

ALASKA LEGISLATURE COMMITTEE FILES 1987 - 1988 86/2

4763 HJUD SB 276 - SB 304

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276

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907.465.3800

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

*House Judiciary:*

*1988 - April 27*

# HOUSE COMMITTEE REPORT

(7)

Date referred: 4/5/88

FURTHER REFERRALS: Finance

DATE: 4/27/88

The Judiciary Committee has considered CSSB 276(Fin)

"An Act relating to brewpub, brewery, and beverage dispensary liquor licenses; and to prohibited financial interests in a licensed liquor business; and providing for an effective date."

**RECOMMENDS:**

- replace with \_\_\_\_\_  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published 3/28/88
- zero with analysis

**SIGNING DO PASS:**

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**SIGNING OTHER RECOMMENDATIONS:**

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Chairman's signature

# Alaska State Legislature

SENATOR BETTYE FAHRENKAMP  
CHAIRMAN, LEGISLATIVE COUNCIL  
CHAIRMAN, OIL AND GAS COMMITTEE  
515 7TH A. S. BLDG., SUITE 130  
FAIRBANKS, ALASKA 99701  
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WHILE IN JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99811  
CAPITOL ROOM 125  
OFFICE (907) 465-3834  
HOME (907) 780-6027

## Senate

### MEMORANDUM

TO: House Judiciary Committee

FROM: Senator Bettye Fahrenkamp

DATE: April 22, 1988

RE: CSSB 276 (Fin) An Act relating to the brewpub, brewery, and beverage dispensary liquor licenses; and to prohibited financial interests in a licensed liquor business; and providing for an effective date.

### INTRODUCTION

If this bill passes, a new industry would be fostered in Alaska, i.e. brewpubs which are growing in number in other states. A brewpub is the industry term for an establishment that consists of a bar and/or restaurant and a brewery.

### WHAT THE BILL DOES

There is an interest by holders of beverage dispensary licenses to be able to brew their own beer on the premises for sale to their patrons to be consumed on the premises only.

This bill would create a new type of license to provide clear authority to the ABC and give them specific conditions under which they would be able to issue these new "brewpub" licenses. Production is limited to 16,000 gallons per year, which is 516 barrels, or 1032 kegs.

The bill would also fix an ambiguity in the current statutes which unintentionally limits to whom a brewer can sell its products. Under current law, an Alaskan brewer can only sell to a wholesaler licensed by the state. Inadvertently, this would prohibit an Alaska brewer from selling beer in Washington or Japan, for example. It also makes a change in the section of the law dealing with prohibited financial interests to allow a brewer to receive a consulting fee from other license holders.

A brewpub license would not be transferable by itself, only in conjunction with a beverage dispensary license.

The CS has the support of the ABC and zero fiscal notes from the Departments of Revenue and Environmental Conservation.

Sectional Analysis of CSSB 276 (Fin)

Section 1. AS 04.11.080 Types of Licenses and Permits

Amended to include brewpub license.

Section 2. AS 04.11.130(b) Brewery License

Deletes archaic language, i.e. changes "wine gallons" to "gallons". Amended to allow a brewer to sell beer to persons licensed to sell beer in other states and countries.

Section 3. AS 04.11.135 Brewpub License

Describes what is authorized under a brewpub license.

(a)(1) the manufacture of not more than 16,000 gallons (516 barrels or 1032 kegs) in a year. Must be brewed on the premises.

(a)(2) must be consumed on the premises.

(b) states that the brewpub license is not transferable except under the provisions of AS04.11.360(12) as amended under this bill.

(c) sets a annual fee of \$250.

Section 4. AS 04.11.360 Denial of Transfer of a license to another person.

Prohibits the transfer of a brewpub license unless it is being transferred with a beverage dispensary license.

Sections 5 and 6. AS 04.11.450 Prohibited Financial Interest

(b) Amended to authorize the holder of beverage dispensary license to obtain a brewpub license, subject to AS 04.11.135.

(c) Amends the definition of "direct or indirect financial interest" to exclude a consulting fee received from persons licensed under the alcohol beverage statutes. In this manner, the holder of a brewery license could assist the holder of a brewpub license in the start up of a brewpub, for example.

Section 7. Makes the bill effective immediatly.

Provided by Senator Fahrenkamp's office 4/22/88

Questions and Answers:

\*Will passage of this bill increase alcohol consumption?

No. The issue is product displacement. Beer consumers will have a choice, and hopefully they will choose to drink an Alaskan made brew instead of one shipped from the lower 48 or elsewhere.

\*Can the holder of a restaurant and eating license obtain a brewpub license under this bill?

No, the ABC does not support such a proposition. The board feels that the restaurant and eating licenses now issued are subject to abuse. The Board intends to examine the problems of this category of licenses, and until then, prefers no new privileges be granted to holders of restaurant and eating place licenses.

\*How often will brewpubs be inspected?

DEC will inspect them once per year, or upon complaint, on a "Best Management Practice", the industry standard they use for all Food Processing and Storage Facilities, and the same standard used by other state when inspecting brewing facilities.

\*Can a holder of a brewing license obtain a beverage dispensary license?

No, current law prohibits such.

\*Can a holder of a brewing license obtain a restaurant and eating place license?

Yes, current law does not prohibit such.

\*Does our one Alaskan brewery support the bill?

Yes. The bill fixes two problems in current brewery statutes. They also feel that if more Alaskan made beer is available, as long as it a quality product, will benefit all brewers, large or small. At least one potential brewpub owner plans to stock Chinook as well as sell his own brew.

\*How can there be a zero fiscal note, when there is a \$250 license fee established in the bill and under existing regs, there is a \$100 application fee?

It's likely that there will be only a handful of brewpub licenses issued in the near future, resulting in revenue barely in the thousands. Revenue derived from the fee, under existing law, will be shared back with 100% municipalities. This is done to pay the costs associated with, for example, local police having to respond to a violation of drinking age requirements. The application fee of \$100 would go towards processing paperwork.

\*What is a wine gallon?

It's an archaic industry term for a standard U.S. gallon. The Revisor of Statutes recommended it be changed to gallon.

Prepared by Senator Fahrenkamp's Office.

FISCAL NOTE

REQUEST:

Revision Date: 2/19/88  
Title: An Act Relating to Issuance of a Brewery License  
Sponsor: Senator Fahrenkamp  
Requestor: Senate Finance

Agency Affected: Revenue  
BRU: Alcoholic Beverage Control Board  
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
<b>OPERATING</b>						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>CAPITAL</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>REVENUE</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<b>TOTAL</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary) Though the bill would establish a license fee of \$250.00 (and require a \$100.00 application fee) it is not possible to estimate its potential revenues. It should be noted that whatever revenues are generated from the new license fee 100% would be shared back to the communities within which the revenues are derived.

Prepared By: Royce Weller Phone: 765-2300  
Division: Commissioner's Office Date: February 19, 1988

Approved by Commissioner: Hugh Malone Date: February 19, 1988  
Agency: Department of Revenue

Distribution (by preparer):

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

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

### ALCOHOLIC BEVERAGE CONTROL BOARD

STEVE COWPER, GOVERNOR

550 W. 7TH AVE  
ANCHORAGE, ALASKA 99501-6698

January 26, 1988

The Honorable Jay Kerttula, Chairman  
Senate Judiciary Committee  
P.O. Box V  
Juneau, Alaska 99811

Dear Senator Kerttula:

At its meeting of January 20, the Alcoholic Beverage Control Board reviewed and discussed SB 276 and proposed changes. The board approves of the legislation.

If I can answer any questions from your committee, please do not hesitate to let me know.

Sincerely,



Patrick L. Sharrock  
Director  
(907) 277-8638

PLS:cr

cc: Senator Bettye M. Fahrenkamp

88-23





STATE OF ALASKA  
OFFICE OF THE GOVERNOR

FEB 26 1988

**BILL ANALYSIS**

DEPARTMENT Environmental Conserv.	DIVISION Environmental Health	BILL NUMBER CS SB 276	SPONSOR Fahrenkamp
SHORT TITLE OF BILL "An Act relating to brewpub, brewery, and beverage dispensary licenses."			
DEPARTMENT POSITION The Department believes this bill may provide opportunities for economic growth and presents no regulatory difficulties.			
PREPARED BY Douglas Donegan	DATE 2/23/88	COMMISSIONER'S SIGNATURE	DATE

**SUMMARY**

OTHER AGENCIES AFFECTED BY BILL Department of Revenue.	CONSTITUENT GROUPS AFFECTED BY BILL Bar and brewery operators, consumers.
ORGANIZATIONAL SUPPORT FOR BILL We assume bar and brewery operators may support this bill.	ORGANIZATIONAL OPPOSITION TO BILL We know of no opposition to this bill.

FISCAL IMPACT:       NONE       FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Bill would allow the licensing of "brewpubs" which are a combination of a bar and a brewery.

ANALYSIS OF BILL/PROGRAM EFFECTS

This bill would have little to no effect on the Department of Environmental Conservation. The department currently inspects bars and breweries. The creation of "brewpubs" would mean that these inspection duties would be combined in some circumstances.

AMENDMENTS PROPOSED

None.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

# Alaska State Legislature

SENATOR BETTYE FAHRENKAMP  
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CHAIRMAN, OIL AND GAS COMMITTEE  
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## Senate

### MEMORANDUM

TO: Senate Judiciary Committee  
FROM: Senator Bettye Fahrenkamp  
DATE: January 29, 1988  
RE: Sanitary Inspections of Breweries and Brewpubs

### CALIFORNIA

In California, brewpubs and breweries are treated the same, receiving sanitary inspections from the Department of Health Services on the same "Good Management Practices" basis as used in Alaska. These "GMP's" were developed by the federal Food and Drug Administration and apply to all food manufacturing operations exclusive of meat, poultry, and dairy.

The frequency of inspection in California is not set in statute or by regulation. By department policy, they inspect breweries of all sizes annually and upon complaint. However, due to budget cuts, some breweries will not be inspected for as long as ten years, as they are considered low priority since they have a low likelihood of causing a public health problem, according to California officials.

### ILLINOIS

In Illinois, breweries receive sanitary inspections, like any other beverage manufacturer, from the Illinois Department of Public Health; Food, Drug, and Dairy Division, on the "Good Management Practices" basis once per year or upon complaint. The frequency is not set by statute or regulation.

The city of Chicago exerts municipal control over health and sanitation in the city. The Chicago Health Department, Food Protection Division inspects all food dispensers twice per year as per municipal ordinances. They treat a brewpub the same as any other food retailer.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

INFORMATION ON "BREW PUBS"

JANUARY, 1988

Bar operations are regulated as food service establishments under 18 AAC 31. Breweries are regulated under 18 AAC 30.220-290, regulations governing Food Processing and Storage Facilities.

Both bars and breweries must be in compliance with water, wastewater and solid waste regulations. A plan review and a pre-opening inspection are required prior to operation. A permit is required for bars.

Breweries are inspected as food processing facilities to ensure that Good Manufacturing Practices are used during the production process.

A brew pub would be inspected as a bar and a brewery. The risks of disease transmission associated with breweries or bars are substantially less than those associated with restaurants or other kinds of food manufacturing plants because potentially hazardous foods are not used in the brewing process. Hazardous foods are those that, if mishandled, can pose a health hazard to the public. The primary concern during an inspection of a brewery is to ensure that the product is not subject to contamination. This requires particular attention to the manufacturing process. General sanitation, chemical and raw product storage, utensil washing and sanitizing, employee hygiene, product labeling, rodent and insect control, facility construction and water supply and plumbing would be items of public health concern in a food processing and bar operation.

Inspections of bars and breweries are conducted annually with followup inspections conducted as necessary. This represents an adequate inspection frequency for bars considering the relatively low public health significance of such facilities. Breweries would likely be inspected twice a year if resources for the public facilities inspection program were adequate.

The proposed "brew pub" legislation will not have a significant impact on the environmental sanitation program in itself because the number of "brew pub" facilities will almost certainly be small compared to the overall number of public facilities. There are more than 6,200 public facilities in Alaska, and the number of brew pubs likely to be built is in the tens. However, the Department has requested an increment in its proposed FY 89 operating budget to bring inspection levels for all public facilities back up to acceptable levels. Due to budget reductions, inspection levels are currently substantially below the frequency necessary to protect public health.

