing for state aid to certain municipalities organized under federal law. The law was effective July 1, 1985. However, the legislature also enacted ch. 74, the new municipal code, effective January 1, 1986, and, ch. 74 included the repeal of the old state aid to municipalities provision (AS 43.20.016) and the enactment of new provisions in AS 29 that continued the old program without substantive change. The new provisions, however, did not take into account the changes in AS 43.20.016 made by ch. 90. Sections 51 - 54 would reenact the substantive provisions of ch. 90 as part of AS 29 and make the enactment retroactive to January 1, 1986, the date that AS 43.20.016 was repealed. In sec. 51, an additional amendment to the first sentence of AS 29.60.360(a) is made to clarify a reference to AS 43.70.080. That minor clarification was requested by the Department of Law. With respect to the amendments made in secs. 51 - 53, the Department of Law is of the opinion that the result can be achieved through interpretation of the two enactments of the 1985 legislature and has issued a memorandum to that effect. However, we do not share their opinion and believe that the amendments should be adopted to ensure that both ch. 90 and ch. 74 are given effect.

Sec. 55. The amendment to AS 32.05.020 proposed by this section substitutes "surviving spouse" for "widow" to ensure that the determination of a partnership is not dependent upon the sex of the recipient of an annuity. This amendment was requested by the Alaska Women's Commission.

Sec. 56. This amendment would delete references to dower and curtesy, legal doctrines that have been abolished in Alaska, and substitute the term "a surviving spouse" for "widows". It does not change the nature of a partner's interest in specific partnership property. The amendment was requested by the Alaska Women's Commission. For a discussion of their recommendation, and the recommendation behind sec. 55 of the bill, see pages 50 - 51 of "Review of the Alaska Statutes for Sex Discrimination."

Sec. 57. This section proposes an amendment to delete references, in the chapter dealing with fraudulent transfers, to provisions that were repealed in 1972 when the new

probate code was enacted. It is not believed necessary to substitute references to the new code.

Sec. 58. This section proposes for repeal a paragraph in the competitive bid law that was rendered obsolete by the passage of the initiative deregulating air carriers.

Sec. 59. This section would add a reference in the law describing the partially exempt service to a position placed in the partially exempt service by AS 44.47.365. The amendment was requested by the division of personnel in the Department of Administration.

Secs. 60 - 67. Following the passage of ch. 95, SLA 1982, several discrepancies were discovered in the legal descriptions of the land to be included in the Chilkat Bald Eagle Preserve. The commissioner of natural resources has requested that these descriptions be corrected in the revisor's bill. In the memorandum to the revisor that transmitted the corrections, the commissioner stated:

The Eagle Preserve legislation was written according to a reference map. When the legal description was written, correct land description notations were not utilized in defining the river, portions of previously surveyed land, and one mapped section of land was inadvertently left out of the description.

At the January, 1983 Eagle Preserve Advisory Council meeting, an explanation and presentation was made to request changes to correct the legal description. The Eagle Preserve Advisory Council and Department of Natural Resources review has concluded that these changes are valid and in keeping with the legislative intent and documentation.

Therefore, I request that these corrections be incorporated into your 1986 revisor's bill.

The backup material for the revisor's bill includes maps of the area involved and a description of the source of the error where that was ascertainable, and will be made available to the committee or any member upon request.

Secs. 68 and 69. These sections would repeal two programs, the Alaska Industrial Incentive Act and the Industrial Incentive Tax Credit Act, which have been fully executed.

By the terms of AS 43.25.110, the former program was closed to new participants on June 30, 1968. AS 43.26.070 closed the latter program on June 30, 1971. The repeal was suggested by the regulations attorney in the Department of Law.

Secs. 70 and 71. These sections deal with obsolete provisions in AS 45. The section proposed for repeal, AS 45.50.110, had no application after July 1, 1966. It dealt with the expiration of trademark registrations filed before July 1, 1961. The amendment to AS 45.55.030(d) deletes transitional provisions from the subsection. The provisions have been obsolete since May 1960.

Sec. 72. In 1983, the legislature repealed AS 44.33.040. However, the reference to that section in the definitions for AS 45.89 (the Residential Energy Conservation Fund) was not amended to reflect that. This section proposes the deletion of the reference in the same manner that similar references were deleted in the 1983 Act (ch. 79, SLA 1983).

Sec. 73. The amendment would make the liability for burial expenses dependent upon relationship to the deceased rather than upon a combination of relationship and sex. This amendment was requested by the Alaska Women's Commission and was discussed on page 59 of their "Review of the Alaska Statutes for Sex Discrimination."

Sec. 74. This section corrects a reference to the office of alcoholism and drug abuse.

Secs. 75 and 76. Chapter 37, SLA 1985 replaced statutory license and other fees connected with occupational licensing with fees established by regulation. The authority to adopt the fees was made effective immediately, but all of the amendments relating to specific occupations were made effective upon the adoption of regulations. At the time the bill was enacted, it was assumed that the department would adopt the regulations for all occupations at the same time. However, the regulations are in fact being adopted on an occupation by occupation basis. For example, the first regulations to be adopted, relating to guides and to nurses, will be effective March 6, 1986, and the balance of the regulations will be adopted and become effective at various times during 1986.

This may be an orderly way to adopt the regulations, but it plays havoc with the effective date provisions of ch. 37.

Representative M. Mike Miller
Page 11
February 10, 1986

The problem is further complicated by the fact that the fee for one occupation covered by ch. 37, explosives handlers, is not set by regulations of the Department of Commerce and Economic Development under AS 08.01.065, referred to in the effective date provisions, but by the Department of Labor. The amendment proposed by sec. 75 of CSHB 493 makes the amendment relating to explosives handlers effective immediately (it would be effective at the same time CSHB 493 is effective).

The amendment proposed by sec. 76 would tie the effective date of ch. 37's amendments and repealers to the adoption of regulations for the specific occupation governed by the affected statutory provisions. The problem and the proposed solutions have been discussed with the Department of Law and it is agreed that secs. 75 and 76 present the most practical solution.

Sec. 77. This would make the Act effective immediately.

DRD:mkr
M3:004

Enclosure

cc; Art Peterson

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 10, 1986

SUBJECT: CSHB 493

TO: Hayden Kayden
Counsel, House Judiciary

FROM: David R. Dierdorff *Lawe*
Revisor of Statutes

Enclosed is the draft CS for HB 493 (the revisor's bill) and an updated sectional analysis. For your ease in reviewing the CS, please note that the following sections are new: 1, 5, 6, 8, 18, 21, 47, 70, 71, 74, 75, and 76.

DRD:csh
c5/065

cc: Art Peterson

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3600

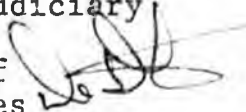
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 27, 1986

SUBJECT: Proposed Amendments to HB 493

TO: Representative Mike Miller
Chairman, House Judiciary

FROM: David R. Dierdorff 
Revisor of Statutes

Enclosed with this memorandum is a proposed amendment to HB 493, the 1986 revisor's bill. The amendment would add 10 new sections to the bill.

The new sections represent problems that were brought to our attention after the introduction copy of the bill had been prepared. This memorandum explains each new section.

AS 04.11.070, 04.11.537 and 04.11.560(b) are amended to conform the sections to the 1985 amendments to AS 04.11 made by ch. 93, SLA 1985. The 1985 amendments changed the concept of "transfer of location" to "relocation" of a liquor license. The Department of Law requested that we conform the language in 13 sections in AS 04.11, but we believe that the three sections included in the amendment are the only ones that really need to be changed. All of the others speak to "transfer to a new location," "transfer between holders or locations," or other similar phrases that describe "relocation."

The fourth new section conforms AS 08.18.081 to the changes made in AS 21 by ch. 26, SLA 1985. That law authorized the director of the insurance division to establish by regulation fees for the various services provided by the division. The intent of that legislation was to provide flexibility in the fee structure to allow the state to recover through fees the cost of the services provided. The proposed amendment substitutes "a fee set under AS 21.06.250" for the old fee of \$5.00 charged when the director acts as an agent of the surety on a contractor's bond for service of process. The amendment was requested by the insurance division.

Representative M. Mike Miller

Page 2

January 27, 1986

The fifth new section authorizes a professional corporation to use the abbreviation "P.C." in its name. That abbreviation is in fact frequently used by professional corporations in Alaska and throughout the country. The fact that the abbreviation is not authorized has apparently been overlooked in the past. The amendment to authorize its use would eliminate a potential problem between the Department of Commerce and Economic Development, professional licensing boards, and professionals. The amendment was requested by the Department of Law.

The sixth new section responds to a problem that was addressed in Kuvaas v. State, 696 P.2d 684, discussed at page 48 of the November 1985 "oversight" report examining court decisions construing Alaska statutes. The court construed AS 12.55.155(c)(20), listing one of the many aggravating factors a court may consider in imposing sentence, as relating only to prior convictions of crimes that were felonies under Alaska law, or in the case of convictions in another state, convictions of crimes that would have been considered felonies if committed in Alaska. The amendment places in the statutes the court's interpretation of the statutes, and the legislature's apparent intent.

The amendment to AS 28.10.502(b), proposed in the seventh new bill section, deletes language that was made obsolete by the passage of the initiative deregulating transportation.

The next two sections deal with obsolete provisions in AS 45. The section proposed for repeal, AS 45.50.110, had no application after July 1, 1966. It dealt with the expiration of trademark registrations filed before July 1, 1961. The amendment to AS 45.55.030(d) deletes transitional provisions from the subsection. The provisions have been obsolete since May 1960.

The last new section proposed for the bill corrects a reference to the office of alcoholism and drug abuse.

