

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 86/2

5339 SJUD HB 266 - HB 322

911

HB 491: CREATING A STATUTORY FORM POWER OF ATTORNEY  
(CONT'D.)

4) WHY IS THIS BILL SO LONG?

The form will be enforceable only if an unambiguous interpretation of each provision is set out in the statute. This is especially important in the instance where a principal is interested in granting only some powers to an agent rather than full general power.

5) WHO SUPPORTS THIS LEGISLATION?

Senior organizations  
Alaska Legal Services  
Individual members of the probate section of the Alaska  
Bar Association  
Residential care facilities

# Older Alaskans Commission

Box C  
Juneau, Alaska 99811-0209  
907/465-3250

POSITION PAPER -- APRIL 22, 1988

CSHB 491 (HESS)

"An Act Establishing a Statutory Form Power of Attorney"

The Older Alaskans Commission strongly supports passage of this bill. Senior citizens can best keep their own financial and personal affairs in order through the use of "advance directives" or Life Planning, by use of a Durable Power of Attorney. A previously signed Durable Power of Attorney would often eliminate the need for family or caregivers of an incapacitated senior to seek a guardianship. Petitioning the court for a guardianship takes up to four months, and is quite cumbersome and costly to both the petitioner's and the public's pocketbook.

At an OAC sponsored Workshop for Professionals on the Guardianship System in Alaska, March 31 and April 1, nearly 100 representatives from nursing homes, hospitals, social service agencies, the court system, the Offices of the Attorney General and the Public Guardian discussed the many problems surrounding the need for guardianship for people no longer competent to make decisions.

The workshop group reached a strong consensus on the need to avoid court guardianship proceedings whenever possible. They agreed that Alaska needs a statutory form Durable Power of Attorney which is easy and inexpensive to use. Once this exists, seniors should be strongly encouraged to use the forms; through a series of clinics at senior centers, hospitals, and certainly upon admission to a nursing home.

Although durable powers of attorney are currently authorized under AS 13.26.325, each person must pay a lawyer to draft the power, a job which can easily cost over \$ 500, because the lawyer must try to specify and define all sorts of contingencies about numerous types of financial and personal transactions.

The primary benefits of CSHB 491 (HESS) are that it provides a statutorily approved form Power of Attorney, and defines in detail the specific powers which an agent may exercise under the power of attorney. This will enable many individuals to enact a Durable Power of Attorney without any expense for consultation with a lawyer.

POSITION PAPER ON CSHB 491 -- PAGE 2  
OLDER ALASKANS COMMISSION

In addition, CSHB 491 requires that third parties presented with a properly executed statutory Power of Attorney must honor it. The opposite frequently happens now, to even the best drafted Power of Attorney: when the agent presents it to a stock brokerage firm, bank or insurance company, the third party refuses to honor it and asks for a differently formatted Power--but if the principal is in the hospital in a coma, it is too late to get the principal's signature on a new form.

CSHB 491 might at first glance appear to be rather long, but the lengthy definitions are needed to ensure that third parties know what their obligations are to carry out the agent's instructions.

CSHB 491 makes several other improvements upon current law because it provides for a simple method to determine "disability," without requiring a judicial determination, provides a hold harmless guarantee to third parties, and ties in with the Living Will statute so that a person may appoint an agent for all health care decision-making.

In summary, the Commission strongly supports this bill in its present form. CSHB 491 (HESS) makes Alaska's current statute on powers of attorney much more beneficial and accessible for seniors and their families, friends, and caregivers who wish to plan for the senior's future.

APPROVED BY:

*for* Connie Labe Eves, Director  
Dove Kuyll, Chair  
Legislative Committee  
Older Alaskans Commission

DATE: April 22, 1988

REVIEWED BY:

John M. Andrews, Commissioner  
Department of Administration

DATE: 4/25/88



ALASKA STATE LEGISLATIVE COMMITTEE

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Box 30009  
Central, AK 99730  
(907) 520-5227

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130 Seward Street, #205  
Juneau, AK 99801  
(907) 586-2066

SECRETARY  
Mrs. Marian R. Triggs  
475 Panorama Drive  
Fairbanks, AK 99712  
(907) 457-4386

MAR 25 1988

3/22/88

Representatives Niilo Koponen  
and Johnny Ellis, Co-Chairmen  
House HESS Committee  
PO Box V  
Juneau, AK 99811

Dear Representatives Koponen and Ellis:

AARP/Alaska State Legislative Committee is pleased to see legislation such as HB 491, "An Act establishing a statutory form power of attorney."

We feel such legislation is vital to clearly defining for Alaskans both general and durable powers of attorney. Such clarification is important not only to those who deal with complex legal issues through attorneys or who can afford to have attorneys draw up their powers of attorney, but also to those whose lower incomes cause them to rely on pre-printed forms for these matters.

Because low-income elderly persons are often unknowing victims of unclear or scattered statutes, bringing together these materials into a clear package seems especially important.

We urge your committee's support of this legislation and hope that it will include protection of "living wills" and state benefits.