**GOLD DREDGE NUMBER 8  
NATIONAL HISTORIC DISTRICT**

P.O. Box 81941  
Fairbanks, Alaska 99708  
457-6038

1-14-88

Senator Jay Kerttula  
Chairman  
Judiciary Committee  
Alaska State Senate  
Juneau, Alaska

Greetings Senator Kerttula and members of the Judiciary Committee

I have just been informed that you will be accepting testimony on Senate Bill 276 this afternoon.

I would like to speak in favor of passage that bill. I am licensed to buy and dispense alcoholic beverages and I would like to be able to brew some of the beer I sell in the restaurant and bar myself. These are called brewpubs but for a better understanding you should think of them as a micro-micro brewery.

Brewpubs are becoming increasingly popular as are micro breweries in the U.S.. They are an emerging industry that have resulted from the success and failures of microbreweries catering to regional tastes. Brewpubs stem from a high level of technology applied to peoples desire to enjoy locally produced brew. (ie. Chinook Beer is a good example of this)

This bill if passed will also create new jobs and this industry is also a new growth industry in Alaska. I am sure I am not the only entrepreneur around the State that would foster the development of the industry. Please pardon the pun. If I am to sell ten draft beers to my customers for instance or ten beers brewed and bottled in St. Louis I would much rather sell the drafts brewed on premises. I believe my customers would also prefer the locally brewed product as long as it's good. Because of the small scale I can afford to spare no expense on insuring nothing but the highest quality beverage will be served.

I also understand this bill may be amended to allow brewers in this state to act as consultants to people such as myself. I understand it is illegal for them to do so now. I support passage of that amendment. I see no reason why I should have to hire an out of state consultant if the talent is available in State. (ie. Juneau)

Thank you for the opportunity to submit this testimony. Please pass SB 276 so I can get my show on the road.

Sincerely,



John Reeves

club. — Where the business affairs of a club, including the purchase and keeping and sale to members of liquor, are so inextricably intermingled with those of

the manager of the club, the manager has an interest in the business and a license may not be lawfully issued. In re Alaska Labor Trades Ass'n, 10 Alaska 472 (1945).

Collateral references. — 48 C.J.S., Intoxicating Liquors, § 229.

Criminal responsibility of club, authorized generally to sell intoxicating liquors, for particular illegal sale thereof by employee or agent. 139 ALR 306.

Knowledge and intent as elements determining responsibility for illegal sale by employee or agent. 139 ALR 313.

Sale of liquor by club or bar as within statute or ordinance imposing tax on sales at retail. 139 ALR 391.

**Sec. 04.11.120. Bottling works license.** (a) A bottling works license authorizes the holder to operate a bottling works where beer and wine may be bottled and sold.

(b) A sale under a bottling works license may be made only to a person licensed under this title and only in quantities of more than five wine gallons.

(c) The annual bottling works license fee is \$250. (§ 2 ch 131 SLA 1980)

**Sec. 04.11.130. Brewery license.** (a) A brewery license authorizes the holder to operate a brewery where beer is manufactured and bottled or barreled for sale.

(b) A brewery license authorizes the holder to sell beer in quantities of more than five wine gallons to persons licensed to sell beer under this title.

(c) The holder of a brewery license may permit a person to sample small portions of the brewery's product free of charge unless prohibited by AS 04.16.030.

(d) The annual brewery license fee is \$500. (§ 2 ch 131 SLA 1980)

**Sec. 04.11.140. Winery license.** (a) A winery license authorizes the holder to operate a winery where wine is manufactured and bottled or barreled for sale.

(b) A winery license authorizes the holder to sell wine to persons licensed under this title in quantities of more than five wine gallons.

(c) The holder of a winery license may permit a person to sample small portions of the wine on the premises free of charge unless prohibited by AS 04.16.030.

(d) The annual winery license fee is \$250. (§ 2 ch 131 SLA 1980)

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202

# HOUSE COMMITTEE REPORT

(7)

Date referred: 3/2/88

FURTHER REFERRALS:

DATE: April 20, 1988

The Judiciary Committee has considered CSSB 282(C&RA)

"An Act relating to municipal sales and use taxes; and providing for an effective date."

**RECOMMENDS:**

- replace with HCS CS SB 282(Jud)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published 2/10/88
- zero with analysis

**SIGNING TO PASS:**

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**SIGNING OTHER RECOMMENDATIONS:**

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 Chairman's signature

Original sponsor: Community and Regional  
Affairs Committee

IN THE SENATE

BY THE JUDICIARY COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 282 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to municipal sales and use taxes;  
and providing for an effective date."

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

\* Section 1. AS 29.10.200(42) is amended to read:

(42) AS 29.45.650(c), (d), (e), and (f) (sales and use tax)

\* Sec. 2. AS 29.45.650(e) is amended to read:

(e) A borough may provide for the creation, recording, and notice of a lien on real or personal property to secure the payment of a sales and use tax, and the interest, penalties, and administration costs in the event of delinquency. When recorded, the sales tax lien has priority over all other liens except (1) liens for property taxes and special assessments; (2) liens that were perfected before the recording of the sales tax lien for amounts actually advanced before the recording of the sales tax lien; (3) mechanics' and materialmen's liens for which claims of lien under AS 34.35.070 or notices of right to lien under AS 34.35.064 have been recorded before the recording of the sales tax lien. This subsection applies to home rule and general law municipalities [WHEN RECORDED, A LIEN AUTHORIZED UNDER THIS SECTION HAS PRIORITY OVER OTHER LIENS EXCEPT THOSE FOR PROPERTY TAXES AND SPECIAL ASSESSMENTS].

\* Sec. 3. This Act takes effect July 1, 1988.

5-1116N  
Cook  
4/20/88

Original sponsor: Community and Regional  
Affairs Committee

1 IN THE SENATE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 282 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to municipal sales and use taxes;  
7 and providing for an effective date."

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

9 \* Section 1. AS 29.10.200(42) is amended to read:

10 (42) AS 29.45.650(c), (d), (e), and (f) (sales and use tax)

11 \* Sec. 2. AS 29.45.650(e) is amended to read:

12 (e) A borough may provide for the creation, recording, and  
13 notice of a lien on real or personal property to secure the payment of  
14 a sales and use tax, and the interest, penalties, and administration  
15 costs in the event of delinquency. When recorded, the sales tax lien  
16 has priority over all other liens except (1) liens for property taxes  
17 and special assessments; (2) liens that were perfected before the  
18 recording of the sales tax lien for amounts actually advanced before  
19 the recording of the sales tax lien; (3) mechanics' and materialmen's  
20 liens for which claims of lien under AS 34.35.070 or notices of right  
21 to lien under AS 34.35.064 have been recorded before the recording of  
22 the sales tax lien. This subsection applies to home rule and general  
23 law municipalities [WHEN RECORDED, A LIEN AUTHORIZED UNDER THIS  
24 SECTION HAS PRIORITY OVER OTHER LIENS EXCEPT THOSE FOR PROPERTY TAXES  
25 AND SPECIAL ASSESSMENTS].

26 \* Sec. 3. This Act takes effect July 1, 1988.

Original sponsor: Community and Regional  
Affairs Committee

1 IN THE SENATE BY THE COMMUNITY AND  
REGIONAL AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 282 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to municipal sales and use taxes;  
7 and providing for an effective date."

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13 notice of a lien on real or personal property to secure the payment of  
14 a sales and use tax, and the interest, penalties, and administration  
15 costs in the event of delinquency. When recorded, the sales tax lien  
16 has priority over all other liens except (1) liens for property taxes  
17 and special assessments; and (2) liens that were perfected before the  
18 recording of the sales tax lien for amounts actually advanced before  
19 the recording of the sales tax lien. This subsection applies to home  
20 rule and general law municipalities [WHEN RECORDED, A LIEN AUTHORIZED  
21 UNDER THIS SECTION HAS PRIORITY OVER OTHER LIENS EXCEPT THOSE FOR  
22 PROPERTY TAXES AND SPECIAL ASSESSMENTS].

23 \* Sec. 3. This Act takes effect July 1, 1988.

*Andy Dahl - Pres Alaska Bankers*

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 19, 1988

SUBJECT: Municipal sales and use taxes (CSSB 282  
(C&RA))

TO: Representative John Sund, Chair  
House Judiciary Committee

FROM: Tamara Brandt Cook *TBC*  
Director  
Division of Legal Services

You have asked how CSSB 282 (C&RA) treats mechanics' and materialmen's liens. The relevant portion of the bill provides:

When recorded, the sales tax lien has priority over all other liens except (1) liens for property taxes and special assessments; and (2) liens that were perfected before the recording of the sales tax lien for amounts actually advanced before the recording of the sales tax lien.

It is not clear to me from the language whether mechanics' and materialmen's liens would be included within paragraph (2) and granted priority over sales tax liens or not. I recommend that the matter be made more clear. If it is the desire of the legislature that mechanics' and materialmen's liens not have priority over sales tax liens they should be specifically excluded under paragraph (2) so that it would read:

(2) liens, other than mechanics' and materialmen's liens, that were perfected before the recording of the sales tax lien for amounts actually advanced before the recording of the sales tax lien.

If it is the desire of the legislature that recorded mechanics' and materialmen's liens be given priority over sales tax liens a new paragraph (3) should be added to read:

(3) mechanics' and materialmen's liens for which claims of lien under AS 34.35.070 or notices of right to lien under AS 34.35.064 have been recorded before the recording of the sales tax lien.

TBC:gc  
WKG3:014

BILL: SB 282

NAME: CSSB 282(C&RA)

TITLE: "An Act relating to municipal sales and use taxes; and providing for an effective date."

PRIME SPONSOR: COMMUNITY & REGIONAL AFFAIRS COMMITTEE

FUNDING : \$000 GENERAL(FNOTE) \$000 OTHER(FNOTE)

CURRENT STATUS: (H) JUD STATUS DATE: 03/02/88

Selection=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU	TEXT	PRINT	BWD	FWD		FIRST	LAST	QUIT
SB 282				Bill/Resolution Action					Page 2	of 3	

Current Status: (H) JUD

	Jrn-Date	Jrn-Pg	Action
1	04/29/87	1107	(S) READ THE FIRST TIME - REFERRAL(S)
2	04/29/87	1107	(S) C&RA AND JUDICIARY
3	05/05/87	1200	(S) CRA RPT 3DP
4	05/05/87	1200	(S) ZERO FISCAL NOTE PUBLISHED
5	05/13/87	1371	(S) JUD RPT CS 5DP
6	05/15/87	1484	(S) FIN REFERRAL ADDED
7	05/16/87	1521	(S) FIN RPT CS 2DP 5NR
8	05/16/87	1521	(S) CRA REFERRAL ADDED
9	02/10/88	2207	(S) CRA RPT CS 5DP WITH NEW TITLE
10	02/10/88	2207	(S) ZERO FISCAL NOTE PUBLISHED
11	02/18/88	2329	(S) RULES TO CALENDAR
12	02/18/88	2333	(S) READ THE SECOND TIME
13	02/18/88	2333	(S) CRA CS ADOPTED UNAN CONSENT
14	02/18/88	2334	(S) ADVANCED TO THIRD READING UNAN CONSENT
15	02/18/88	2334	(S) READ THE THIRD TIME CSSB 282(CRA)
16	02/18/88	2334	(S) PASSED Y18 N- X1 A1
17	02/18/88	2334	(S) EFFECTIVE DATE SAME AS PASSAGE
18	02/18/88	2342	(S) TRANSMITTED TO (H)

Selection=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU	TEXT	PRINT	BWD	FWD		FIRST	LAST	QUIT
SB 282				Bill/Resolution Action					Page 3	of 3	

Current Status: (H) JUD

	Jrn-Date	Jrn-Pg	Action
1	02/19/88	2285	(H) READ THE FIRST TIME - REFERRAL(S)
2	02/19/88	2285	(H) C&RA THEN JUDICIARY
3	03/02/88	2422	(H) CRA RPT 3DP
4	03/02/88	2423	(H) REFERRED TO JUDICIARY

# Alaska State Legislature

ARLISS STURGULEWSKI, Chairman  
TIM KELLY, Vice Chairman  
RICK HALFORD  
MIKE SZYMANSKI  
FRED ZHAROFF



P. O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-4989

## Senate Community and Regional Affairs Committee

TO: SENATE C&RA MEMBERS

FEB 9, 1988

FROM: SENATE C&RA STAFF

A handwritten signature in dark ink, appearing to be "MEL".