DRD:mkr

M2:091

Enclosure

A M E N D M E N T

Offered in the House Judiciary Committee

TO: HB 493

Page 1, after line 9, insert a new bill section to read:

"* Section 1. AS 04.11.070 is amended to read:

Sec. 04.11.070. POWER LIMITED TO THE BOARD. Only the board may issue, renew, transfer, relocate, suspend, or revoke a license under this title."

Page 1, line 10, delete "* Section 1." and insert "* Sec. 2."

Renumber succeeding bill sections accordingly.

Page 1, after line 24, insert new bill sections to read:

"* Sec. 5. AS 04.11.537 is amended to read:

Sec. 04.11.537. APPLICATION OF PRECEDENT. In determining whether issuance, renewal, transfer, relocation, suspension, or revocation of a license is in the best interests of the public, the board need not conform to or distinguish its decision from any action it has taken in the past on applications presenting similar facts, but may instead base its decision only on the particular facts before it.

* Sec. 6. AS 04.11.560(b) is amended to read:

(b) A decision by the board relating to the issuance, renewal, transfer, relocation, suspension, or revocation of a license under this title may be appealed to the superior court under AS 44.62.560."

Renumber succeeding bill section accordingly.

Page 2, after line 5, insert a new bill section to read:

"* Sec. 8. AS 08.18.081(a) is amended to read:

(a) A person having a claim against a contractor for any of the items referred to in AS 08.18.071 may bring suit upon the bond in the district court of the judicial district in which venue lies. A copy of the complaint shall be served by registered or certified mail upon the commissioner at the time suit is filed and the commissioner shall maintain a record, available for public inspection, of all suits commenced. Two additional copies shall be served upon the director of the division of insurance with the payment [OF \$5] to the director of a fee set under AS 21.06.250, taxable as costs in the action. This service upon the director shall constitute service on the surety and the director shall transmit the complaint or a copy of it to the surety within 72 hours after it has been received. The surety upon the bond is not liable in an aggregate amount in excess of that named in the bond, but in case claims pending at any one time exceed the amount of the bond, the claims shall be satisfied from the bond in the following order:

- (1) labor, including employee benefits;
- (2) taxes and contributions due the state, city and

borough, in that order;

- (3) material and equipment;
- (4) claims for breach of contract;
- (5) repair of public facilities."

Renumber succeeding bill sections accordingly.

Page 4, after line 22, insert a new bill section to read:

"* Sec. 18. AS 10.45.120 is amended to read:

Sec. 10.45.120. CORPORATE NAME. The corporate name of a professional corporation shall contain the last name of one or more of its shareholders, unless the regulations of a particular regulating board or the ethics of a profession permit the use of a corporate name which does not include the surname of any present or former shareholder. The corporate name shall be ended by the word 'Corporation,' or 'Incorporated,' or by the abbreviation 'Corp.' or 'Inc.,' or by the words, 'a professional corporation,' or by the abbreviation 'P.C.' "

Renumber succeeding bill sections accordingly.

Page 6, after line 7, insert a new bill section to read:

"* Sec. 21. AS 12.55.155(c)(20) is amended to read:

(20) the defendant was on furlough under AS 33.30 or on parole or probation for another felony charge or conviction that would be considered a prior felony conviction under AS 12.55.145(a)(2);"

Renumber succeeding bill sections accordingly.

Page 12, after line 18, insert a new bill section to read:

"* Sec. 47. AS 28.10.502(b) is amended to read:

(b) A lien under this section is limited to towing and storage charges [ASSESSED ACCORDING TO THE TARIFF FILED BY THE CARRIER WITH THE ALASKA TRANSPORTATION COMMISSION; HOWEVER, IN THE ABSENCE OF A FILED TARIFF, THE TOWING OR STORAGE CHARGE SHALL BE THE SAME AS THE LOWEST SIMILAR CHARGE IN THE OTHER FILED TARIFFS COVERING THE SAME SERVICE OR ROUTE]. Storage charges cease to be part of the lien after 60 days unless the registered owner or primary lienholder, if any, has been given actual notice of the possessory lien within that time or unless a certified letter has been mailed within that time to the owner and primary lienholder, if any, at their addresses of record with the Department of Public Safety or the corresponding office in another jurisdiction in which the title to the motor vehicle and the lien on it are recorded."

Renumber succeeding bill sections accordingly.

Page 14, line 18, delete "41 AND 44 - 46" and insert "48 AND 51 - 53"

Page 14, line 19, delete "41 and 44 - 46" and insert "48 and 51 - 53"

Page 21, after line 21, insert new bill sections to read:

"* Sec. 70. AS 45.50.110 is repealed.

* Sec. 71. AS 45.55.030(d) is amended to read:

(d) Every registration expires one year from its effective date unless renewed. [THE ADMINISTRATOR MAY BY RULE OR ORDER PREPARE AN INITIAL SCHEDULE FOR REGISTRATION RENEWALS SO THAT SUBSEQUENT RENEWALS OF REGISTRATIONS EFFECTIVE ON MAY 9, 1959, MAY BE STAGGERED BY CALENDAR MONTHS. FOR THIS PURPOSE THE ADMINISTRATOR MAY BY RULE REDUCE THE REGISTRATION FEE PROPORTIONATELY.]"

Renumber succeeding bill sections accordingly.

Page 22, after line 9, insert a new bill section to read:

** Sec. 74. AS 47.37.270(6) is amended to read:

(6) "coordinator" means the coordinator of the office of alcoholism and drug abuse;"

Renumber succeeding bill section accordingly.

STATE OF ALASKA
THE LEGISLATURE

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


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 31, 1986

SUBJECT: AS 08.18.081

TO: Jeff Bush
Assistant Attorney General
Department of Law

FROM: David R. Dierdorff 
Revisor of Statutes

I have prepared an amendment to HB 493 that includes an amendment to AS 08.18.081(a). I intend to submit the amendment to the House Judiciary committee at their first hearing on the bill.

Art Peterson has received a copy of the amendment and of my memo to Representative Miller explaining the contents of the amendment.

DRD:mkr
M2:117

cc: Representative M. Mike Miller
Art Peterson

STATE OF ALASKA
THE LEGISLATURE

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

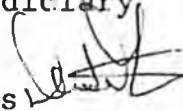
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 23, 1986

SUBJECT: 1986 Revisor's Bill
HB 493

TO: Representative M. Mike Miller
Chairman, House Judiciary

FROM: David R. Dierdorff 
Revisor of Statutes

This bill was prepared by the revisor of statutes under AS 01.05.036, which provides, in part, that the revisor of statutes shall

. . . prepare for submission to the legislature legislation for the correction or removal of . . . deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of . . . the statute law of this state.

This memorandum discusses the bill as introduced.

Sections 1 and 2. Under current law, the holders of brewery and winery licenses are allowed to give a person small samples of their products on their premises, unless the recipient is intoxicated. They are permitted to give samples to minors, to any person on an election day, or at any hour of the day or night. Our analysis of the two provisions proposed for amendment in secs. 1 and 2 of the bill suggests that this was an oversight. The Department of Law and the executive director of the Alcoholic Beverage Control Board concur in our analysis and have asked that the statutes be amended to make breweries and wineries subject to the same prohibitions that other licensees are subject to.

Sec. 3 This section proposes an amendment to AS 04.11.370, which sets out the grounds for the suspension or revocation of a liquor license. The 1978 revision of the criminal laws substituted "promotion of prostitution" for "pimping" in the provisions relating to crimes connected with prostitution.

The amendment proposed by this section updates the language of AS 04.11.370(7) to reflect this fact. The amendment was suggested by the Alaska Women's Commission. See the commission's "Review of the Alaska Statutes for Sex Discrimination", May 1985, at page 43.

Sec. 4. This section deletes an obsolete reference to senate districts and replaces it with a reference to the judicial districts of the state. The amendment was suggested by the Department of Law.

Sec. 5. AS 08.20.150, proposed for repeal by this section, requires licensed chiropractors to record their licenses with the clerk of the superior court. Since 1966, the state has had centralized licensing and the division of occupational licensing maintains all of the records. The chief counsel of the court system and the regulations attorney in the Department of Law have requested that this archaic provision be repealed to eliminate an unnecessary burden on the court system and a source of confusion among licensees.

Sec. 6. The sentence proposed for deletion by this section refers to filing certificate "with the board" (of chiropractic examiners), which, as the revisor's note to this section has pointed out, is a nonexistent requirement. The intent may have been to refer to filing with the court, which has been required under AS 08.20.150, proposed for repeal by the preceding section of the bill. This amendment was suggested by the regulations attorney in the Department of Law.

Sec. 7. The amendment proposed by this section updates AS 08.54.142(b) to reflect changes in the regulation of air carriers made by the 1983 initiative and related action by the first session of the 14th Legislature.

Secs. 8-11. In these sections of the bill, AS 08.64.280 and 08.64.350, relating to physicians' licenses, are proposed for repeal; AS 08.64.350, AS 08.72.120 and AS 08.72.125(b) are amended; and AS 08.72.130, relating to optometrists' licenses, is proposed for repeal. The reasons for these proposals are the same as those set out above in the discussion of sec. 5 of the bill.

Sec. 12. The section proposed for amendment, AS 08.88.421, lists the persons and entities who are exempted from the laws regulating real estate brokers and salesmen. Paragraph

(9) describes certain corporations, partnerships, and individuals as exempt, but those provisions conflict with AS 08.88.161, which sets out the requirement that certain corporations, partnerships, and individuals must be licensed under the laws. The source of the conflict is that the exceptions set out in AS 08.88.421(9)(B) relate only to that subparagraph, when they should probably relate to AS 08.88.421(9)(A) as well. The Department of Law suggested that AS 08.88.421(9) be amended as proposed in sec. 12 of the bill in order to eliminate the conflict and conform the provision to apparent legislative intent.

Sec. 13. This section and secs. 37 - 39 of the bill reflect recommendations of the Alaska Women's Commission (see pages 15 - 17 of their "Review of the Alaska Statutes for Sex Discrimination") relating to change of name in domestic relations actions. The amendment to AS 09.55.010 proposed in sec. 13 simply updates the basic statute relating to jurisdiction in an action to change a person's name, by adding a reference to "dissolution" in the last sentence. This provision was adopted before dissolutions were established in Alaska and was not amended when dissolutions were provided for.

Secs. 14 and 15. These sections update provisions relating to the classification of offenses to reflect legislative changes to the underlying provisions in 1982 and 1983.

Sec. 16. Recall elections in REAA's are conducted under the municipal recall provisions of AS 29.26. Although the statutory references within AS 14.08.081 were changed as a part of the municipal code revision (ch. 74, SLA 85), there is a minor problem remaining that is addressed in sec. 16 of the bill. The new municipal code requires the director of elections to use the last regular election in the municipality to determine the number of signatures required on the recall petition. The municipal code, however, excludes REAA's from the definition of a municipality. The suggested amendment makes it clear that the election to be used as the basis for signature requirements is "the last regular election held within the regional educational attendance area."

Sec. 17. The sections proposed for repeal relate to the "public school facilities construction advance account." AS 14.11.115(a) sets out the basic requirement for payments under these sections. The Department of Education has

suggested the repeal of these provisions because no school district has qualified for the payments during the seven years the law has been in force, nor is it likely that any district will qualify in the future. The presence of these unused provisions has created some confusion in connection with both legislative consideration of other, viable provisions in AS 14.11, and with the administration of those provisions.

Sec. 18. This proposed amendment is made to conform a section to the provisions of the new municipal code (ch. 74, SLA 1985). Under new AS 29.20.300, members of a school board "are elected at large unless a different method of election has been approved by the voters in a regular election." The last sentence of AS 14.12.030(b) is inconsistent with that provision and is proposed for deletion.

Sec. 19. The language in AS 14.20.160 proposed for deletion is contrary to both federal and state law relating to age discrimination. The amendment was requested by the Department of Education to avoid misunderstanding and confusion.

Sec. 20. The provision proposed for repeal is obsolete and should have been repealed in 1984 when other provisions made obsolete by changes in the relationship between the state and public schools were repealed. AS 14.20.220(f) established the minimum salary for substitute teachers as a per centage of the "base salary" for the appropriate area of the state. The state no longer establishes base salaries for teachers. The Department of Education requested the repeal of this obsolete provision.

Sec. 21. The paragraph proposed for repeal required the commissioner of health and social services to adopt regulations covering "the notification of engagement or release of a physician assistant under AS 08.64.170(b)." In 1974, AS 08.64.170(b) was repealed, rendering the paragraph proposed for repeal obsolete.

Secs. 22 - 24. These sections propose amendments that will delete obsolete material related to initial appointments.

Sec. 25. This section amends the statute governing the registration of live births by eliminating a statutory preference given to fathers. This amendment was requested by the Alaska Women's Commission. See page 32 of their "Review of the Alaska Statutes for Sex Discrimination."

Sec. 26. The 1980 rewrite of AS 37.10.070 made obsolete the reference to subsections (a), (f), (g) and (i) of that section in the next to last sentence of the section proposed for amendment.

Secs. 27 and 28. These sections propose an amendment to AS 18.55.570(a) and the repeal of AS 18.55.695 - 18.55.698, 18.55.700(e)-(h), 18.55.945 and 18.55.950(19). All of the provisions proposed for repeal relate to the 1964 earthquake and are no longer needed. The amendment to AS 18.55.570(a) is required if the other sections are repealed. The action proposed by secs. 27 and 28 was requested by counsel for the Alaska State Housing Authority. The amendment to AS 18.55.570(a) is also supported by the state assessor's office.

Sec. 29. Deletes obsolete material related to initial appointments.

Sec. 30. AS 18.56.090(1), referenced in the second sentence of the section proposed for amendment, was repealed in 1981. The reference is amended to reflect that.

Sec. 31 and 32. There are two definitions of "obligation" in AS 18.56.210. Section 31 of the bill would repeal the first definition of the term, and sec. 32 amends the second definition to incorporate material that was in the repealed definition.

Sec. 33. The amendment deletes obsolete material related to initial appointments.

Sec. 34. The "boiler fund" and AS 18.60.380, referred to in AS 18.60.070, were repealed in 1968. The proposed amendments deletes the obsolete references.

Sec. 35. The amendment deletes obsolete material related to initial appointments.

Sec. 36. The term "public office", defined by AS 24.45.171(12), does not appear in AS 24.45 and is not defined in AS 39.50.200(a) as suggested by the existing language of AS 24.45.171(12). The amendment substitutes "public officer" for "public office". The term "public officer" is used in AS 24.45, so the substitution of that term for "public office" is appropriate.

Secs. 37 - 39. These sections propose amendments to AS 25.24.160 and 25.24.230 to make uniform the provisions in the divorce and dissolution laws relating to the change of a party's name by the court in connection with a divorce or dissolution. These changes were requested by the Alaska Women's Commission (see the discussion for sec. 13 of the bill).

Sec. 40. The provision proposed for repeal directed the state to reimburse local governments for revenue lost through the operation of the senior citizens' exemption for certain motor vehicle taxes. AS 29.45.030(j), enacted in the new municipal code, now covers the subject and makes AS 28.10.411(d) redundant. The repeal of this provision was requested by the state assessor's office.

Sec. 41. Chapter 92, SLA 1985, amended AS 29.13.010(b), effective June 6, 1985. Chapter 74, SLA 1985, repealed AS 29.13, effective January 1, 1986, and did not incorporate the changes made by ch. 92 in the equivalent provisions in AS 29.10.040 enacted as a part of the municipal code revision. The amendment to AS 29.10.040(a) proposed by sec. 41 incorporates the substantive amendment of ch. 92 and makes a minor style change to clarify the language of the subsection. The amendment proposed by sec. 41 is made retroactive to January 1, 1986, by sec. 47 of the bill.

Sec. 42. The proposed amendment to newly enacted AS 29.45.030(a)(4) clarifies that it is the organization of certain veterans that must be composed entirely of those veterans, not the auxiliary of such organization. The sentence construction proposed is identical to that found in former AS 29.53.020(a)(4), which was repealed when the new municipal code was enacted. The amendment was requested by the state assessor's office.

Sec. 43. AS 29.60.120(f) defines a "health facility" as one that is "licensed or certified by the state or approved under regulations adopted by" the Department of Community and Regional Affairs. The term "licensed health facility" is, however, used in AS 29.60.120(a)(3). The Department of Community and Regional Affairs believes that this was an oversight in the new municipal code and has requested a correction that deletes "licensed" from AS 29.60.120(a)(3).

Secs. 44 - 47. The legislature last session enacted ch. 90, providing for state aid to certain municipalities organized

under federal law. The law was effective July 1, 1985. However, the legislature also enacted ch. 74, the new municipal code, effective January 1, 1986, and, ch. 74 included the repeal of the old state aid to municipalities provision (AS 43.20.016) and the enactment of new provisions in AS 29 that continued the old program without substantive change. The new provisions, however, did not take into account the changes in AS 43.20.016 made by ch. 90. Sections 44 - 47 would reenact the substantive provisions of ch. 90 as part of AS 29 and make the enactment retroactive to January 1, 1986, the date that AS 43.20.016 was repealed. In sec. 44, an additional amendment to the first sentence of AS 29.60.360(a) is made to clarify a reference to AS 43.70.080. That minor clarification was requested by the Department of Law. With respect to the amendments made in secs. 44 - 46, the Department of Law is of the opinion that the result can be achieved through interpretation of the two enactments of the 1985 legislature and has issued a memorandum to that effect. However, we do not share their opinion and believe that the amendments should be adopted to ensure that both ch. 90 and ch. 74 are given effect.

Sec. 48. The amendment to AS 32.05.020 proposed by this section substitutes "surviving spouse" for "widow" to ensure that the determination of a partnership is not dependent upon the sex of the recipient of an annuity. This amendment was requested by the Alaska Women's Commission.

Sec. 49. This amendment would delete references to dower and curtesy, legal doctrines that have been abolished in Alaska, and substitute the term "a surviving spouse" for "widows". It does not change the nature of a partner's interest in specific partnership property. The amendment was requested by the Alaska Women's Commission. For a discussion of their recommendation, and the recommendation behind sec. 48 of the bill, see pages 50 - 51 of "Review of the Alaska Statutes for Sex Discrimination."

Sec. 50. This section proposes an amendment to delete references, in the chapter dealing with fraudulent transfers, to provisions that were repealed in 1972 when the new probate code was enacted. It is not believed necessary to substitute references to the new code.

Sec. 51. This section proposes for repeal a paragraph in the competitive bid law that was rendered obsolete by the passage of the initiative deregulating air carriers.

Sec. 52. This section would add a reference in the law describing the partially exempt service to a position placed in the partially exempt service by AS 44.47.365. The amendment was requested by the division of personnel in the Department of Administration.

Secs. 53 - 60. Following the passage of ch. 95, SLA 1982, several discrepancies were discovered in the legal descriptions of the land to be included in the Chilkat Bald Eagle Preserve. The commissioner of natural resources has requested that these descriptions be corrected in the revisor's bill. In the memorandum to the revisor that transmitted the corrections, the commissioner stated:

The Eagle Preserve legislation was written according to a reference map. When the legal description was written, correct land description notations were not utilized in defining the river, portions of previously surveyed land, and one mapped section of land was inadvertently left out of the description.

At the January, 1983 Eagle Preserve Advisory Council meeting, an explanation and presentation was made to request changes to correct the legal description. The Eagle Preserve Advisory Council and Department of Natural Resources review has concluded that these changes are valid and in keeping with the legislative intent and documentation.