RE: CSSB 282 (C&RA) - "AN ACT RELATING TO MUNICIPAL SALES AND USE TAXES."

UNDER EXISTING LAW (29.45.650(E)) MUNICIPALITIES MAY PLACE LIENS ON REAL OR PERSONAL PROPERTY TO SECURE PAYMENT OF SALES AND USE TAX. THIS ABILITY IS NEW, ADDED UNDER THE TITLE 29 REVISION TWO YEARS AGO.

THE SECTION WAS ADDED TO TITLE 29 IN RESPONSE TO A FAIRBANKS COURT CASE IN WHICH THE JUDGE RULED THAT MUNICIPALITIES DID NOT HAVE THE POWER TO PLACE SUCH LIENS. THE TITLE 29 TECHNICAL COMMITTEE AT THE TIME RECOMMENDED THAT SUCH LIENS HAVE THE FORCE OF JUDGEMENT LIENS, HOWEVER, ALSO ADDED AT THAT TIME WAS A SENTENCE THAT GAVE SUCH LIENS PRIORITY OVER OTHER LIENS, EXCEPT FOR PROPERTY TAXES AND SPECIAL ASSESSMENTS.

THIS PRIORITY CONFLICTS WITH 34.36.060 WHICH GIVES LABOR LIENS FIRST POSITION AND MORTGAGES SECOND POSITION. ACCORDING TO REPRESENTATIVES OF THE HOME MORTGAGE INDUSTRY, INCLUDING AHFC,

THIS PRIORITY FOR SALES TAX LIENS COULD CAUSE MAJOR DISRUPTIONS IN THE HOME MORTGAGE INDUSTRY AND RAISE INTEREST RATES.

SB 282 WOULD ALTER THIS PRIORITY. THE PROPOSED CS GIVES SALES TAX LIENS PRIORITY OVER ALL OTHER LIENS EXCEPT (1) LIENS FOR PROPERTY TAXES AND SPECIAL ASSESSMENTS; AND (2) LIENS THAT WERE PERFECTED BEFORE THE RECORDING OF THE SALES TAX LIEN FOR AMOUNTS ACTUALLY ADVANCED BEFORE THE RECORDING OF THE SALES TAX LIEN.

THIS DRAFT WAS DEVELOPED WITH THE ASSISTANCE OF TOM BOEDEKER, MUNICIPAL ATTORNEY FOR THE KENAI BOROUGH, AND WES COYNER, LOBBYIST FOR THE BANKING INDUSTRY. MR. BOEDEKER, WHO HAS TAKEN THE LEAD FOR THE MUNICIPALITIES ON THIS ISSUE, WOULD PREFER TO LIMIT THE PRIORITY TO PROPERTY TAXES, SPECIAL ASSESSMENTS, AND PRIOR RECORDED MORTGAGES, TRUST DEEDS, AND LAND SALE CONTRACTS; BUT HE BELIEVES THE PROPOSED CS IS REASONABLE AND TECHNICALLY CORRECT.

BOTH GENTLEMEN WILL BE AT THE COMMITTEE TO TESTIFY. THE CS HAS A ZERO FISCAL NOTE FROM THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS.

## ALASKA BANKERS ASSOCIATION

December 15, 1987

### Draft Position Paper For Amending Alaska Law Relating To Liens For Sales, Use And Personal Property Taxes.

#### Brief History of Municipal/Borough Priority Tax Lien Issue

Local government entities have experienced difficulty in collecting unpaid sales, use and personal property taxes for a number of years. During the 1970's various municipalities enacted laws to establish sales tax liens as a means of collecting unpaid taxes; however, in 1980 the Alaska State Supreme Court ruled that municipalities which levied sales and use taxes had no authority to assert a lien for unpaid taxes except through the normal judicial process. The Supreme Court said further that authorization of such liens "should be addressed by specific legislation rather than by municipal, or judicial fiat".

In 1983, legislation was proposed that would have given boroughs and municipalities a sales tax lien with the full force, priority and duration of a judgement lien; however, this legislation did not become law. When this legislation became law in 1985, the provision that the sales tax obtain an attachment lien was changed in the final draft to give the lien a priority; a priority over all other liens including mortgages, security interests, judgement liens, and the claims of anyone who claims an interest in either real or personal property. This change from the initial version of the 232 page Municipal Code Revision, and the full impact this change was not observed by the banks, the title companies, nor other affected parties. Only when some of the boroughs and municipalities began enforcing their new priority lien, was its significant impact realized.

#### No Other Tax Lien Has Such A Priority

Not even the State of Alaska, nor the Internal Revenue Service, have such a priority lien. Real property taxes have a clear priority over all other interests. But the real property tax is a charge against the property itself and real estate is immobile. All who deal with real estate know it is subject to annual taxation by a single authority. The lien amount can be readily determined and a reserve fund established to ensure its payment. This is not possible with a sales tax or a tax on personal property. It is patently unfair that, under present law, a lender can make a loan secured by real or personal property with all taxes or liens current and have a subsequent lien due to unpaid taxes at some future date preempt the position. There is no way for a lender to protect itself from this kind of action.

Existing Law Is Not Specific Who Must Pay - It Is Aimed At Everybody

The priority lien provision A.S. 29.45.650(e) gives broad authority to municipalities/boroughs to exact payment from prior lienholders who had nothing to do with the transaction that gave rise to the tax and also to innocent buyers who pay the tax to a seller and then the seller fails to remit the proceeds to the municipality. The priority lien law goes further; it authorizes a municipality to assert a lien on any property of the buyer and it accords that lien a priority over any other lien.

Personal property is highly mobile and can be readily moved from district to district. There is no means of knowing that it is subject to a sales or use tax lien nor any way to determine the amount.

Does an individual now have to call local government to find out if a local auto dealer has remitted all sales tax collected and paid his personal property taxes? Under this law he does or he can lose the automobile, and the lienholder will also lose its lien. In effect, the priority tax lien requires an innocent third party to guaranty tax payments to a municipality or a borough.

A lender relies on the information available at the time a loan is made and then relies on its priority lien to protect it over the term of its loan. Permitting a higher priority lien long after a loan is made and over which a lender has no knowledge or control to erode its safety margin is unfair. It will also have an effect on secondary financing by outside investors and could eventually impact AHFC and AIDA programs as existence of the priority lien becomes known.

Existing Law Is Unclear

It appears that this outcome is not what the drafters of the priority lien provision wanted. What is wanted is authority for a lien on the seller's property to secure the seller's obligation to remit the taxes collected, yet the only authority the present statute grants is for a lien to secure payment of the tax, a liability of the buyer. It is now clear that a revision is needed in this new law to better describe who has the tax obligation and what is a fair priority for a lien on a violator's property.

It is not contended that municipalities and boroughs with sales and use taxes should not have the authority to assert liens; however, that authority should be confined to asserting the lien against property of the violator and the lien's relative priority over other innocent claimants should be determined by the date notice of the lien is filed.

Proposed Compromise Amendment

At a November 13, 1987 meeting between the Alaska Bankers Association and attorneys for the Alaska Municipal League, a compromise solution was recommended. The municipalities and boroughs would give up the 1985 priority lien position in exchange for a sales and use tax lien which is the equivalent of an attachment lien but without the need of first bringing suit. The municipalities and boroughs could also obtain a priority lien on the seller's business assets to secure the seller's obligation to collect and remit sales tax. A priority lien could be achieved on all additional or future advances but only after giving legal notice to senior lienholder(s) that sales and/or use taxes are due and unpaid. A simple lien search will reveal if a senior lienholder exists and its address. This priority lien on commercial financing of business assets (i.e. accounts receivable and inventory) is similar to the lien priority that can be obtained by the Internal Revenue Service and offers the senior lienholder(s) the option of either declining further advance requests or insuring that sales or use taxes are paid. It also elevates concern for remitting local tax payments to a much higher level for local businessmen. The Alaska Bankers Association finds this type of compromise acceptable.

Summary

The 1985 statute authorizing a priority lien for municipal sales and use taxes, as it now exists, is an onerous law and goes beyond what is reasonable and fair. With a single last minute word change, local government gained the power to assert its lien on any property of any innocent buyer (a consumer who purchased in good faith and paid his tax) and it can place a secured creditor in a subordinated position without notice, without knowledge, and even though he had no part in the taxable transaction. Further, the municipalities and borough governments did not achieve a very good vehicle to collect from the real potential violator, the seller who fails to remit taxes collected.

The Alaska Bankers Association does not believe there should be no authority for sales and use tax liens. However, such a law should be worded carefully to restrict the lien to only property of the violator and lien priority to other innocent lienholders should be based on date notice is filed. This law should treat all parties in commerce equally and offer an opportunity to do business without a surprise. A provision that permits a priority lien against subsequent advances after direct notice to a secured party seems fair and should go far in solving the delinquent sales and use tax problems the boroughs and municipalities have experienced.



# Alaska State Legislature

## House of Representatives

### Committee on Community & Regional Affairs

Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-4833

2/29/'88

TO: Rep. Henry Springer, Chairman HCRA

FROM: David C. Harrison, P.A. HCRA

Subject: BILL REVIEW:  
CS SB 282 (CRA) "An Act relating to municipal sales and use taxes: and providing for an effective date." [Sponsor: SCRA]

\*\*\*\*\*

\*Section 1. AS 29.10..200(42) is amended to read:

(42) AS 29.45.650.(c), (d), (e), and (f) (sales and use tax)

Sec. 2. AS 29.45.650.(e) is amended to read:

(e) A borough may provide for the creation, recording, and notice of a lien on real and personal property to secure the payment of a sales and use tax, and the interest, penalties, and administration costs in the event of delinquency. When recorded, the sales tax lien has priority over all other liens except (1) liens for property taxes and special assessment; and (2) liens that were perfected before the recording of the sales tax lien. This subsection applies to home rule and general law municipalities.

COMMENTS: The underlined section provides for certain conditions in which banks, institutions and or individuals must record and perfect liens before the recording of the sales or use tax liens in order to establish priority lien on real or personal property.

Home rule and general municipalities sales tax liens and special property assessments have priority lien when recorded prior to liens record by banks, institutions and or individuals.

Deleted part: [When recorded, a lien authorized under this section has priority over other liens except those for property taxes and special assessments.]

Sec. 29.45.570. SALES AND USE TAX. (a) A borough may levy and collect a sales tax not exceeding six percent on sales, rents, and on services made within the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) No change.

(c) No change.

(d) If the assembly of a home rule or general-law borough charges interest on sales taxes not paid when due, the rate of interest may not exceed 15 percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

*new* (e) A borough may provide for the creation, recording, and notice of a lien on real or personal property to secure the payment of a sales or use tax, and for interest, penalties and administration costs in the event of delinquencies. A lien established under this section has the force, priority and duration of a judgment lien.

EXPLANATION: (a) changed to make it clear that tax can be levied on sales and rents, not just one or the other. (d) interest rate raised from eight to 15 percent. (e) added to allow liens for the collection of sales and use taxes.

TITLE 29 TECHNICAL COMM.

furnished and labor was done "in connection with the work done upon the claim" does not comply with the statute (Goldstein v. Noble, 3 Alaska 283 (1920)).

A lien on a building for materials furnished cannot include another structure against which a lien is not filed, and into the construction, alteration and repairs of which some or all of the materials were employed or used. Burr v. House, 3 Alaska 611 (1909).

The general rule is that a lessee cannot impose any charge upon the reversion or estate of the lessor thereof. Morris v. Marsh, 3 Alaska 140 (1906).

Nor does the fact that the lessor acquiesces in the improvement by the lessee subject his reversion to the mechanics' liens therefor. Morris v. Marsh, 3 Alaska 140 (1906).

Unless lessor fails to give notice of nonresponsibility or his agent causes improvement — This section, AS 34.35.050 and AS 34.35.065, construed together, mean that the person in charge of the work shall prima facie be deemed to be the agent of the owner, and the property of the latter shall be charged with the lien under the express provisions of AS 34.35.050; that, if the person in charge is not in fact such agent, the interest of the owner shall, nevertheless, be liable for the improvement if it is constructed with his knowledge, and he fails to post the required notice disclaiming responsibility; and that, if the work is done for a lessee of the property, liability is confined to the

lessor's estate, if the owner had no knowledge of the construction of the improvement, or if, having such knowledge, he gave notice that he would not be responsible. Cascard v. Winchell, 101 F. 241 (9th Cir. 1908). See AS 34.35.115.

To determine whether or not modular units are sufficiently attached to the land on which they are situated, the supreme court will look to the following elements: (1) physical annexation, (2) adaption to use with real property, (3) intention to annex to realty, (4) relationship of the claiming parties, (5) the relative difficulty of removal, (6) the nature of the article annexed, and (7) whether the fact of the annexation is open and apparent. Dannemiller v. AMFAC Distribution Corp., Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 645 (1977).

Applied in Torkko/Korman/Engineers v. Penland Ventures, Sup. Ct. Op. No. 2757 (File No. 6489), 673 P.2d 769 (1983).

Quoted in Jorgensen Co. v. Sheldon, 2 Alaska 507 (1905).

Stated in Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Collateral reference. — 53 Am. Jur. 2d, Mechanics' Liens, § 28-48.

Public property as subject to lien. 28 ALR 326.

Vendor's interest as subject to mechanic's lien. 58 ALR 911; 102 ALR 233.

Quantity or area of land around improvement which may be subject to lien. 84 ALR 123.

**Sec. 34.35.060. Priorities.** (a) Except as provided in (c) of this section, an encumbrance which is properly recorded shall be preferred to a lien created under AS 34.35.050 — 34.35.120 unless the claim of lien under AS 34.35.070 or notice of right to lien under AS 34.35.064 has been recorded before the encumbrance. The preference granted for a prior mortgage or deed of trust under this section applies without regard to when the sums are disbursed or whether the disbursements are required under the terms of a loan agreement.

(b) [Repealed, § 19 ch 175 SLA 1978.]

(c) A lien created by AS 34.35.050 — 34.35.120 in favor of an individual actually performing labor upon a building or other improvement in its original construction or of a trustee of an employee benefit trust for those individuals is preferred to a prior encumbrance upon the land on which the building or other improvement is constructed.

(d) In enforcing the lien, the building or other improvement may be sold separately from the land. When sold separately, the purchaser may remove the building or other improvement within a reasonable time after the sale, not to exceed 30 days, upon the payment to the owner of the land of a reasonable rent for its use from the date of its purchase to the time of removal. If removal is prevented by legal proceedings, the 30 days does not begin to run until the final determination of the proceedings in the court of first resort, or in the appellate court if appeal is taken. (§ 26-1-3 ACLA 1919; am § 1 ch 111 SLA 1953; am § 1 ch 7 SLA 1955; am §§ 2, 3, 19 ch 175 SLA 1978)

#### NOTES TO DECISIONS

**Editor's notes.** — The cases annotated below were decided under this section as it existed prior to the 1978 amendment, which, among other things, rewrote subsection (a) and repealed subsection (b), which provided when a lien created by AS 34.35.050 — 34.35.120 was preferred to a lien, mortgage, or other encumbrance which is unrecorded.

**Legislative Intent.** — The legislative intent is to limit the priority granted generally to situations where the construction preceded all other construction in and upon a given area of vacant or cleared land. Lynch v. McCann, Sup. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970).

In the case of "original construction," the legislature intended to subordinate to some extent the principle of first in time, first in right, to a social interest in securing mechanics' liens. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

For purposes of this section, a deed of trust and a mortgage are not differentiated. Thorpe Constr. Co. v. Irvin & Co., 367 F. Supp. 87 (D. Alaska 1973).

This section protects the security of a mortgagee or beneficiary of a deed of trust against mechanics' liens so long as his encumbrance attaches and is recorded before the mechanics' lienor commences his labor or furnishes materials, except where "original construction" is performed. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

A beneficiary of a deed of trust whose interest attaches and who records before

any alteration or repair begins or materials are furnished has priority over a mechanics' lienor, except in the case of original construction under this section. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

**Scheme of priorities not overcome by posting notices of nonresponsibility.** — Mortgagees and beneficiaries of deeds of trust need not post notice of nonresponsibility, and if they do, the notices do not overcome the scheme of priorities established in this section. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

A mechanics' lienor has priority over the beneficiary of a deed of trust in the case of original construction under subsection (c), regardless of whether the beneficiary of the deed of trust posts a notice of nonresponsibility. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

The legislature, in subsection (c), provided that mechanics' lienors performing original construction should have priority over earlier security interests. The scheme of priorities ordered by the legislature in the circumstances of original construction would be defeated if beneficiaries of deeds of trust could attain priority over mechanics' lienors by posting notices of nonresponsibility. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Construction lenders can protect themselves from mechanics' liens in

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to municipal sales and use taxes."  
Sponsor: Senate C&RA Committee  
Requestor: \_\_\_\_\_

Agency Affected: Community & Regional Affairs  
BRU: Municipal & Regional Assistance

Components: State Assessor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jim Plasman, Deputy Director  
Division: Municipal & Regional Assistance

Phone: 465-4750

Date: 1-19-88

Approved by Commissioner: [Signature]  
Agency: Community & Regional Affairs

Date: 1-19-88

Distribution (by preparer):

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

HOUSE COMMITTEE REPORT (6) (CRA)

(5)

Date referred: 2/19/88

FURTHER REFERRALS: Judiciary

FEB 29 1988

DATE: \_\_\_\_\_

The Community and Regional Affairs Committee has considered CSSB 282 (C&RA)

"An Act relating to municipal sales and use taxes; and providing for an effective date."

RECOMMENDS:

- replace with \_\_\_\_\_  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS:  \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published 2/10/88
- zero with analysis

SIGNING DO PASS:

Bette Otto Otto  
Jim Zawacki Zawacki  
Heinrich Springer Springer

SIGNING OTHER RECOMMENDATIONS:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Heinrich Springer  
 Chairman's signature

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 19, 1988

SUBJECT: Municipal sales and use taxes (CSSB 282  
(C&RA))

TO: Representative John Sund, Chair  
House Judiciary Committee

FROM: Tamara Brandt Cook *TBC*  
Director  
Division of Legal Services

You have asked how CSSB 282 (C&RA) treats mechanics' and materialmen's liens. The relevant portion of the bill provides:

When recorded, the sales tax lien has priority over all other liens except (1) liens for property taxes and special assessments; and (2) liens that were perfected before the recording of the sales tax lien for amounts actually advanced before the recording of the sales tax lien.

It is not clear to me from the language whether mechanics' and materialmen's liens would be included within paragraph (2) and granted priority over sales tax liens or not. I recommend that the matter be made more clear. If it is the desire of the legislature that mechanics' and materialmen's liens not have priority over sales tax liens they should be specifically excluded under paragraph (2) so that it would read:

(2) liens, other than mechanics' and materialmen's liens, that were perfected before the recording of the sales tax lien for amounts actually advanced before the recording of the sales tax lien.

If it is the desire of the legislature that recorded mechanics' and materialmen's liens be given priority over sales tax liens a new paragraph (3) should be added to read:

(3) mechanics' and materialmen's liens for which claims of lien under AS 34.35.070 or notices of right to lien under AS 34.35.064 have been recorded before the recording of the sales tax lien.

TBC:gc  
WKG3:014

S B

290

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

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

May, 1988

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

Mary Van Nimwegen

*House Judiciary:*

*1988 - April 19  
April 20*

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

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

Mary Van Nimwegen

*House Judiciary*

*5-16-87*

# HOUSE COMMITTEE REPORT

Date referred: 5/15/87

FURTHER REFERRALS:

DATE: 5-16-87

The Judiciary Committee has considered SB 290

an Act relating to supplying false information on fish tickets."

### RECOMMENDS:

- replace with \_\_\_\_\_  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

EXEMPTS:  \_\_\_\_\_ letter of intent

### ATTACHES NEW FISCAL NOTE(S):

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

### SIGNING DO PASS:

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### SIGNING OTHER RECOMMENDATIONS:

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

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\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Chairman's signature

# HOUSE COMMITTEE REPORT

(9)

Date referred: 5/14/87

FURTHER REFERRALS:

3/15  
Judiciary

DATE: \_\_\_\_\_

The Resources Committee has considered SB 290

"An Act relating to supplying false information on fish tickets."

**RECOMMENDS:**

- replace with \_\_\_\_\_  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING TO PASS:**

**SIGNING OTHER RECOMMENDATIONS:**

\_\_\_\_\_  
*Adelheid Herrmann*  
 \_\_\_\_\_  
*Heinrich Spriggs*  
 \_\_\_\_\_  
*Tom Hill*  
 \_\_\_\_\_  
*Cliff Davidson*  
 \_\_\_\_\_  
*Dick Smith*  
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\_\_\_\_\_  
*Adelheid Herrmann*  
 \_\_\_\_\_  
 Chairman's signature

# STATE OF ALASKA THE LEGISLATURE

PROPERTY STATE LAMPER  
JUNEAU ALASKA 99801  
707 365 1800

## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 11, 1987

SUBJECT: Sectional analysis of SB 290, false  
information on fish tickets

TO: Senator Dick Eliason

FROM: Edward H. Hein *EHS*  
Legislative Counsel

Section 1 makes it a class A misdemeanor to knowingly enter false information on a fish ticket or to knowingly supply false information to another person who is filling out a fish ticket. The penalty is provided under AS 16.05.720. Maximum penalty is \$5,000 fine and one year in jail. This is the same penalty imposed for failure to keep fish tickets or for failure to report them to the Department of Fish and Game.

Incidentally, class A misdemeanor is also the penalty prescribed for an unsworn falsification under AS 11.56.210. An unsworn falsification consists of submitting a false written or recorded statement that the person does not believe to be true, with the intent to mislead a public servant. Unsworn falsification applies only to applications for benefits and to forms that have printed on them a notice that false statements made on the form are punishable. A fish ticket fits neither of these last two requirements, so falsifying a fish ticket does not constitute an unsworn falsification. There is no penalty provided in law or regulation for knowingly falsifying a fish ticket.

EHH:mkr  
m11/139

BILL NO: SB 290

DATE: 5/8/87

TITLE: "An Act relating to  
supplying false information  
on fish tickets."

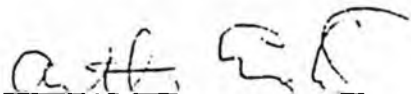
CONTACT: Capt. James Nutgrass  
Director  
Fish & Wildlife Protection

DEPARTMENT OF  
PUBLIC SAFETY

The Department of Public Safety supports SB 290, "An Act relating to supplying false information on fish tickets."

The passage of this amendment to AS 16.05.690 will give the Department of Public Safety the ability to charge a person who falsifies information on fish tickets with a clear, enforceable statute. This amendment will place the commercial fishermen who harvest Alaska's resources on notice that accurate information is required to be supplied by them on fish tickets.

In sum, the passage of this amendment will aid our department in carrying out its enforcement responsibilities and protection of the Fish & Wildlife Resources of the State of Alaska.



ARTHUR ENGLISH  
Commissioner

POSTAL PERMIT

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: SB 290

Publish Date: \_\_\_\_\_

REQUEST

Revision Date: \_\_\_\_\_

Title: "An Act relating to supplying false information on fish tickets."

Sponsor: Sen. Eliason

Requestor: Senate Resources

Agency Affected: Public Safety

BRU: Fish & Wildlife Protection

Components: Enforcement

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING:: (Thousands of Dollars)

GENERAL FUNDS		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

*JWR*  
*5/11/87* Prepared by: Kyle Weaver  
Division: Fish & Wildlife Protection

Phone: 269-5539

Date: 5/11/87

Approved by Commissioner: Arthur English  
Agency: Public Safety

Date: 5/11/87

Distribution (by preparer):

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

# ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON

RULES COMMITTEE CHAIRMAN  
LABOR & COMMERCE COMMITTEE VICE-CHAIRMAN  
LEGISLATIVE COUNCIL  
RESOURCES COMMITTEE  
FISHERIES SUBCOMMITTEE CHAIRMAN

P O BOX 143  
SITKA ALASKA 99735  
P O BOX V  
JUNEAU ALASKA 99811  
9071 465 4916

## EXPLANATION OF PURPOSE OF SB 290 BY Senator Eliason

### SB 290 "An Act relating to supplying false information on fish tickets"

By law, every time a fisherman sells fish to a commercial fish buyer, the transaction must be documented by a fish ticket which is filled out by the fish buyer and signed by the buyer and the fisherman. This ticket describes what species of fish are sold, the poundage, the price paid, an imprint of the fisherman's fishing permit, and a description of the area where the fish were caught. Copies of each fish ticket are provided to the fisherman, the Dept. of Fish and Game (or National Marine Fisheries Service for those fisheries under federal jurisdiction), the Dept. of Revenue, Commercial Fisheries Entry Commission, and Dept. of Public Safety.