Therefore, I request that these corrections be incorporated into your 1986 revisor's bill.

The backup material for the revisor's bill includes maps of the areas involved and a description of the source of the error where that was ascertainable, and will be made available to the committee or any member upon request.

Secs. 61 and 62. These sections would repeal two programs, the Alaska Industrial Incentive Act and the Industrial Incentive Tax Credit Act, which have been fully executed. By the terms of AS 43.25.110, the former program was closed to new participants on June 30, 1968. AS 43.26.070 closed the latter program on June 30, 1971. The repeal was suggested by the regulations attorney in the Department of Law.

Sec. 63. In 1983, the legislature repealed AS 44.33.040. However, the reference to that section in the definitions

Representative M. Mike Miller
Page 9
January 23, 1986

for AS 45.89 (the Residential Energy Conservation Fund) was not amended to reflect that. This section proposes the deletion of the reference in the same manner that similar references were deleted in the 1983 Act (ch. 79, SLA 1983).

Sec. 64. The amendment would make the liability for burial expenses dependent upon relationship to the deceased rather than upon a combination of relationship and sex. This amendment was requested by the Alaska Women's Commission and was discussed on page 59 of their "Review of the Alaska Statutes for Sex Discrimination."

Sec. 65. This would make the Act effective immediately.

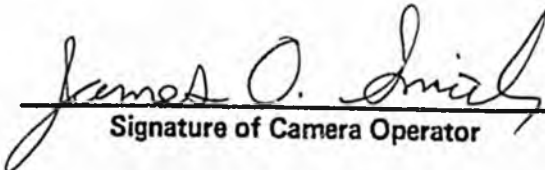
DRD:mkr
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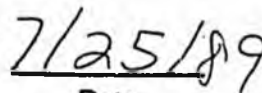
Enclosure



RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microfilm are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

H B

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ALASKANS FOR LIEN LAW REFORM
840 K STREET SUITE 200
ANCHORAGE, ALASKA 99501
(907) 274-6581

February 3, 1986

M. Mike Miller
Judiciary Committee Chairman
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Re: Alaskans for Lien Law Reform
House Bill 494

Dear Mike:

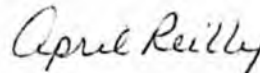
Please find enclosed a copy of the information packet we have been distributing and using in our efforts to gain support for House Bill 494.

It's purpose is to provide background information on the existing lien law and to summarize our position regarding the proposed changes.

Gaining support from the general public appeared to start out slowly. However, through public meetings, personal contacts, and mail-outs, support is steadily increasing.

Thank-you for your time and consideration concerning House Bill 494.

Sincerely,



APRIL REILLY
Steering Committee

ALASKANS

FOR

LIEN LAW REFORM

LIEN LAW HISTORY

In 1979 certain amendments were made to the Alaska Lien Laws which have caused large monetary losses to material suppliers and sub-contractors. The intent of these amendments was to expedite loan closings on the sale of real property and also to assure that no liens could be attached after the property was sold. In a joint meeting held between suppliers, sub-contractors, title companies, and lending institutions it was agreed that this new bill would allow the lending institutions to be secured by a first deed of trust on their interim construction financing which gave them priority over all liens or encumbrances which may be recorded by a material supplier or sub-contractor.

In exchange for giving up a historical priority position, suppliers and sub-contractors were to be provided a vehicle by which they could put the lending institution on notice that they were a supplier of record, and in so doing, protect the suppliers interest. The methods provided to material suppliers and sub-contractors under the new law were:

1. Notice of Right to Lien and
2. Stop Payment Notice

The intent of the "Notice of Right to Lien" was to inform the lending institution, and the property owner, that a supplier or sub-contractor had provided materials or services to a specific project and they may have a claim on the interim construction financing. The further intent of this notice was to guarantee that the lending institution would monitor the disbursing of interim construction funds to assure that persons who had given them a "Notice of Right to Lien" would be paid from each draw.

The "Stop Payment Notice" amendment was added as an additional method for securing a payment, when past due from interim construction financing. The intent of this amendment was to cause the lending institution to withhold the amount claimed by the material supplier or sub-contractor from the next draw and to disburse the funds directly to the claimant.

Since there is no liability on the part of the lending institution for failing to disregard the intent of these amendments, they have been circumvented to a large degree. Interim construction draws are being disbursed directly to the contractor with no assurance that the material supplier or sub-contractor will be paid. In many instances the contractor will use these funds for purposes other than paying his suppliers or sub-contractors.

A "Stop Payment Notice" rarely accomplishes the purpose for which it was intended. The lending institutions in many instances interpret this notice as indication that the contractor is in financial trouble and they will call the loan; thereby stopping all draw requests until the liens are removed or the loan is satisfied. Or they may just hold the notice for a period of 30 days at which time the current law mandates that a law suit be instigated to collect the debt. In addition, the current law mandates that a claimant must provide a bond equal to the amount of the claim. With the current cost of bonding, legal fees and the length of time it takes to get a court date a claimant will rarely recover the amount owed to him. Interestingly enough the lending institutions continue making draws to satisfy their interest charges.

A "Claim of Lien" in many instances has no value. The lending institution has priority over all other encumbrances through their First Deed of Trust position. In the event of foreclosure the lending institutions First Deed of Trust must be paid in its entirety before any other claims can be satisfied, in spite of the fact that the lending institution may have disbursed construction funds directly to the contractor with no regard to a supplier, or sub-contractors "Notice of Right to Lien".

POSITION

The suppliers and sub-contractors position is really quite simple:

We should have the right to reasonably expect to be compensated for the materials supplied and work performed that adds value to someone else's property, and in the event this does not occur we have equal opportunity for recovery under the law.

The trade off or "trust me legislation" of 1979 is simply not working.

Lending institutions are in the best position to review and determine a contractor's financial capability. They have or can have complete access to a contractor's financial information because they control the purse strings. However, loan officers have little or no incentive under existing law to control disbursements so as to assure that suppliers and sub-contractors are paid. At a minimum all they need do is assure that the materials are incorporated into the real estate before they disburse to the contractor. Whether the contractor pays the suppliers or the sub-contractors is really of little concern, because they (the lending institution) are always in first position. This enables them to foreclose and extinguish the liens of suppliers and sub-contractors in the event the contractor ultimately fails to perform. When an institution fails to exercise good control of funds, it is difficult to understand why their investment should be given priority at the expense of suppliers and sub-contractors.

There is no viable vehicle for a supplier or sub-contractor to compel a lending institution to disburse loan draws for materials purchased or work performed.

When the supplier or sub-contractor attempts to utilize a stop payment, or otherwise involve the loan officers, typically the lending institutions' first reaction is to draw down available proceeds to cover interest and other charges or even to call the loan.

Conclusion. The make up of the lending institutions as well as the environment under which the legislation was drafted in 1979, differs from that of today and perhaps is one of the prime reasons requiring a change in this legislation.

It is evident that the current law is not working. The unusual large numbers of business failures, bankruptcies, and foreclosures bear this out. If some form of protection for sub-contractors and material suppliers is not legislated, there will continue to be many bankruptcies and foreclosures. In addition, the cost of construction will increase dramatically due to the increase in cost of materials and services to cover the losses sustained through the inequities in the existing law.

**CASE HISTORY
EXAMPLE**

PROJECT Residential Units - Fairbanks
LENDER Bank
ACCOUNT PROFILE Customer for several years
Slow payment record

HISTORY. Because of previous problems with this customer and before supplier would enter into an agreement to sell the project, the lending institution agreed to monitor the loan and disburse funds direct to the supplier. After the project was in process the account went 30 days past due and was closed. The supplier contacted the bank was told they (the bank) were working on the draws and payment would be sent in about 10 days. Additionally, the bank requested that the account be left open.

When the account was (45) days past due and no payment received, the supplier again called the bank and was told the loan officer was on vacation. Again the bank requested that the account remain open and that if the materials were allowed to go they would cover the purchases. The supplier was also told there were more than enough funds to cover the balance due. A check would be cut as soon as the loan officer returned.

When the account was (60) days past due the supplier closed the account. The bank was contacted. The loan officer met with supplier, who was again advised that they were working on draws that would bring the account current. The loan officer requested that the account still be left open. Supplier recorded claim of liens.

When the account was (70) days past due the bank filed foreclosure with no advance notice to supplier.

ACTION TAKEN. Timely recorded Notice of Right to Lien and notified lender. Filed Claim of Liens totaling \$214,000.

RESULTS. Without notice bank filed foreclosure notices. Bank offered supplier \$85,000 in settlement. Customer filed bankruptcy. Loan officer resigned from his position at the bank.

SUMMARY. Under the existing law supplier filed all proper documents, and additionally had the assurance of the lending institution that they would disburse directly to them. The supplier had no other recourse except to sue the lending institution or settle because of the first position given the bank under the present lien law.

1986 - PROPOSED AMENDMENTS TO THE LAW

- Abolishment of Acknowledgement of Right to Lien

- Adoption of a Direct-Payment Notice which requires the owner's construction lender to make a direct payment to the claimant from the next construction draw, unless the owner timely objects to the Notice, in which case the lender is required to make a joint payment to the claimant and owner and leave it up to them to work out their disputes.

- Claimants other than individual laborers are given equal priority with a prior-recorded deed of trust for construction financing in cases of original construction. Individual laborers (excluding individual sub-contractors) and trustees of employment benefit trusts for such laborers continue to have priority over prior-recorded deeds of trust.

- The deadline is extended for recording a Notice of Right to Lien or Claim of Lien after a Notice of Completion is recorded to give the latter job trades more time to prepare their statements and determine if they have a payment problem.



TESTIMONY OF

ALASKA CHAPTER
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

TO

HOUSE LABOR AND COMMERCE COMMITTEE

ON

LIEN LAW REFORM

HB 494

FEBRUARY 26, 1986

AGC-Alaska on behalf of our over 800 member firms appreciates the opportunity to comment on HB 484.

The proposed legislation affects three significant areas of the existing law: WHO CAN CLAIM A LIEN; THE ABILITY TO IMPACT CONSTRUCTION DRAWS; and PRIORITY OF LIENS.

Who Can Claim a Lien

Presently, a person without a direct contract with an owner (most subcontractors and suppliers) may not claim a lien unless an "acknowledgment of right to lien" signed by the owner is obtained by the owner (an exception to this requirement is a person claiming a labor lien for work he performed). Without the existence of a lien law there is no right to sue an owner because no contract exists between the owner and a subcontractor or supplier.

HB 494 eliminates the "Acknowledgment of Right to Lien" requirement. Thus, anyone who supplied labor, materials, services or equipment may file a lien. There is no requirement that the owner even know the claimant was one of the persons supplying the labor, materials, services or equipment.

HB 494 would institute an optional "Notice of Intent to Furnish Labor, Materials, Sources or Equipment." (See Section 6) The purported effect is to shift the burden of proof in any action based on a lien. However, it does not limit the ability of anyone to file a lien. Further, this provision does not

require a lien claimant to prove that the owner knew or consented to the claimant supplying the materials, services or equipment.

In short, the proposed change will result in a substantial increase in the filing of liens by persons unknown to the owner. Owners and financial institutions will retain a greater portion of the general contractors money and property sales will be impeded and more litigation will result.

The Ability To Impact Construction Draws

Under existing law a "stop payment notice" can be given by a lien claimant to the lending institution, if payment is more than 20 days overdue. However, to stop payment for more than 30 days the claimant must file suit within that 30 day period.

HB 494 would substitute a "direct payment notice" for the existing "stop payment notice." Under the proposed "direct payment notice" the lending institution must pay the claimant directly unless an objection is received by the owner within 10 days. If an objection is received the lender must distribute the money directly to the claimant and the owner.

The net effect of the provision would be to tie up money anytime there is a dispute between a general and subcontractor or supplier. The result could be an increasing number of projects not being completed, i.e. more foreclosures.

Priority of Liens

Under existing law a prior encumbrance is preferred to a lien (except a lien by a person actually performing labor). HB 494 proposes to give equal priority to all liens for "original" construction with a prior recorded encumbrance. While the term "original construction" needs to be defined, AGC concurs with the overall intent of this provision - equal priority of liens with construction lenders.

In summary, AGC recommends that no changes be made to the present system of claiming and establishing liens or stop payment notices. AGC does support legislative changes to the priority presently enjoyed by construction lenders.

HB494.1d

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

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JUNEAU, ALASKA 99811
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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	3/27/86	1:30 pm
" "	4/16/86	1:30 pm
" "	4/17/86	1:30 pm

**HOUSE
COMMITTEE REPORT**

(7)

Date referred: 3/24/86

FURTHER REFERRALS:

DATE: _____

The JUDICIARY Committee has considered HB 494

"An Act relating to liens for labor or materials furnished."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CSHB494 (JUD) same title
- new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

[Signature]
[Signature]
[Signature]
[Signature]
ROD E CRON
[Signature]

[Signature] - NO REC

[Signature]
Chairman

Original sponsors: Cotten, Szymanski,
Phillips, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 494 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to liens for labor or material
7 furnished."

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

9 * Section 1. AS 34.35.062 is repealed and reenacted to read:

10 Sec. 34.35.062. CONSTRUCTION FINANCING. (a) A claimant to whom
11 payment for the labor, material, service, or equipment furnished for a
12 project is past due may give the lender a stop-lending notice. The
13 claimant shall at the same time give a copy of the notice to the owner
14 and to each prime contractor with whom or through whom the claimant or
15 the claimant's debtor has contracted. A stop-lending notice shall

16 (1) instruct the lender to stop disbursing, advancing, or
17 otherwise providing construction financing for the project;

18 (2) be verified by the claimant;

19 (3) state the claimant's name, address, and telephone
20 number;

21 (4) describe the labor, material, service, or equipment
22 furnished by the claimant and state the name of the person to whom
23 furnished;

24 (5) describe the real property improved by the labor,
25 material, service, or equipment and state the name of the person the
26 claimant believes to be the owner of the real property;

27 (6) state the amount due and unpaid to the claimant for the
28 labor, material, service, or equipment.

29 (b) A stop-lending notice is binding upon a lender from the time

1 the lender has received it and had a reasonable opportunity to act
2 upon it until it expires or is revoked. A notice expires on the 91st
3 day after it is received by the lender unless the claimant has com-
4 menced an action on the claim that is the subject of the notice before
5 that day and the lender has received written notification of the
6 action. A stop-lending notice may be revoked at any time in writing
7 signed by the claimant. Expiration or revocation of a notice extin-
8 guishes the liability of the lender to the claimant under (c) of this
9 subsection.

10 (c) A lender who disburses, advances, or otherwise provides
11 construction financing for a project after it is the subject of a
12 stop-lending notice is liable to the claimant in an amount equal to
13 the lowest of the following amounts:

14 (1) the amount of construction financing disbursed, ad-
15 vanced, or otherwise provided by the lender after receipt of the
16 claimant's stop-lending notice; if there are two or more stop-lending
17 notices when the disbursement occurs, the lender's liability to each
18 claimant is based on the claimant's ranking under AS 34.35.112;

19 (2) the amount owed to the claimant, including interest,
20 costs, and attorney's fees, for labor, material, service, or equipment
21 furnished for the project by the claimant as established by a written
22 agreement signed on or after the date of the stop-lending notice by
23 the claimant, the owner and the prime contractor with whom or through
24 whom the claimant or the claimant's debtor has contracted or by a
25 final judgment in an action in which the owner, the claimant and the
26 claimant's debtor are named and, if necessary, served parties;

27 (3) 150 percent of the amount stated in the stop-lending
28 notice.

29 (d) Within 10 days after receiving the written agreement or a

1 certified copy of the judgment under (c)(2) of this section estab-
2 lishing the amount owed to a claimant from whom it has a binding
3 stop-landing notice, a lender shall send to the claimant a verified
4 statement showing, by date and amount, all construction financing
5 provided by the lender for the project. Except as provided in (e) of
6 this section, the lender shall include with the statement payment in
7 the amount of the lender's liability to the claimant under (c) of this
8 section.

9 (e) If there are two or more claimants to whom a lender is or
10 may be liable under (c) of this section and the lender is uncertain as
11 to the amount of its liability or possible liability to each, the
12 lender may bring an action to require the claimants to interplead
13 their claims.

14 (f) A draw against construction financing may be made only after
15 certification of job progress is delivered to the lender by the owner.
16 The form of the certification may be prescribed by the lender and
17 shall include

18 (1) a statement of the progress of the project, including
19 the percentage of completion of the project;

20 (2) the name, address, and telephone number of each prime
21 contractor who has furnished labor, material, service, or equipment
22 for the project;

23 (3) the amount owed by the owner to each listed prime
24 contractor; and

25 (4) the portion of the draw that the owner will pay to each
26 listed prime contractor.

27 (g) The owner shall use each draw as indicated in the certifi-
28 cates given by them to the lender under (f) of this section. The
29 lender may not be required to verify the information in a certificate

1 and is not liable for an error in a certificate.

2 (h) An owner who intentionally fails to apply construction
3 financing proceeds as indicated by the certificate required under (f)
4 of this section is guilty of a class A misdemeanor. The penalty
5 provided under this subsection does not replace any other penalty that
6 may be provided for by law for the same conduct.

7 (i) Within 10 days after being requested, a lender shall provide
8 a person who has given the lender a stop-lending notice with a copy of

9 (1) each certificate received by the lender under (f) of
10 this section; and

11 (2) a verified certificate stating the amount of construc-
12 tion financing proceeds committed by the lender for the project that
13 have not been disbursed by the lender.

14 (j) The lender may not provide construction financing proceeds
15 for payment of indebtedness of the owner that is not incurred for the
16 project.

17 * Sec. 2. AS 34.35.064(a) is amended to read:

18 (a) Before furnishing labor, material, service, or equipment for
19 a project, a person [AFTER ENTERING INTO A CONTRACT, A CLAIMANT] may
20 give a notice of right to lien to the owner or owner's agent [AND THE
21 LENDER]. If the notice is given in accordance with this section, the
22 owner has the burden of proof to show that the owner did not know of
23 or consent to the furnishing of the labor, material, service, or
24 equipment by the claimant in an action to foreclose the claimant's
25 lien on the property under AS 34.35.050 - 34.35.120. Otherwise the
26 claimant has the burden of proof to show that the owner knew of and
27 consented to the furnishing of the labor, material, service, or equip-
28 ment. The notice of right to lien sha'll be in writing, state that it
29 is a notice of a right to assert a lien against real property [A

BUILDING OR OTHER IMPROVEMENT] for labor, materials, services, or equipment furnished in connection with a project [CONSTRUCTION, ALTERATION, OR REPAIR OF THE BUILDING OR OTHER IMPROVEMENT], and contain

(1) a legal description sufficient for identification of the real property [UPON WHICH THE BUILDING OR OTHER IMPROVEMENT IS LOCATED];

(2) the name of the owner;

(3) the name and address of the claimant;

(4) the name and address of the person with whom the claimant contracted;

(5) a general description of the labor, materials, services, or equipment provided or to be provided;

(6) a statement that the claimant may be entitled to record a claim of lien; and

(7) the following statement in type no smaller than that used in providing the information required by (1) - (6) of this subsection: WARNING: Unless provision is [HAS BEEN] made for payment of sums that may be due to the undersigned, your above property may be subject to foreclosure to satisfy those sums even though you may pay [THIS CLAIM, YOU MAY BE LIABLE FOR PAYMENT DIRECTLY TO THIS CLAIMANT, NOTWITHSTANDING THE FACT THAT PAYMENT HAS BEEN MADE TO] a prime contractor or other person for the labor, material, service, or equipment furnished by the undersigned [PARTY].