It is vitally important for fisheries management, taxation, and so on that all of this information be accurate. But currently there is no specific prohibition in law against providing false information when fish is sold to the fish buyer.

One prime example of how incorrect information on fish tickets can affect a fishery is in the halibut fishery. The fishery is managed jointly between the U.S. and Canada by the International Pacific Halibut Commission. It is managed on a strict quota-by-area system whereby the Alaskan and Canadian coastline is divided into areas (labeled 1A, 2A, 3A, 1B, 2B, etc.). Each area has an allotted number of pounds it can catch. There have long been suspicions, and lately some substantiation, that some of the large vessels which fish in one area will report to their buyers that they caught the fish in another area. They do this in hopes of filling the quota in an area where they do not fish so that the quota in their own area will not be filled as soon and they will be allowed more days of fishing. Without disincentives for this practice it is likely to continue or get worse as halibut seasons get shorter and shorter each year.

While creating penalties for providing false information on fish tickets may not be highly enforceable or totally effective in stopping the practice, it is likely to curb it dramatically since fishermen have no guarantee that falsely reporting the area fished will extend their season and so will see it as not worth the risk. Management of the fishery will become more fair and will be based on more dependable catch data.

SB

294

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

*House Judiciary:*

*1987 - May 16*

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST: \_\_\_\_\_

Bill Version : SB 294  
Publish Date : \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: "An Act removing...loperamide from  
the schedules of controlled substances..."  
Sponsor: Senator Josephson  
Requestor: Senate Judiciary

Agency Affected: Department of Law  
BRU: Prosecution  
Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

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

REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672  
Division: Administrative Services Date: May 11, 1987  
*Richard I. Pegues / RGR*  
Approved by Commissioner: Grace Berg Schaible, Atty. Gen. Date: May 11, 1987  
Agency: Department of Law

Distribution (by preparer):

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

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 294

This bill repeals AS 11.71.180(c), thereby removing the anti-diarrheal drug loperamide from the schedule of controlled substances under the Criminal Code. This drug has already been removed from the federal controlled substances schedules, after the DEA concluded that loperamide has a currently accepted use in medical treatment in the United States and does not have sufficient potential for abuse to justify its continued control in any schedule of the federal Controlled Substances Act. Therefore, the bill will not have a fiscal impact on the Department of Law.

BILL #

An Act repealing AS 11.71.180(c)

AS 11.71.180(c) is repealed.

AS 11.71.180(c) reads:

"Schedule VA includes Loperamide."

The Federal Government and all other states have descheduled Loperamide. The State of Alaska has not descheduled Loperamide simply because this amendment usually ends up in a lengthy controlled substance bill that either doesn't get introduced or is not passed.

This year the Administration has just not introduced a bill . . . yet. Loperamide is an anti diarrheal drug that would remain a prescription drug under this amendment. There would be no change for pharmacists.

This amendment simply takes Loperamide, an anti-diarrheal, off our lowest schedule, schedule V; making us consistent with Federal Law and the other States.

(3) pemoline, including organometallic complexes and chelates of this substance.

(e) Schedule IVA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit, or their salts calculated as the free anhydrous base or alkaloid.

(f) Schedule IVA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including their salts:

- (1) dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-dephenyl-3-methyl-2-propionoxybutane);
- (2) pentazocine;
- (3) propoxphene. (§ 2 ch 45 SLA 1982)

**Sec. 11.71.180. Schedule VA.** (a) A substance shall be placed in schedule VA if it is found under AS 11.71.120(c) to have a degree of danger or probable danger to a person or the public which is less than substances listed in schedule IVA, but higher than substances listed in schedule VIA.

(b) Schedule VA includes any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or their salts, calculated as the free anhydrous base or alkaloid, in limited quantities as specified in (1) — (6) of this subsection, which includes one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by schedule IA substances alone:

- (1) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;
  - (2) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;
  - (3) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;
  - (4) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
  - (5) not more than 100 milligrams of opium per 100 milliliters or per 100 grams;
  - (6) not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
- (c) Schedule VA includes loperamide. (§ 2 ch 45 SLA 1982)

**Sec. 11.71.190. Schedule VIA.** (a) A substance shall be placed in schedule VIA if it is found under AS 11.71.120(c) to have the lowest degree of danger or probable danger to a person or the public.

SB

304

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY  
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POUCH Y. - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

May, 1988

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

Mary Van Nimwegen

*House Judiciary:*

*1988 - April 29*

*May 4*



5-1077N✓  
Bannister  
4/30/88

Adopted

Original sponsor: Rules/Legislative Council

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 304 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to filing and recording, recordable  
7 documents, conveyances, plats, and platting author-  
8 ities; and providing for an effective date."

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

10 \* Section 1. AS 40 is amended by adding a new chapter to read:

11 CHAPTER 17. RECORDING IN PUBLIC RECORDS.

12 Sec. 40.17.010. PLACE OF RECORDING AND ACCESS TO RECORDS. (a)

13 The Department of Natural Resources shall provide at each public  
14 office designated by the department

15 (1) the documents and indices or alternative document re-  
16 trieval system of the recording district or districts served by that  
17 public office;

18 (2) a machine, device or system with which to retrieve  
19 stored documents;

20 (3) a means for making copies of recorded documents and a  
21 person authorized by the recorder to certify the copies;

22 (4) to the extent money is appropriated for the purpose, a  
23 machine, device, or system capable of rapidly transmitting a document  
24 eligible for recording to a recorder at one place of recording in the  
25 state, and a person to operate the machine, device, or system; if the  
26 department determines that it is not feasible to provide a machine,  
27 device, or system in an office serving a recording district, it shall  
28 provide for transmitting documents from the office by other expedi-  
29 tious means;

1 (5) instructions that explain to the public the formal  
2 requirements that a document must satisfy to be recorded.

3 (b) The department shall provide the staff and equipment to re-  
4 ceive and record documents and to store them permanently.

5 (c) When rapid recording and retrieval and secure storage of  
6 documents can be provided for all recording districts with a single  
7 place of recording in the state, the recorder shall record the docu-  
8 ments at a single place in the state designated by the department.

9 (d) The recorder shall provide reasonable public access during  
10 business hours to recorded documents, indices, and facilities provided  
11 for in this section.

12 Sec. 40.17.020. RECORDING CONVEYANCES. (a) A conveyance that  
13 is eligible for recording under AS 40.17.030 and 40.17.110 may be  
14 recorded only in the records of the recording district in which land  
15 affected by the conveyance is located. If land affected by the con-  
16 veyance is located in more than one recording district, an original  
17 conveyance may be recorded in the records of any district in which  
18 part of the land is located and an original or a certified copy may be  
19 recorded in the records of each other district in which part of the  
20 land is located. A certified copy so recorded has the same effect  
21 from the time it is recorded as though it were the original convey-  
22 ance.

23 (b) A certified copy of a conveyance that is eligible for re-  
24 cording under AS 40.17.030 and 40.17.110 and that has been recorded or  
25 filed in a public recorder's office in another state or in the United  
26 States Bureau of Land Management may be recorded only in the records  
27 of a recording district where land affected by the conveyance is  
28 located. When so recorded, it has the same effect from the time it is  
29 recorded as though it were the original conveyance.

1           Sec. 40.17.030. FORMAL REQUISITES FOR RECORDING. (a) To be  
2 eligible for recording, a document must be

3           (1) legible or capable of being converted into legible form  
4 by a machine or device used in the recording office;

5           (2) capable of being copied by the method used in the  
6 recording office;

7           (3) accompanied by the proper fee for recording and include  
8 or be accompanied by information, stamps, certificates, taxes, or fees  
9 that under other laws are necessary to qualify the document for re-  
10 cording;

11           (4) accompanied by or include the information needed to  
12 index the document under regulations of the department;

13           (5) accompanied by or include the name and address of the  
14 person to whom the document is to be returned after recording; and

15           (6) accompanied by or include the mailing addresses of all  
16 persons named in the document who grant or acquire an interest under  
17 the document if it is a conveyance; this paragraph does not apply to a  
18 release of a security interest.

19           (b) A signature, acknowledgment, seal, or witness is required  
20 for a document to be eligible for recording only when required for the  
21 specific document by this chapter or by other law.

22           (c) A name, address, or other information required by this  
23 section shall be contained in the document that is to be recorded, or  
24 shall be recorded with the document.

25           (d) The recorder shall prescribe the style, size, form, and  
26 quality that a plat, plan, or survey map must satisfy for filing and  
27 recording under this chapter.

28           Sec. 40.17.040. INDEXING. (a) The recorder shall maintain an  
29 index system for recorded documents in the manner prescribed by

1 regulations adopted by the department. The system shall be designed  
2 so the public may find documents by names of grantors and grantees,  
3 and the system may include other means for locating the documents.

4 (b) The declaration for a common interest community under  
5 AS 34.08 shall be indexed in the grantee's index in the name of the  
6 common interest community and the association and in the grantor's  
7 index in the name of each person executing the declaration.

8 Sec. 40.17.050. INCORPORATION OF MASTER FORM. A recorded master  
9 form, or a numbered paragraph of it, may be incorporated by reference  
10 in a recorded document by referring to the form by its recording  
11 information and the number of the paragraph to be incorporated. The  
12 reference has the same effect as if the master form or the numbered  
13 paragraph were reproduced in full in the record at the place where the  
14 reference to the form or paragraph is made.

15 Sec. 40.17.060. DOCUMENTS EXECUTED UNDER FORMER LAW. If a docu-  
16 ment included under AS 40.17.110(b) or (c) was executed in accordance  
17 with the law in effect at the time the document was executed, the  
18 document remains recordable regardless of later amendments to the law  
19 changing the manner in which that document is to be executed.

20 Sec. 40.17.070. DUTIES OF RECORDER. (a) The recorder shall  
21 promptly record all documents presented that are recordable under  
22 AS 40.17.020, 40.17.030, and 40.17.110.

23 (b) The recorder shall maintain in the central recording office  
24 a daily log and index for recorded documents.

25 (c) As a document is recorded, the recorder shall indicate on or  
26 attach to each document the date, hour, and minute of recording, enter  
27 that information and a consecutive serial number in a daily log of  
28 documents without delay in the order in which the documents are re-  
29 ceived, and note the serial number on the document.

1 (d) If a document presented for recording is reviewed and re-  
2 jected for recording, the recorder shall indicate on or attach to the  
3 document the date, hour, and minute of rejection and a citation of the  
4 statute requiring rejection. If the document is later determined to  
5 be recordable in the form in which it was earlier presented to the  
6 recorder, later recording does not relate back to the time and date of  
7 rejection. Recording is effective when the document is accepted for  
8 recording, regardless of the cause of the rejection.

9 (e) The recorder shall promptly copy recorded documents and  
10 place them in permanent records and shall note the recording informa-  
11 tion at the entry of each document in the daily log.

12 (f) Promptly after recording a document, the recorder shall make  
13 the index entries required in this chapter and in the regulations of  
14 the department.

15 (g) After recording, the recorder shall return the document to  
16 the person who presented it or a person designated by the person who  
17 presented it.

18 (h) The recorder shall certify copies and provide a certified  
19 copy of a recorded document to a person who tenders the proper fee.

20 (i) The recorder is not required to record part of a document if  
21 the part is identified and preceded by the words "From Previously  
22 Recorded Master Form--Do Not Record" and the recorded part contains a  
23 reference to the master form's recording information.

24 Sec. 40.17.080. EFFECT OF RECORDING ON TITLE AND RIGHTS; CON-  
25 STRUCTIVE NOTICE. (a) Subject to (c) and (d) of this section, from  
26 the time a document is recorded in the records of the recording dis-  
27 trict in which land affected by it is located, the recorded document  
28 is constructive notice of the contents of the document to subsequent  
29 purchasers and holders of a security interest in the same property or

1 a part of the property.

2 (b) A conveyance of real property in the state, other than a  
3 lease for a term of less than one year, is void as against a subse-  
4 quent innocent purchaser in good faith for valuable consideration of  
5 the property or a part of the property whose conveyance is first  
6 recorded. An unrecorded conveyance is valid as between the parties to  
7 it and as against one who has actual notice of it. In this subsec-  
8 tion, "purchaser" includes a holder of a consensual interest in real  
9 property that secures payment or performance of an obligation.