* Sec. 3. AS 34.35.067 is amended to read:

Sec. 34.35.067. RECORDING NOTICE OF RIGHT TO LIEN. A notice of right to lien may be recorded by a claimant at any time after the claimant enters [ENTERING] into a contract for or first furnishes labor, material, service, or equipment [FURNISHED] in connection with a project [THE CONSTRUCTION, ALTERATION OR REPAIR OF A BUILDING OR

OTHER IMPROVEMENT]. The notice shall be recorded in the same manner as specified for the recording of a claim of lien under AS 34.35.070.

* Sec. 4. AS 34.35.070(a) is amended to read:

(a) A [SUBJECT TO THE PROVISIONS OF AS 34.35.069(a), A] claimant may record a claim of lien after entering into a contract for a project [THE CONSTRUCTION, ALTERATION, OR REPAIR OF A BUILDING OR IMPROVEMENT]. A claim of lien may not be recorded later than the time specified under AS 34.35.068.

* Sec. 5. AS 34.35.071(a) is amended to read:

(a) The owner of real property that may be subject to a lien under AS 34.35.050 - 34.35.120 may announce the date of completion of the project [A BUILDING OR OTHER IMPROVEMENT ON THE PROPERTY] by

(1) recording a notice of completion after completion of the project [CONSTRUCTION, ALTERATION OR REPAIR OF THE BUILDING OR OTHER IMPROVEMENT] in the office of the recorder of the district in which the real property [BUILDING OR OTHER IMPROVEMENT] is situated; and

(2) giving notice at least five days before the recording of the notice of completion to all claimants who have given a notice of right to lien or a stop-lending [STOP-PAYMENT] notice to the owner and the lender prior to 10 days before recording a notice of completion; the notice must include a copy of the notice of completion and a statement advising claimants that a notice of completion will be recorded not earlier than five days after the date of the notice.

* Sec. 6. AS 34.35 is amended by adding a new section to read:

Sec. 34.35.074. CIVIL SUITS. (a) A person injured by a violation of AS 34.35.050 - 34.35.120 may bring a civil action

(1) except as provided in AS 34.35.062(c), for actual and consequential damages that are proximately caused by the violation

plus costs, including reasonable attorney's fees;

(2) to enjoin the violation, and if the person prevails, the person shall be awarded costs, including reasonable attorney's fees.

(b) A claimant who files a stop-lending notice or has a claim of lien recorded under AS 34.35.075 and who fails to promptly remove the stop-lending notice or claim of lien from the record upon receiving payment in full on the claim or discovering that the stop-lending notice or claim of lien is in error, unjust, premature or excessive is liable for actual and consequential damages caused by the filing of the stop-lending notice or improperly recorded claim of lien plus costs, including reasonable attorney's fees.

* Sec. 7. AS 34.35.080(a) is amended to read:

(a) A lien provided for in AS 34.35.050 - 34.35.120 does not bind real property [A BUILDING, STRUCTURE, OR OTHER IMPROVEMENT] for more than six months after the claim of lien is recorded [FILED], unless an action is commenced in [SUIT IS BROUGHT BEFORE] the proper court to enforce the lien within

(1) [WITHIN] that time; [,] or

(2) [WITHIN] six months after recording of an extension notice in the same recording office within the original six-month period showing the recording date and the book and page or instrument number of the initial claim of lien, and the balance owing.

* Sec. 8. AS 34.35.080 is amended by adding a new subsection to read:

(c) A lien whose duration is extended by commencement of an action under (a) of this section is void as against a person who, after the commencement of the action and without knowledge or actual notice of its pendency, acquires an interest in the subject property in good faith for valuable consideration, unless a notice of the

1 pendency of the action has been duly filed for record before the time
2 the person's conveyance is duly filed for record. Notice of the
3 pendency of the action shall conform to the requirements of AS 09.45.-
4 790.

5 * Sec. 9. AS 34.35.112 is amended to read:

6 Sec. 34.35.112. PAYMENT OF CLAIMANT'S LIENS. (a) If more than
7 one lien created under AS 34.35.050 - 34.35.120 is claimed against
8 property, the court in its judgment shall declare the rank of each
9 lien or class of liens in the following order:

10 (1) all persons other than prime contractors or subcontractors
11 with lien rights under AS 34.35.050(1);

12 (2) the trustees of employment benefit trusts for persons
13 described in (1) of this subsection;

14 (3) all materialmen and subcontractors;

15 (4) [SUBCONTRACTORS, INCLUDING] prime contractors other
16 than the general contractor [AND PERSONS DESCRIBED IN AS 34.35.050-
17 (5)];

18 (5) the general contractor.

19 (b) For purposes of AS 34.35.050 - 34.35.120, if the proceeds of
20 the foreclosure sale of the property are insufficient to pay the lien
21 claims of all persons who have recorded claims [A CLAIM] of lien, the

22 (1) [THE] liens of all individuals with lien rights under
23 AS 34.35.050(1) shall first be paid in full, or pro rata if the pro-
24 ceeds are insufficient to pay them in full;

25 (2) [THE] liens of trustees of employment benefit trusts
26 for persons described in (1) of this subsection shall be paid in full
27 or pro rata if the proceeds are insufficient to pay them in full;

28 (3) [THE] liens of materialmen and subcontractors shall be
29 paid in full or pro rata if the proceeds are insufficient to pay them

in full;

(4) liens of persons described in AS 34.35.050(5) and [OUT OF THE REMAINDER THE SUBCONTRACTORS, INCLUDING] prime contractors, other than the general contractor, shall be paid in full [,] or pro rata if the remainder is insufficient to pay them in full; and

(5) lien of the general contractor [THE BALANCE] shall be paid out of [TO THE GENERAL CONTRACTOR; A GENERAL CONTRACTOR IS ENTITLED TO EXECUTION FOR] the balance [DUE AFTER DISTRIBUTION].

* Sec. 10. AS 34.35.112 is amended by adding a new subsection to read:

(c) For purposes of AS 34.35.050 - 34.35.120, if the proceeds of the foreclosure sale of the property are sufficient to pay the lien claims of all persons who have recorded claims of lien, the balance shall be paid to the person who owned the property before the foreclosure sale.

* Sec. 11. AS 34.35.114(c) is repealed and reenacted to read:

(c) A person who receives a stop-lending notice or notice of right to lien identifying a project for which the person is not the lender shall notify the claimant in writing within 10 days after receipt of the notice that the person is not the lender.

* Sec. 12. AS 34.35.114(d) is repealed and reenacted to read:

(d) A claimant shall, within 10 days after receipt of a request, provide an owner or lender to whom the claimant has given a stop-lending notice or notice of right to lien a written statement of the amount due to the claimant and unpaid.

* Sec. 13. AS 34.35.117(a) is amended to read:

(a) Except as provided under (b) of this section, a written waiver of lien or stop-lending [STOP-PAYMENT] notice of rights created under AS 34.35.050 - 34.35.120 signed by a claimant requires no consideration and is valid and binding. A waiver permitted under this

section may not relate to labor, materials, services, or equipment furnished after the date the waiver is signed by the claimant.

* Sec. 14. AS 34.35.120(4) is amended to read:

(4) "construction financing" means [THAT PORTION OF] money loaned or other credit extended to an owner secured by an encumbrance on real property to finance a project on that [ORIGINAL CONSTRUCTION OF A BUILDING OR OTHER IMPROVEMENT ON, OR DEVELOPMENT OF,] real property [, BUT DOES NOT INCLUDE

(A) FUNDS TO ACQUIRE REAL PROPERTY;

(B) FUNDS TO PAY PRINCIPAL AMORTIZATION OF ENCUMBRANCES WITH PRIORITY OVER THE ENCUMBRANCE SECURING THE CONSTRUCTION FINANCING;

(C) FUNDS TO PAY LOAN, COMMITMENT, TITLE, LEGAL, CLOSING, RECORDING OR APPRAISAL FEES ON THE CONSTRUCTION LOAN];

* Sec. 15. AS 34.35.120(9) is amended to read:

(9) "give notice" means to mail a notice required under AS 34.35.050 - 34.35.120 by first-class mail and by using a form of mail requiring a signed receipt, or to deliver the notice and obtain a receipt signed by the person to whom it is directed or an agent of that person; a notice is effective when given or delivered to

(A) [TO] a lender at the address designated in the encumbrance securing that lender;

(B) [TO] an owner at the last known address of the owner;

(C) [TO] a prime contractor at the last known address of the prime contractor;

(D) [TO] a potential lien claimant at the address specified in a stop-lending [STOP-PAYMENT] notice or notice of right to lien or claim of lien;

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* Sec. 16. AS 34.35.120(13) is amended to read:

(13) "owner" means a person who owns real property or a possessory interest in real property [THE BUILDING OR OTHER IMPROVEMENT] and who enters into a contract, express or implied, for a project on that property [THE CONSTRUCTION, ALTERATION OR REPAIR OF A BUILDING OR IMPROVEMENT];

* Sec. 17. AS 34.35.120 is amended by adding a new paragraph to read:

(17) "project" means construction, alteration, or repair of an improvement on real property or work done to enhance the real property itself.

* Sec. 18. AS 34.35.069, 34.35.080(b), 34.35.114(e), and 34.35.118 are repealed.

Cook
4/18/86

Original sponsors: Cotten, Szymanski,
Phillips, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 494 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to liens for labor or material
7 furnished."

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

9 * Section 1. AS 34.35.062 is repealed and reenacted to read:

10 Sec. 34.35.062. CONSTRUCTION FINANCING. (a) A claimant to whom
11 payment for the labor, material, service, or equipment furnished for a
12 project is past due may give the lender a stop-lending notice. The
13 claimant shall at the same time give a copy of the notice to the owner
14 and to each prime contractor with whom or through whom the claimant or
15 the claimant's debtor has contracted. A stop-lending notice shall

16 (1) instruct the lender to stop disbursing, advancing, or
17 otherwise providing construction financing for the project;

18 (2) be verified by the claimant;

19 (3) state the claimant's name, address, and telephone
20 number;

21 (4) describe the labor, material, service, or equipment
22 furnished by the claimant and state the name of the person to whom
23 furnished;

24 (5) describe the real property improved by the labor,
25 material, service, or equipment and state the name of the person the
26 claimant believes to be the owner of the real property;

27 (6) state the amount due and unpaid to the claimant for the
28 labor, material, service, or equipment.

29 (b) A stop-lending notice is binding upon a lender from the time

1 the lender has received it and had a reasonable opportunity to act
2 upon it until it expires or is revoked. A notice expires on the 91st
3 day after it is received by the lender unless the claimant has com-
4 menced an action on the claim that is the subject of the notice before
5 that day and the lender has received written notification of the
6 action. A stop-lending notice may be revoked at any time in writing
7 signed by the claimant. Expiration or revocation of a notice extin-
8 guishes the liability of the lender to the claimant under (c) of this
9 subsection.

10 (c) A lender who disburses, advances, or otherwise provides
11 construction financing for a project after it is the subject of a
12 stop-lending notice is liable to the claimant in an amount equal to
13 the lowest of the following amounts:

14 (1) the amount of construction financing disbursed, ad-
15 vanced, or otherwise provided by the lender after receipt of the
16 claimant's stop-lending notice; if there are two or more stop-lending
17 notices when the disbursement occurs, the lender's liability to each
18 claimant is based on the claimant's ranking under AS 34.35.112;

19 (2) the amount owed to the claimant, including interest,
20 costs, and attorney's fees, for labor, material, service, or equipment
21 furnished for the project by the claimant as established by a written
22 agreement signed on or after the date of the stop-lending notice by
23 the claimant, the owner and the prime contractor with whom or through
24 whom the claimant or the claimant's debtor has contracted or by a
25 final judgment in an action in which the owner, the claimant and the
26 claimant's debtor are named and, if necessary, served parties;

27 (3) 150 percent of the amount stated in the stop-lending
28 notice.

29 (d) Within 10 days after receiving the written agreement or a

1 certified copy of the judgment under (c)(2) of this section estab-
2 lishing the amount owed to a claimant from whom it has a binding
3 stop-lending notice, a lender shall send to the claimant a verified
4 statement showing, by date and amount, all construction financing
5 provided by the lender for the project. Except as provided in (e) of
6 this section, the lender shall include with the statement payment in
7 the amount of the lender's liability to the claimant under (c) of this
8 section.

9 (e) If there are two or more claimants to whom a lender is or
10 may be liable under (c) of this section and the lender is uncertain as
11 to the amount of its liability or possible liability to each, the
12 lender may bring an action to require the claimants to interplead
13 their claims.

14 (f) A draw against construction financing may be made only after
15 certification of job progress is delivered to the lender by the owner.
16 The form of the certification may be prescribed by the lender and
17 shall include

18 (1) a statement of the progress of the project, including
19 the percentage of completion of the project;

20 (2) the name, address, and telephone number of each prime
21 contractor who has furnished labor, material, service, or equipment
22 for the project;

23 (3) the amount owed by the owner to each listed prime
24 contractor; and

25 (4) the portion of the draw that the owner will pay to each
26 listed prime contractor.

27 (g) The owner shall use each draw as indicated in the certifi-
28 cates given by them to the lender under (f) of this section. The
29 lender may not be required to verify the information in a certificate

1 and is not liable for an error in a certificate.

2 (h) An owner who intentionally fails to apply construction
3 financing proceeds as indicated by the certificate required under (f)
4 of this section is guilty of a class A misdemeanor. The penalty
5 provided under this subsection does not replace any other penalty that
6 may be provided for by law for the same conduct.

7 (i) Within 10 days after being requested, a lender shall provide
8 a person who has given the lender a stop-lending notice with a copy of

9 (1) each certificate received by the lender under (f) of
10 this section; and

11 (2) a verified certificate stating the amount of construc-
12 tion financing proceeds committed by the lender for the project that
13 have not been disbursed by the lender.

14 (j) The lender may not provide construction financing proceeds
15 for payment of indebtedness of the owner that is not incurred for the
16 project.

17 * Sec. 2. AS 34.35.064(a) is amended to read:

18 (a) Before furnishing labor, material, service, or equipment for
19 a project, a person [AFTER ENTERING INTO A CONTRACT, A CLAIMANT] may
20 give a notice of right to lien to the owner or owner's agent [AND THE
21 LENDER]. If the notice is given in accordance with this section, the
22 owner has the burden of proof to show that the owner did not know of
23 or consent to the furnishing of the labor, material, service, or
24 equipment by the claimant in an action to foreclose the claimant's
25 lien on the property under AS 34.35.050 - 34.35.120. Otherwise the
26 claimant has the burden of proof to show that the owner knew of and
27 consented to the furnishing of the labor, material, service, or equip-
28 ment. The notice of right to lien shall be in writing, state that it
29 is a notice of a right to assert a lien against real property [A

1 BUILDING OR OTHER IMPROVEMENT] for labor, materials, services, or
2 equipment furnished in connection with a project [CONSTRUCTION, ALTER-
3 ATION, OR REPAIR OF THE BUILDING OR OTHER IMPROVEMENT], and contain

4 (1) a legal description sufficient for identification of
5 the real property [UPON WHICH THE BUILDING OR OTHER IMPROVEMENT IS
6 LOCATED];

7 (2) the name of the owner;

8 (3) the name and address of the claimant;

9 (4) the name and address of the person with whom the claim-
10 ant contracted;

11 (5) a general description of the labor, materials, ser-
12 vices, or equipment provided or to be provided;

13 (6) a statement that the claimant may be entitled to record
14 a claim of lien; and

15 (7) the following statement in type no smaller than that
16 used in providing the information required by (1) - (6) of this
17 subsection: WARNING: Unless provision is [HAS BEEN] made for payment
18 of sums that may be due to the undersigned, your above property may be
19 subject to foreclosure to satisfy those sums even though you may pay
20 [THIS CLAIM, YOU MAY BE LIABLE FOR PAYMENT DIRECTLY TO THIS CLAIMANT,
21 NOTWITHSTANDING THE FACT THAT PAYMENT HAS BEEN MADE TO] a prime con-
22 tractor or other person for the labor, material, service, or equipment
23 furnished by the undersigned [PARTY].

24 * Sec. 3. AS 34.35.067 is amended to read:

25 Sec. 34.35.067. RECORDING NOTICE OF RIGHT TO LIEN. A notice of
26 right to lien may be recorded by a claimant at any time after the
27 claimant enters [ENTERING] into a contract for or first furnishes
28 labor, material, service, or equipment [FURNISHED] in connection with
29 a project [THE CONSTRUCTION, ALTERATION OR REPAIR OF A BUILDING OR

1 OTHER IMPROVEMENT]]. The notice shall be recorded in the same manner
2 as specified for the recording of a claim of lien under AS 34.35.070.

3 * Sec. 4. AS 34.35.070(a) is amended to read:

4 (a) A [SUBJECT TO THE PROVISIONS OF AS 34.35.069(a), A] claimant
5 may record a claim of lien after entering into a contract for a proj-
6 ect [THE CONSTRUCTION, ALTERATION, OR REPAIR OF A BUILDING OR IMPROVE-
7 MENT]. A claim of lien may not be recorded later than the time spec-
8 ified under AS 34.35.068.

9 * Sec. 5. AS 34.35.071(a) is amended to read:

10 (a) The owner of real property that may be subject to a lien
11 under AS 34.35.050 - 34.35.120 may announce the date of completion of
12 the project [A BUILDING OR OTHER IMPROVEMENT ON THE PROPERTY] by

13 (1) recording a notice of completion after completion of
14 the project [CONSTRUCTION, ALTERATION OR REPAIR OF THE BUILDING OR
15 OTHER IMPROVEMENT] in the office of the recorder of the district in
16 which the real property [BUILDING OR OTHER IMPROVEMENT] is situated;
17 and

18 (2) giving notice at least five days before the recording
19 of the notice of completion to all claimants who have given a notice
20 of right to lien or a stop-lending [STOP-PAYMENT] notice to the owner
21 and the lender prior to 10 days before recording a notice of comple-
22 tion; the notice must include a copy of the notice of completion and a
23 statement advising claimants that a notice of completion will be
24 recorded not earlier than five days after the date of the notice.

25 * Sec. 6. AS 34.35 is amended by adding a new section to read:

26 Sec. 34.35.074. CIVIL SUITS. (a) A person injured by a viola-
27 tion of AS 34.35.050 - 34.35.120 may bring a civil action

28 (1) except as provided in AS 34.35.062(c), for actual and
29 consequential damages that are proximately caused by the violation

1 plus costs, including reasonable attorney's fees;

2 (2) to enjoin the violation, and if the person prevails,
3 the person shall be awarded costs, including reasonable attorney's
4 fees.

5 (b) A claimant who files a stop-lending notice or has a claim of
6 lien recorded under AS 34.35.075 and who fails to promptly remove the
7 stop-lending notice or claim of lien from the record upon receiving
8 payment in full on the claim or discovering that the stop-lending
9 notice or claim of lien is in error, unjust, premature or excessive is
10 liable for actual and consequential damages caused by the filing of
11 the stop-lending notice or improperly recorded claim of lien plus
12 costs, including reasonable attorney's fees.