10 (c) The recording of an assignment of a security interest is not  
11 in itself notice to the debtor. The debtor may pay the assignor  
12 unless the debtor has actual notice of the assignment.

13 (d) A recorded option or agreement to enter into a contract in  
14 the future ceases to be constructive notice for any purpose

15 (1) when six months have elapsed after the date of record-  
16 ing of the option or agreement, if the recorded option or agreement  
17 contains no expiration date;

18 (2) when 30 days have elapsed after the expiration date of  
19 the option or agreement, if the recorded option or agreement contains  
20 an expiration date.

21 Sec. 40.17.090. CONVEYANCES AND RECORDED DOCUMENTS AS EVIDENCE.

22 (a) A conveyance that is acknowledged, proven, or certified under  
23 AS 34.15.150 - 34.15.250 is admissible as evidence of the conveyance  
24 without further proof.

25 (b) An acknowledged and recorded signed document relating to  
26 title to real property creates presumptions with respect to title that

27 (1) the document is genuine and was executed as the volun-  
28 tary act of the person purporting to execute it;

29 (2) the person executing the document and the person on

1 whose behalf it is executed are the persons they are purported to be  
2 and the person executing it was neither incompetent nor a minor at any  
3 relevant time;

4 (3) delivery of the document occurred notwithstanding a  
5 lapse of time between dates on the document and the date of recording;

6 (4) any necessary consideration was given;

7 (5) the grantee, transferee, or beneficiary of an interest  
8 created or claimed by the document acted in good faith at all relevant  
9 times up to and including the time of the recording;

10 (6) a person purporting to act as an agent, attorney in  
11 fact under a recorded power of attorney or authority, officer of an  
12 organization, or in a fiduciary or official capacity, held the posi-  
13 tion the person purported to hold, acted within the scope of the  
14 person's authority, and in the case of an organization, the authoriza-  
15 tion satisfied all requirements of law; and in the case of an agent,  
16 acted for a principal who was neither incompetent nor a minor at any  
17 relevant time and who had not revoked the agency;

18 (7) if the document purports to be executed in accordance  
19 with or to be a final determination in a judicial or administrative  
20 proceeding, or to be executed under a power of eminent domain, the  
21 court, official body, or condemnor acted within its jurisdiction and  
22 all steps required for the execution of the title document were taken;

23 (8) the recitals and other statements of fact in a convey-  
24 ance are true if the matter stated is relevant to the purpose of the  
25 document,

26 (9) the persons named in, signing, or acknowledging the  
27 document and persons named in, signing, or acknowledging another  
28 related document in a chain of title are identical, if the persons  
29 appear in those documents under identical names, or under variants of

1 the names, including inclusion, exclusion, or use of

2 (A) commonly recognized abbreviations, contractions,  
3 initials, or colloquial or other equivalents;

4 (B) first or middle names or initials;

5 (C) simple transpositions that produce substantially  
6 similar pronunciations;

7 (D) articles or prepositions in names or titles;

8 (E) descriptions of entities as corporations, com-  
9 panies, or abbreviations or contractions of either; or

10 (F) name suffixes, such as "Senior" or "Junior",  
11 unless other information appears of record indicating that they  
12 are different persons; and

13 (10) all other requirements for the execution, delivery and  
14 validity of the document have been satisfied.

15 (c) The presumptions stated in (b) of this section arise even if  
16 the document purports only to release a claim or convey an interest of  
17 the person executing it or of the person on whose behalf it is exe-  
18 cuted.

19 (d) Facts stated in a recorded certificate of a public official  
20 in affidavit form or under the seal of the official's office and  
21 derived from information or documents obtained or kept by the official  
22 as part of official duties are presumed to be true.

23 (e) If presumptions created by this section are inconsistent,  
24 the presumption applies that is founded upon weightier consideration  
25 of policy and logic. If these considerations are of equal weight,  
26 neither presumption applies.

27 Sec. 40.17.100. RECORDING A RECONVEYANCE. When the parties to a  
28 recorded conveyance absolute in its terms intend it to serve only as  
29 security for repayment of a debt, the conveyance is absolute as to all

1 persons who rely upon it in good faith and for value before a recon-  
2 veyance is recorded.

3 Sec. 40.17.110. CLASSES OF DOCUMENTS ELIGIBLE FOR RECORDING.

4 (a) A signed document listed in (b) of this section or included under  
5 (c) of this section that meets the requisites for recording under  
6 AS 40.17.030 may be recorded.

7 (b) The recorder may record

8 (1) a conveyance acknowledged or proven under AS 34.15.-  
9 150 - 34.15.250 or a certified copy of the conveyance if recording the  
10 copy is permitted by AS 40.17.020;

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

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

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

18 (5) a certificate of a public official or an affidavit of a  
19 person that may affect the title to or any interest in real property  
20 in the state that is described in the certificate or affidavit, stat-  
21 ing facts relating to age, sex, birth, death, capacity, relationship,  
22 family history, heirship, names, identity of parties, marital status,  
23 possession or adverse possession, adverse use, residence, service in  
24 the armed forces, conflicts and ambiguities in description of land in  
25 recorded instruments, and the happening of a condition or event that  
26 may terminate an estate or interest; a certificate or affidavit re-  
27 corded under this section must contain the recording information of a  
28 recorded document referred to in it;

29 (6) an instrument by which a real property security

1 agreement is subordinated or waived as to priority;

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

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

6 (9) a release of lien or security interest in real prop-  
7 erty;

8 (10) an exact or fully conformed copy of a document that is  
9 otherwise recordable under this section, when the person offering the  
10 document attaches to it an affidavit that

11 (A) the exact or fully conformed copy was received by  
12 the person in the course of the transaction;

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

15 (C) the instrument offered for recordation is an exact  
16 or fully conformed copy;

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

19 (12) a certified copy of a petition in bankruptcy;

20 (13) a notice of an action previously filed and pending in a  
21 court of the state or the United States affecting title to real prop-  
22 erty in the state, if the notice contains the case number assigned by  
23 the court and a description of the property affected in the recording  
24 district;

25 (14) notice of an action for divorce, separate maintenance,  
26 annulment, or dissolution of marriage previously filed and pending in  
27 a court of any state or the United States affecting title to real  
28 property in this state, if the notice contains the case number as-  
29 signed by the court;

1 (15) notice of a pending judicial proceeding to compel  
2 recording or indexing, if the notice contains the case number assigned  
3 by the court;

4 (16) a certified copy of a judgment decree or order of a  
5 court of a state in an action for divorce, separate maintenance,  
6 annulment, or dissolution of marriage requiring the execution of a  
7 conveyance of real property in this state;

8 (17) a list of real property granted by a governmental  
9 entity to the state, a municipality, or a corporation;

10 (18) a conveyance executed by an officer of the state by  
11 authority of law in the state;

12 (19) a notice limiting future advances under a recorded  
13 security agreement;

14 (20) a certified copy of a judgment or decree of a court of  
15 the state or of a court of record of the United States or a certified  
16 copy of a satisfaction of judgment or decree;

17 (21) a certificate of attachment or an order or proceeding  
18 of record discharging attachment;

19 (22) a condemnation order;

20 (23) a declaration of taking;

21 (24) a copy of the record of the meeting of a cemetery  
22 association;

23 (25) a cooperative contract;

24 (26) a list of persons whose cooperative contracts have been  
25 terminated;

26 (27) a letter of conservatorship;

27 (28) an employee's lien for failure to make payments to a  
28 benefit fund;

29 (29) an employment security contributions lien;

- 1 (30) a verified workers' compensation lien;
- 2 (31) a mining claim, location, or lease;
- 3 (32) a grubstake contract;
- 4 (33) a mining assessment work affidavit;
- 5 (34) a notice to contribute or forfeit an interest in a  
6 mining claim;
- 7 (35) a subdivision plat;
- 8 (36) a signed and sworn-to certificate of limited partner-  
9 ship and a signed and sworn-to amendment to a certificate of limited  
10 partnership;
- 11 (37) a declaration or amendments to a declaration under  
12 AS 34.07 or AS 34.08, an instrument by which property may be removed  
13 from the provisions of AS 34.07 or AS 34.08, and an instrument affect-  
14 ing property controlled by AS 34.07 or AS 34.08; a declaration under  
15 AS 34.08 may not be recorded unless it satisfies the requirements of  
16 AS 34.08.090(b);
- 17 (38) a survey map and floor plan for a building under  
18 AS 34.07, or a plat or plan for a common interest community under  
19 AS 34.08;
- 20 (39) a substitution of trustee under a deed of trust, or  
21 other person having a power of sale under a real property security  
22 agreement, when executed and acknowledged by all the beneficiaries;
- 23 (40) notice and affidavits required in default and sale  
24 under a deed of trust;
- 25 (41) a notice of right to mechanics' or materialmen's lien;
- 26 (42) an attested or notarized copy of a notice of nonrespon-  
27 sibility for construction, alteration, or repair;
- 28 (43) an acknowledgment of right to mechanics' or material-  
29 men's lien;

- 1 (44) a verified claim of lien under AS 34.35;
- 2 (45) a verified notice of completion of a building or im-
- 3 provement;
- 4 (46) a bond guaranteeing payment of the sum recovered on a
- 5 mechanics' or materialmen's lien;
- 6 (47) a notice extending a mechanics' or materialmen's lien;
- 7 (48) a state tax lien;
- 8 (49) a federal tax lien;
- 9 (50) an instrument transferring a water appropriation or a
- 10 certified copy of it;
- 11 (51) a financing statement covering goods that are or are to
- 12 become fixtures to real property described in the financing statement;
- 13 if the debtor does not have an interest of record in the real prop-
- 14 erty, the financing statement must show the name of the record owner
- 15 of the real property;
- 16 (52) an assignment of rent;
- 17 (53) a memorandum of lease as described in AS 40.17.120(b);
- 18 (54) a state highway right-of-way map;
- 19 (55) an armed forces report of separation;
- 20 (56) a document amending or correcting a recorded document
- 21 listed in this section if the amending or correcting document is exe-
- 22 cuted by the same parties who executed the original document;
- 23 (57) a master form that can be incorporated by reference in
- 24 documents later recorded;
- 25 (58) a unitization agreement under AS 31.05.110; and
- 26 (59) any other document that creates or affects an interest
- 27 in real property.

28 (c) A document specifically permitted or required to be recorded

29 by another law of the state or made recordable by regulation of the

1 department may be recorded.

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

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

9 (1) the names of the parties;  
10 (2) addresses of the parties set out in the lease;  
11 (3) the date of the lease;  
12 (4) a description of the real property leased or subleased;  
13 (5) the commencement and termination dates of the lease if  
14 fixed and, if not fixed, the method by which the dates are to be  
15 fixed; and

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

19 Sec. 40.17.130. ACTION AGAINST RECORDER AND STATE. If the  
20 recorder fails to record and index a document properly, the recorder  
21 may be compelled to record and index the document properly by an  
22 action filed in the superior court.

23 Sec. 40.17.900. DEFINITIONS. In this chapter

24 (1) "acceptance" means the determination by the recorder  
25 that a document is recordable under this chapter accompanied by mark-  
26 ing an identifying code on the document and entering the document in a  
27 daily log;

28 (2) "certified copy" means a copy of a document certified  
29 as correct by the custodian or other person authorized to make the

1 certification;

2 (3) "conveyance" means a transfer of an interest in real  
3 property other than by will or operation of law;

4 (4) "department" means the Department of Natural Resources;

5 (5) "document" means a writing, plat, plan, or map, and  
6 includes information in a form, such as electronic, mechanical, or  
7 magnetic storage; microfilm; or electronic data transmission signals,  
8 that can be converted into legible writing, plat, plan, or map form by  
9 a machine or device;

10 (6) "place of recording" means a place designated by the  
11 department where documents recordable under this chapter are recorded;

12 (7) "record" means the acceptance of a document by the re-  
13 corder that the recorder has determined is recordable under this  
14 chapter and that is presented for recording in the place of recording  
15 designated for the recording district where affected property is  
16 located whether or not the place of recording is in that district, and  
17 whether or not under applicable law the recorder is directed to record  
18 the document;

19 (8) "recorder" means the commissioner of the department or  
20 the commissioner's designee;

21 (9) "recording district" means a part of the state des-  
22 ignated a recording district under AS 44.37.025; and

23 (10) "recording information" means information needed to  
24 find a document in the public records such as book and page, document  
25 number, electronic retrieval code, or other specific information.