13 * Sec. 7. AS 34.35.080(a) is amended to read:

14 (a) A lien provided for in AS 34.35.050 - 34.35.120 does not
15 bind real property [A BUILDING, STRUCTURE, OR OTHER IMPROVEMENT] for
16 more than six months after the claim of lien is recorded [FILED],
17 unless an action is commenced in [SUIT IS BROUGHT BEFORE] the proper
18 court to enforce the lien within

19 (1) [WITHIN] that time; [,] or

20 (2) [WITHIN] six months after recording of an extension
21 notice in the same recording office within the original six-month
22 period showing the recording date and the book and page or instrument
23 number of the initial claim of lien, and the balance owing.

24 * Sec. 8. AS 34.35.080 is amended by adding a new subsection to read:

25 (c) A lien whose duration is extended by commencement of an
26 action under (a) of this section is void as against a person who,
27 after the commencement of the action and without knowledge or actual
28 notice of its pendency, acquires an interest in the subject property
29 in good faith for valuable consideration, unless a notice of the

1 pendency of the action has been duly filed for record before the time
2 the person's conveyance is duly filed for record. Notice of the
3 pendency of the action shall conform to the requirements of AS 09.45.-
4 790.

5 * Sec. 9. AS 34.35.112 is amended to read:

6 Sec. 34.35.112. PAYMENT OF CLAIMANT'S LIENS. (a) If more than
7 one lien created under AS 34.35.050 - 34.35.120 is claimed against
8 property, the court in its judgment shall declare the rank of each
9 lien or class of liens in the following order:

10 (1) all persons other than prime contractors or subcontrac-
11 tors with lien rights under AS 34.35.050(1);

12 (2) the trustees of employment benefit trusts for persons
13 described in (1) of this subsection;

14 (3) all materialmen and subcontractors;

15 (4) [SUBCONTRACTORS, INCLUDING] prime contractors other
16 than the general contractor [AND PERSONS DESCRIBED IN AS 34.35.050-
17 (5)];

18 (5) the general contractor.

19 (b) For purposes of AS 34.35.050 - 34.35.120, if the proceeds of
20 the foreclosure sale of the property are insufficient to pay the lien
21 claims of all persons who have recorded claims [A CLAIM] of lien, the

22 (1) [THE] liens of all individuals with lien rights under
23 AS 34.35.050(1) shall first be paid in full, or pro rata if the pro-
24 ceeds are insufficient to pay them in full;

25 (2) [THE] liens of trustees of employment benefit trusts
26 for persons described in (1) of this subsection shall be paid in full
27 or pro rata if the proceeds are insufficient to pay them in full;

28 (3) [THE] liens of materialmen and subcontractors shall be
29 paid in full or pro rata if the proceeds are insufficient to pay them

1 in full;

2 (4) liens of persons described in AS 34.35.050(5) and [OUT
3 OF THE REMAINDER THE SUBCONTRACTORS, INCLUDING] prime contractors,
4 other than the general contractor, shall be paid in full [,] or pro
5 rata if the remainder is insufficient to pay them in full; and

6 (5) lien of the general contractor [THE BALANCE] shall be
7 paid out of [TO THE GENERAL CONTRACTOR; A GENERAL CONTRACTOR ENTI-
8 TLED TO EXECUTION FOR] the balance [DUE AFTER DISTRIBUTION].

9 * Sec. 10. AS 34.35.112 is amended by adding a new subsection to read:

10 (c) For purposes of AS 34.35.050 - 34.35.120, if the proceeds of
11 the foreclosure sale of the property are sufficient to pay the lien
12 claims of all persons who have recorded claims of lien, the balance
13 shall be paid to the person who owned the property before the foreclo-
14 sure sale.

15 * Sec. 11. AS 34.35.114(c) is repealed and reenacted to read:

16 (c) A person who receives a stop-lending notice or notice of
17 right to lien identifying a project for which the person is not the
18 lender shall notify the claimant in writing within 10 days after
19 receipt of the notice that the person is not the lender.

20 * Sec. 12. AS 34.35.114(d) is repealed and reenacted to read:

21 (d) A claimant shall, within 10 days after receipt of a request,
22 provide an owner or lender to whom the claimant has given a stop-lend-
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24 amount due to the claimant and unpaid.

25 * Sec. 13. AS 34.35.117(a) is amended to read:

26 (a) Except as provided under (b) of this section, a written
27 waiver of lien or stop-lending [STOP-PAYMENT] notice of rights created
28 under AS 34.35.050 - 34.35.120 signed by a claimant requires no con-
29 sideration and is valid and binding. A waiver permitted under this

1 section may not relate to labor, materials, services, or equipment
2 furnished after the date the waiver is signed by the claimant.

3 * Sec. 14. AS 34.35.120(4) is amended to read:

4 (4) "construction financing" means [THAT PORTION OF] money
5 loaned or other credit extended to an owner secured by an encumbrance
6 on real property to finance a project on that [ORIGINAL CONSTRUCTION
7 OF A BUILDING OR OTHER IMPROVEMENT ON, OR DEVELOPMENT OF,] real prop-
8 erty [, BUT DOES NOT INCLUDE

9 (A) FUNDS TO ACQUIRE REAL PROPERTY;

10 (B) FUNDS TO PAY PRINCIPAL AMORTIZATION OF ENCUM-
11 BRANCES WITH PRIORITY OVER THE ENCUMBRANCE SECURING THE CONSTRUC-
12 TION FINANCING;

13 (C) FUNDS TO PAY LOAN, COMMITMENT, TITLE, LEGAL,
14 CLOSING, RECORDING OR APPRAISAL FEES ON THE CONSTRUCTION LOAN];

15 * Sec. 15. AS 34.35.120(9) is amended to read:

16 (9) "give notice" means to mail a notice required under
17 AS 34.35.050 - 34.35.120 by first-class mail and by using a form of
18 mail requiring a signed receipt, or to deliver the notice and obtain a
19 receipt signed by the person to whom it is directed or an agent of
20 that person; a notice is effective when given or delivered to

21 (A) [TO] a lender at the address designated in the
22 encumbrance securing that lender;

23 (B) [TO] an owner at the last known address of the
24 owner;

25 (C) [TO] a prime contractor at the last known address
26 of the prime contractor;

27 (D) [TO] a potential lien claimant at the address
28 specified in a stop-lending [STOP-PAYMENT] notice or notice of
29 right to lien or claim of lien;

1 * Sec. 16. AS 34.35.120(13) is amended to read:

2 (13) "owner" means a person who owns real property or a
3 possessory interest in real property [THE BUILDING OR OTHER IMPROVE-
4 MENT] and who enters into a contract, express or implied, for a proj-
5 ect on that property [THE CONSTRUCTION, ALTERATION OR REPAIR OF A
6 BUILDING OR IMPROVEMENT];

7 * Sec. 17. AS 34.35.120 is amended by adding a new paragraph to read:

8 (17) "project" means construction, alteration, or repair of
9 an improvement on real property or work done to enhance the real
10 property itself.

11 * Sec. 18. AS 34.35.069, 34.35.080(b), 34.35.114(e), and 34.35.118 are
12 repealed.

Cook
4/16/86

Original sponsors: Cotten, Szymanski,
Phillips, et al

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 494 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to liens for labor or material
7 furnished."

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

9 * Section 1. AS 34.35.062 is repealed and reenacted to read:

10 Sec. 34.35.062. CONSTRUCTION FINANCING. (a) A claimant to whom
11 payment for the labor, material, service, or equipment furnished for a
12 project is past due may give the lender a stop-lending notice. The
13 claimant shall at the same time give a copy of the notice to the owner
14 and to each prime contractor with whom or through whom the claimant or
15 the claimant's debtor has contracted. A stop-lending notice shall

16 (1) instruct the lender to stop disbursing, advancing, or
17 otherwise providing construction financing for the project;

18 (2) be verified by the claimant;

19 (3) state the claimant's name, address, and telephone
20 number;

21 (4) describe the labor, material, service, or equipment
22 furnished by the claimant and state the name of the person to whom
23 furnished;

24 (5) describe the real property improved by the labor,
25 material, service, or equipment and state the name of the person the
26 claimant believes to be the owner of the real property;

27 (6) state the amount due and unpaid to the claimant for the
28 labor, material, service, or equipment.

29 (b) A stop-lending notice is binding upon a lender from the time

1 the lender has received it and had a reasonable opportunity to act
2 upon it until it expires or is revoked. A notice expires on the 91st
3 day after it is received by the lender unless the claimant has com-
4 menced an action on the claim that is the subject of the notice before
5 that day and the lender has received written notification of the
6 action. A stop-lending notice may be revoked at any time in writing
7 signed by the claimant. Expiration or revocation of a notice extin-
8 guishes the liability of the lender to the claimant under (c) of this
9 subsection.

10 (c) A lender who disburses, advances, or otherwise provides
11 construction financing for a project after it is the subject of a
12 stop-lending notice is liable to the claimant in an amount equal to
13 the lowest of the following amounts:

14 (1) the amount of construction financing disbursed, ad-
15 vanced, or otherwise provided by the lender after receipt of the
16 claimant's stop-lending notice; if there are two or more stop-lending
17 notices when the disbursement occurs, the lender's liability to each
18 claimant is based on the claimant's ranking under AS 34.35.112;

19 (2) the amount owed to the claimant, including interest,
20 costs, and attorney's fees, for labor, material, service, or equipment
21 furnished for the project by the claimant as established by a written
22 agreement signed on or after the date of the stop-lending notice by
23 the claimant, the owner and the prime contractor with whom or through
24 whom the claimant or the claimant's debtor has contracted or by a
25 final judgment in an action in which the owner, the claimant and the
26 claimant's debtor are named and, if necessary, served parties;

27 (3) 150 percent of the amount stated in the stop-lending
28 notice.

29 (d) Within 10 days after receiving the written agreement or a