26 \* Sec. 2. AS 19.10.260 is amended to read:

27 Sec. 19.10.260. REPLACEMENT OF PERMANENT MARKERS AND FILING OF  
28 RIGHT-OF-WAY MAP AFTER CONSTRUCTION. The department shall:

29 (1) replace all permanent markers on private or municipal

1 property that were destroyed or lost during highway construction to  
2 permit persons to determine accurately new boundary lines resulting  
3 from the construction;

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

9 \* Sec. 3. AS 29.40.090(b) is amended to read:

10 (b) The platting authority shall waive the preparation, sub-  
11 mission for approval, filing, and recording of a plat on satisfactory  
12 evidence that the subdivision meets the requirements of (a) of this  
13 section and each lot created by the subdivision is five acres or  
14 larger.

15 \* Sec. 4. AS 29.40.110(b) is amended to read:

16 (b) The platting authority shall state in writing its reasons  
17 for disapproval of a plat. If the platting authority approves a plat,  
18 the plat shall be acknowledged, [AND] filed, and recorded in accor-  
19 dance with AS 40.15.010 - 40.15.020.

20 \* Sec. 5. AS 29.40.150 is amended to read:

21 Sec. 29.40.150. RECORDING. If the alteration or replat is  
22 approved, the revised plat shall be acknowledged, [AND] filed, and  
23 recorded in accordance with AS 40.15.010 - 40.15.020.

24 \* Sec. 6. AS 29.40.180 is amended to read:

25 Sec. 29.40.180. VIOLATIONS. The [IT IS UNLAWFUL FOR THE] owner  
26 of land located in a subdivision may not [TO] transfer, sell, offer to  
27 sell, or enter into a contract to sell land in a subdivision before a  
28 plat of the subdivision has been prepared, approved, [AND] filed, and  
29 recorded in accordance with this chapter. A [IT IS UNLAWFUL FOR A]

1 person may not [TO] file or record a plat or other document depicting  
2 subdivided land in a public recorder's office unless the plat or  
3 document has been approved by the platting authority. For the viola-  
4 tion of a provision of this chapter, a subdivision regulation adopted  
5 under this chapter, or a term, condition, or limitation imposed by a  
6 platting authority in the exercise of its powers under this chapter, a  
7 municipality may by ordinance prescribe a penalty not to exceed a fine  
8 of \$1,000 and imprisonment for 90 days.

9 \* Sec. 7. AS 30.13.080 is amended to read:

10 Sec. 30.13.080. VALIDITY OF PLEDGE. It is the intention of the  
11 legislature that a pledge made in respect of bonds is [SHALL BE]  
12 perfected and [SHALL BE] valid and binding from the time the pledge is  
13 made; that the money or property so pledged and thereafter received by  
14 an authority is [SHALL] immediately [BE] subject to the lien of the  
15 pledge without physical delivery or further act; and that the lien of  
16 the pledge is [SHALL BE] valid and binding against all parties having  
17 claims of any kind in tort, contract, or otherwise against the author-  
18 ity [IRRESPECTIVE OF] whether or not the parties have notice. Neither  
19 the resolution, trust agreement, or any other instrument by which a  
20 pledge is created need be recorded or filed under the provisions of  
21 the Uniform Commercial Code to be perfected or to be valid, binding,  
22 or effective against the parties. This section does not affect title  
23 to or conveyances of real property, and does not limit the applicabil-  
24 ity of AS 40.17.080 [AS 34.15.290].

25 \* Sec. 8. AS 34.07.020(14) is amended to read:

26 (14) a reference to the file number and recording informa-  
27 tion for [OF] the floor plans of the building affected that [WHICH]  
28 are required to be filed and recorded simultaneously with the declara-  
29 tion under AS 34.07.030.

1 \* Sec. 9. AS 34.07.030 is amended to read:

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

6           (1) a survey map of the surface of the land submitted under  
7 [TO] the provisions of this chapter showing the location of the build-  
8 ing on it;

9           (2) a set of the floor plans of the building showing the  
10 layout, apartment numbers and dimensions of the apartments in suffi-  
11 cient detail to identify and locate each apartment with certainty,  
12 stating the name of the building or that it has no name, and bearing  
13 the verified statement of a registered architect or registered profes-  
14 sional engineer certifying that it is an accurate copy of portions of  
15 the plans of the building as filed with and approved by the govern-  
16 mental entity having jurisdiction over the approval or issuance of  
17 permits for the construction of the building, or a statement that no  
18 approval or permit is required.

19 \* Sec. 10. AS 34.07.040(a) is amended to read:

20           (a) If the floor plans do not include a verified statement by a  
21 registered architect or registered professional engineer that the  
22 plans fully and accurately depict the layout, apartment numbers, and  
23 dimensions of the apartments as built, there shall be recorded before  
24 the first conveyance of an apartment an amendment to the declaration  
25 to which shall be attached a verified statement of a registered archi-  
26 tect certifying that the plans previously filed and recorded or being  
27 filed and recorded simultaneously with the amendment fully and  
28 accurately depict the layout, apartment number and dimensions of the  
29 apartments as built.

1 \* Sec. 11. AS 34.07.050 is amended to read:

2       Sec. 34.07.050. FORM OF FLOOR PLANS. The recording office shall  
3 prescribe the style, size, form, and quality of floor plans filed and  
4 recorded under AS 34.07.030.

5 \* Sec. 12. AS 34.08.090 is amended to read:

6       Sec. 34.08.090. CREATION OF COMMON INTEREST COMMUNITIES. (a) A  
7 common interest community may be created under this chapter only by  
8 recording a declaration executed in the same manner as a deed and, in  
9 a cooperative, by conveying the real estate subject to the declaration  
10 to the association. The declaration must be recorded, and a plat or  
11 plan that is part of the declaration filed and recorded, in each  
12 recording district in which a portion of the common interest community  
13 is located and must be indexed in the grantee's index in the name of  
14 the common interest community and the association and in the grantor's  
15 index in the name of each person executing the declaration.

16       (b) In a condominium, a declaration or an amendment to a decla-  
17 ration that adds a unit may not be recorded, and a plat or plan that  
18 is part of the declaration may not be filed or recorded, unless the  
19 structural components and mechanical systems of each building contain-  
20 ing or comprising a unit of the condominium are completed substantial-  
21 ly in accordance with the plans, as evidenced by a certificate of  
22 completion recorded with the declaration or amendment to the declara-  
23 tion and executed by

24               (1) an independent registered engineer, architect, or land  
25 surveyor;

26               (2) an appraiser with the designation of Senior Residen-  
27 tial Appraiser, Senior Real Property Appraiser, or Senior Real Estate  
28 Analyst of the Society of Real Estate Appraisers;

29               (3) a Residential Member, or Member of the [,] Appraisal

1 Institute, of the American Institute of Real Estate Appraisers; or

2 (4) an individual with a designation established by regu-  
3 lation of the Alaska Housing Finance Corporation for fee appraisers  
4 who certify the completion of construction.

5 \* Sec. 13. AS 34.08.140(b) is amended to read:

6 (b) After the declaration for a leasehold condominium or lease-  
7 hold planned community is recorded, and a plat or plan that is part of  
8 the declaration is filed and recorded. neither the lessor nor the  
9 successor in interest of the lessor may terminate the leasehold inter-  
10 est of a unit owner who makes timely payment of a unit owner's share  
11 of the rent and otherwise complies with the covenants that, if violat-  
12 ed, would entitle the lessor to terminate the lease. The leasehold  
13 interest of a unit owner in a condominium or planned community is not  
14 affected by the failure of any other person to pay rent or fulfill a  
15 covenant.

16 \* Sec. 14. AS 34.08.140(d) is amended to read:

17 (d) If the expiration or termination of a lease decreases the  
18 number of units in a common interest community, the allocated inter-  
19 ests must be reallocated under AS 34.08.740(a) as if the units had  
20 been taken by eminent domain. The reallocation must be confirmed by  
21 an amendment to the declaration prepared, executed, and recorded by  
22 the association of unit owners; a plat or plan that accompanies the  
23 amendment must be filed and recorded with the amendment.

24 \* Sec. 15. AS 34.08.160(b) is amended to read:

25 (b) Except as the declaration otherwise provides, a limited  
26 common element may be reallocated by an amendment to the declaration  
27 executed by the unit owners between or among whose units the  
28 reallocation is made. The persons executing the amendment shall  
29 provide a copy of the amendment to the association, which shall record

1 the amendment and file and record a plat or plan that accompanies the  
2 amendment [IT]. The amendment must be recorded, and an accompanying  
3 plat or plan filed and recorded, in the names of the parties and the  
4 common interest community.

5 \* Sec. 16. AS 34.08.170(b) is amended to read:

6 (b) Each plat must show:

7 (1) the name and a survey or general schematic map of the  
8 entire common interest community;

9 (2) the location and dimensions of the real estate not  
10 subject to development rights or subject only to the development right  
11 to withdraw, and the location and dimensions of each existing improve-  
12 ment within the real estate;

13 (3) a legally sufficient description of the real estate  
14 subject to development rights, labeled to identify the rights applic-  
15 able to each parcel;

16 (4) the extent of each encroachment by or upon a portion  
17 of the common interest community;

18 (5) to the extent feasible, a legally sufficient descrip-  
19 tion of each easement serving or burdening a portion of the common  
20 interest community;

21 (6) the location and dimensions of any vertical unit  
22 boundaries not shown or projected on plans filed and recorded under  
23 (d) of this section and the identifying number of the unit;

24 (7) the location with reference to an established datum of  
25 any horizontal unit boundaries not shown or projected on plans filed  
26 and recorded under (d) of this section and the identifying number of  
27 the unit;

28 (8) a legally sufficient description of any real estate in  
29 which the unit owners will own only an estate for years, labeled as

"leasehold real estate";

(9) the distance between noncontiguous parcels of real estate comprising the common interest community;

(10) the location and dimensions of limited common elements, including porches, decks, balconies and patios, other than parking spaces and the other limited common elements described in AS 34.08.100(2) and (4);

(11) in the case of real estate not subject to development rights, all other matters customarily shown on land surveys.

\* Sec. 17. AS 34.08.170(f) is amended to read:

(f) Upon the exercise of a [ANY] development right, the declarant shall either file and record new plats and plans necessary to conform to the requirements of (a), (b), and (d) of this section, or file and record new certifications of plats and plans previously filed and recorded if the plats and plans otherwise conform to the requirements of (a), (b), and (d) of this section.

\* Sec. 18. AS 34.08.170(h) is amended to read:

(h) The state recorder shall prescribe the style, size, form, and quality of plats and plans filed and recorded under this chapter.

\* Sec. 19. AS 34.08.180(a) is amended to read:

(a) To exercise a development right reserved under AS 34.08.-130(a)(8), a declarant shall prepare, execute, and record an amendment to the declaration, file and record a plat or plan that accompanies the amendment, and, in a condominium or planned community, comply with AS 34.08.170. The declarant is the unit owner of the units created under the amendment. The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in (b) of this section, reallocate the allocated interests among all units. The amend-

1 ment must describe any common elements and any limited common elements  
2 created under the amendment and, in the case of limited common ele-  
3 ments, designate the unit to which each is allocated to the extent  
4 required by AS 34.08.160.

5 \* Sec. 20. AS 34.08.200(b) is amended to read:

6 (b) The association

7 (1) in a condominium or planned community shall prepare,  
8 file, and record plats or plans necessary to show the altered bound-  
9 aries between adjoining units, and their dimensions and identifying  
10 numbers; and

11 (2) in a cooperative shall prepare and record amendments  
12 to the declaration, and file and record a plat or plan [INCLUDING ANY  
13 PLANS,] necessary to show or describe the altered boundaries between  
14 adjoining units [,] and their dimensions and identifying numbers.

15 \* Sec. 21. AS 34.08.210(a) is amended to read:

16 (a) If the declaration expressly permits it, a unit may be  
17 subdivided into two or more units. Upon application of a unit owner  
18 to subdivide a unit, the association shall, subject to the provisions  
19 of the declaration and other provisions of law, prepare, execute, and  
20 record an amendment to the declaration subdividing the unit, including  
21 in a condominium or planned community filing and recording a plat or  
22 plat that accompanies the amendment [THE PLATS AND PLANS, SUBDIVIDING  
23 THE UNIT].

24 \* Sec. 22. AS 34.08.250(c) is amended to read:

25 (c) Each amendment to the declaration must be recorded, and a  
26 plat or plan that accompanies the amendment filed and recorded, in  
27 each recording district in which a portion of the common interest  
28 community is located and the amendment is effective only upon record-  
29 ing. An amendment, except an amendment under AS 34.08.200(a), must be

1 indexed in the name of the common interest community and the associa-  
2 tion and in the name of the parties executing the amendment.

3 \* Sec. 23. AS 34.08.320(a) is amended to read:

4 (a) Except as provided in (b) of this section and subject to the  
5 provisions of the declaration, the association may:

6 (1) adopt and amend bylaws and rules and regulations;

7 (2) adopt and amend budgets for revenues, expenditures,  
8 and reserves and collect assessments for common expenses from unit  
9 owners;

10 (3) hire and discharge managing agents and other employ-  
11 ees, agents, and independent contractors;

12 (4) institute, defend, or intervene in litigation or  
13 administrative proceedings or seek injunctive relief for violations of  
14 its declaration, bylaws or rules in its own name on behalf of itself  
15 or two or more unit owners on matters affecting the common interest  
16 community;

17 (5) make contracts and incur liabilities;

18 (6) regulate the use, maintenance, repair, replacement,  
19 and modification of common elements;

20 (7) cause additional improvements to be made as a part of  
21 the common elements;

22 (8) acquire, hold, encumber, and convey in its own name  
23 any right, title, or interest to real estate or personal property,  
24 except that

25 (A) common elements in a condominium or planned  
26 community may be conveyed or subjected to a security interest  
27 only under AS 34.08.430; and

28 (B) part of a cooperative may be conveyed or all or  
29 part of a cooperative may be subjected to a security interest

only under AS 34.08.430;

1  
2 (9) grant easements, leases, licenses, and concessions  
3 through or over the common elements;

4 (10) impose and receive a payment, fee, or charge for the  
5 use, rental, or operation of the common elements, other than limited  
6 common elements described in AS 34.08.100(2) and (4), and for services  
7 provided to unit owners;

8 (11) impose a reasonable charge for late payment of assess-  
9 ments and, after notice and an opportunity to be heard, levy a reason-  
10 able fine for a violation of the declaration, bylaws, rules, and  
11 regulations of the association;

12 (12) impose a reasonable charge for the preparation and  
13 recording of an amendment to the declaration, the filing and recording  
14 of a plat or plan that accompanies an amendment, resale certificate  
15 required by AS 34.08.590, or a statement of unpaid assessments;

16 (13) provide for the indemnification of its officers and  
17 executive board and maintain directors' and officers' liability insur-  
18 ance;

19 (14) assign its right to future income, including the right  
20 to receive common expense assessments, but only to the extent the  
21 declaration expressly permits the assignment;

22 (15) exercise any other powers conferred by the declaration  
23 or bylaws;

24 (16) exercise any other power that may be exercised in the  
25 state by a legal entity of the same type as the association; and

26 (17) exercise any other power necessary and proper for the  
27 governance and operation of the association.

28 \* Sec. 24. AS 34.08.440(h) is amended to read:

29 (h) A portion of the common interest community for which insur-

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ance is required under this section that is damaged or destroyed must be repaired or replaced promptly by the association unless (1) the common interest community is terminated and AS 34.08.260 applies, (2) repairs or replacement would be illegal under a state statute or municipal ordinance governing health or safety, or (3) 80 percent of the unit owners, including each owner of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire common interest community is not repaired or replaced, (1) the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the common interest community, and (2) except to the extent that other persons will be distributees, (A) the insurance proceeds attributable to a unit and limited common elements that is not rebuilt must be distributed to the owner of the unit and the owner of the unit to which the limited common elements were allocated, or to lien holders, as their interests may appear, and (B) the remainder of the proceeds must be distributed to each unit owner or lien holder, as their interests may appear, as follows: (i) in a condominium, in proportion to the common element interest of all the units and (ii) in a cooperative or planned community, in proportion to the common expense liabilities of all the units. If the unit owners vote not to rebuild a unit, the allocated interests of the unit are reallocated upon the vote as if the unit had been condemned under AS 34.08.740(a), and the association promptly shall prepare, execute [EXECUTED], and record an amendment to the declaration reflecting the reallocations, and file and record a plat or plan that accompanies the amendment.

\* Sec. 25. AS 34.08.700 is amended to read:

1           Sec. 34.08.700. SUBSTANTIAL COMPLETION OF UNITS. In the sale of  
2 a unit for which delivery of a public offering statement is required,  
3 a contract of sale may be executed, but an interest in the unit may  
4 not be conveyed until the declaration is recorded, a plat or plan that  
5 accompanies the declaration is filed and recorded, and the unit is  
6 substantially completed as evidenced by issuance of a certificate of  
7 occupancy authorized by law or by a recorded certificate of substan-  
8 tial completion executed by

9           (1) an independent registered engineer, architect, or land  
10 surveyor;

11           (2) an appraiser with the designation of senior residen-  
12 tial appraiser, senior real property appraiser, or senior real estate  
13 analyst of the Society of Real Estate Appraisers;

14           (3) a residential member, or member of the [,] appraisal  
15 institute, of the American Institute of Real Estate Appraisers; or

16           (4) an individual with a designation established by regu-  
17 lation of the Alaska Housing Finance Corporation for fee appraisers  
18 who certify the completion of construction.

19 \* Sec. 26. AS 34.08.740(a) is amended to read:

20           (a) If a unit is acquired by eminent domain or part of a unit is  
21 acquired by eminent domain leaving the unit owner with a remnant that  
22 may not practically or lawfully be used for any purpose permitted by  
23 the declaration, the award must include compensation to the unit owner  
24 for that unit and its allocated interests, whether or not any common  
25 elements are acquired. Upon acquisition, unless the decree otherwise  
26 provides, the allocated interests of the unit are automatically real-  
27 located to the remaining units in proportion to the respective  
28 allocated interests of those units before the taking, and the associa-  
29 tion shall promptly prepare, execute, and record an amendment to the

1 declaration reflecting the reallocations, and file and record a plat  
2 or plan that accompanies the amendment. A remnant of a unit remaining  
3 after part of a unit is taken under this subsection is a common ele-  
4 ment from that time.

5 \* Sec. 27. AS 34.08.990(30) is amended to read:

6 (30) "special declarant rights" means the right reserved  
7 for the benefit of a declarant to

8 (A) complete improvements indicated on plats and  
9 plans filed and recorded with the declaration or, in a coopera-  
10 tive, to complete improvements described in the public offering  
11 statement under [PURSUANT TO] AS 34.08.530(a)(2);

12 (B) exercise a development right;

13 (C) maintain sales offices, management offices, signs  
14 advertising the common interest community, and models;

15 (D) use easements through the common elements for the  
16 purpose of making improvements within the common interest commu-  
17 nity or within real estate that may be added to the common inter-  
18 est community;

19 (E) make the common interest community subject to a  
20 master association;

21 (F) merge or consolidate a common interest community  
22 with another common interest community of the same form of owner-  
23 ship; or

24 (G) appoint or remove an officer of the association  
25 or a master association or an executive board member during a  
26 period of declarant control;

27 \* Sec. 28. AS 34.15 is amended by adding a new section to read:

28 Sec. 34.15.015. USE OF RECORDED MASTER FORM. If reference is  
29 made in a document to a recorded master form, a copy of the form, or

1 so much of it as is incorporated by reference, must be provided to  
2 each party to the transaction by the party that furnished the docu-  
3 ment.

4 \* Sec. 29. AS 38.04.045(b) is amended to read:

5 (b) Before the conveyance of surface rights to state land, an  
6 official cadastral survey shall be accomplished, unless a comparable,  
7 acceptable survey exists that has been conducted by the federal Bureau  
8 of Land Management. The rectangular survey section corner positions  
9 shall be monumented and shown on a cadastral survey plat approved by  
10 the state. However, for those areas where the state may wish to  
11 convey surface estate outside of an official cadastral survey grid,  
12 the director may waive monumentation of all individual section corner  
13 positions and substitute an official control survey with control  
14 points being monumented and shown on control survey plats approved by  
15 the state. No portion of land to be conveyed may be located more than  
16 two miles from such a survey control monument except that the commis-  
17 sioner may waive this requirement on a determination that topographic  
18 features, diffuse settlement, or the public interest do not justify  
19 the requirement. The lots and tracts in state subdivisions shall be  
20 monumented and the cadastral survey and plats for the subdivision  
21 shall be approved by the state. Where land is located within a muni-  
22 cipality with planning, platting, and zoning powers, plats for state  
23 subdivisions shall comply with local ordinances and regulations in the  
24 same manner and to the same extent as plats for subdivisions by other  
25 landowners. State subdivisions shall be filed and recorded in the  
26 district recorder's office. The requirements of this section do not  
27 apply to land made available through a cabin permit system, material  
28 sales, or short-term leases; however, for short-term leases the lessee  
29 must comply with local subdivision ordinances unless waived by the

municipality under procedures specified by ordinance.

1  
2 \* Sec. 30. AS 40.15.010 is amended to read:

3 Sec. 40.15.010. APPROVAL, FILING, AND RECORDING OF SUBDIVISIONS.

4 Before the lots or tracts of any subdivision or dedication may be sold  
5 or offered for sale, the subdivision or dedication shall be submitted  
6 for approval to the authority having jurisdiction, as prescribed in  
7 this chapter. The regular approval of the authority shall be shown on  
8 it or attached to it and the subdivision or dedication shall be filed  
9 and recorded [FOR RECORD] in the office of the recorder. The recorder  
10 may [SHALL] not accept a subdivision or dedication for filing and  
11 recording unless it shows this approval. If no platting authority  
12 exists as provided in AS 40.15.070 - 40.15.130, lands may be sold  
13 without approval.

14 \* Sec. 31. AS 40.15.020 is amended to read:

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

26 \* Sec. 32. AS 40.15.030 is amended to read:

27 Sec. 40.15.030. DEDICATION OF STREETS, ALLEYS AND THOROUGHFARES.

28 When an area is subdivided and a plat of the subdivision is approved,  
29 filed, and recorded, all streets, alleys, thoroughfares, parks and

1 other public areas shown on the plat are considered to be [DEEMED TO  
2 HAVE BEEN] dedicated to public use.

3 \* Sec. 33. AS 40.15.040 is amended to read:

4 Sec. 40.15.040. CERTIFIED COPY OF PLAT AS [IS] EVIDENCE. A copy  
5 of a plat certified by the recorder of the recording district in which  
6 it is filed or recorded as a true and complete copy of the original  
7 filed or recorded in the recording office for the district [ON FILE IN  
8 HIS OFFICE] is admissible in evidence in all courts in the state with  
9 the same effect as the original.

10 \* Sec. 34. AS 40.15.050 is amended to read:

11 Sec. 40.15.050. [RECORDED] PLATS LEGALIZED. All plats filed or  
12 recorded with the recorder [RECORDED] before March 30, 1953, whether  
13 executed and acknowledged in accordance with this chapter or not, are  
14 validated and all streets, alleys or public thoroughfares shown on  
15 these plats are considered to be [AS HAVING BEEN] dedicated to public  
16 use. [THIS SECTION DOES NOT PROHIBIT THE ABANDONMENT OF A PLAT RE-  
17 CORDED BEFORE MARCH 30, 1953, IF A SUBSEQUENT PLAT IS FILED INDICATING  
18 ABANDONMENT.] The last plat of the area of record on March 30, 1953,  
19 is the official plat of the area as of that date, and the streets,  
20 alleys, or thoroughfares shown on it are considered [DEEMED] to be  
21 [THE STREETS, ALLEYS OR THOROUGHFARES] dedicated to public use. The  
22 streets, alleys or thoroughfares shown on an earlier plat of the same  
23 area or any part of it which is in conflict with those shown on the  
24 official plat are considered to be [IS DEEMED TO HAVE BEEN] abandoned  
25 and vacated.

26 \* Sec. 35. AS 40.15.060 is amended to read:

27 Sec. 40.15.060. MISSING PLATS. When [WHERE] a filed or recorded  
28 plat is missing and no present record is available except by reference  
29 to the missing plat, a counterpart copy, approved by the platting