Sincerely yours,

A handwritten signature in cursive script that reads "Patricia Oakes".

Miss Patricia Oakes, Chairman  
AARP/Alaska State Legislative Committee

# CARTA

## Central Alaska Retired Teachers Association

Advocate for Retired and Pre-Retired Educators

1620 Crescent Drive  
Anchorage, AK 99504  
April 15, 1988

Representative Johnny Ellis  
Alaska State Legislature  
PO Box V (MS 3100)  
Juneau, AK 99811

APR 20 1988

Dear Representative Ellis:

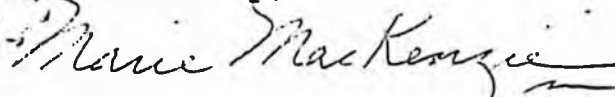
The Legislative Committee of the Central Alaska Retired Teachers Association (CARTA) has studied and considered a number of proposed bills this past year. We recently sent you a report of our activities that led to making our decisions. As we near the end of the session, we strongly urge passage of the following bills:

1. House Substitute for SB56 - Annuity Bill (First Priority)
2. SB67 - Mental Health Insurance Bill
3. HB491 - Establishing a Statutory Form Power of Attorney
4. SB442 - Relating to the Older Alaskan Commission and the protection of elderly persons, establishing the office of Older Alaskan Ombudsman
5. HB306 - Anatomical gifts

CARTA also strongly supports funding the recommendations of the Governor's Commission on Children and Youth.

We appreciate your attention and time for our concerns.

Sincerely,



Marie MacKenzie, Chairman  
Legislative Committee

cc: Vera Gazaway, President, CARTA  
Joan McKinnon, President, Alaska State Retired Teachers Assn  
Patricia Oakes, Chairman, AARP State Legislative Committee  
Anchorage Senior Citizens Advisory Committee

Anchorage, Alaska  
March 18, 1988

MAR 24 1988

TO: REPRESENTATIVE JOHNNY ELLIS  
REPRESENTATIVE MAX GRUENBERG, Jr.

FROM: Thelma P. Langdon - 2363 Capt. Cook Drive - Anchorage 99517

RE: HB NO. 491 - "An Act establishing a statutory form power of attorney"

**I am in strong support of this bill.** As one of the organizers of the Alzheimer's Disease Family Support Group, I know what a great help it would be to the families of victims of Alzheimer's Disease and Related Disorders.

My own father has a severe and progressive dementia and my sister and I need to have the kind of authority and protection this bill addresses. In carrying out our responsibility we need to have the authority to make decisions he cannot or will not make.

Thank you for introducing this bill.

*Thelma P. Langdon*  
MSP  
consult

5-0521L  
Bannister  
5/3/88

MAY 3 1988

Original sponsor: Ulmer

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE  
 2 SENATE CS FOR CS FOR HOUSE BILL NO. 266 (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 the recording of documents."

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

8 \* Section 1. LEGISLATIVE FINDINGS. The legislature finds that the

9 (1) recording of legal documents of the kind customarily re-  
10 corded throughout the United States is an essential state function;

11 (2) time and place of the recording of a document can be more  
12 important than the underlying legal sufficiency of the document;

13 (3) recording offices exist primarily for the benefit and conve-  
14 nience of the general public;

15 (4) business community, commercial institutions including banks,  
16 and private individuals cannot function effectively without the public  
17 notice protection afforded by recording their documents; and

18 (5) policy of the state is to maintain a convenient means of  
19 regularly recording legal documents relating to property and obtaining  
20 information concerning existing recorded documents.

21 \* Sec. 2. AS 34.15 is amended by adding a new section to read:

22 Sec. 34.15.343. RECORDING CRITERIA. When determining whether a  
23 document may be recorded, the recorder

24 (1) may not consider whether the contents of the document  
25 are legally sufficient to achieve the purposes of the document;

26 (2) may not reject a document because the document

27 (A) does not satisfy the current requirements for  
28 recording, if the document satisfied the requirements for record-  
29 ing that existed at the time the document was executed;

1 (B) serves more than one purpose;

2 (C) does not state the name of the recording district,  
3 if the name is given to the recorder at the time the document is  
4 offered for recording, or if the name is contained in a cover  
5 letter accompanying the document;

6 (D) references an attached exhibit that is not la-  
7 belled;

8 (E) is a certified copy of an official document that  
9 creates an interest in real property and that is from a govern-  
10 mental office in this or another state; or

11 (3) may not require that a document that serves more than  
12 one purpose be recorded separately for each of the purposes; this  
13 paragraph does not prevent the multiple recording of the document if  
14 the person offering the document requests that the document be re-  
15 corded for more than one of its purposes.

16 \* Sec. 3. AS 44.37.025(a) is amended to read:

17 (a) The Department of Natural Resources shall adopt regulations  
18 [,] establishing, modifying, or discontinuing recording districts or  
19 precincts and prescribing the records to be maintained and the instru-  
20 ments to be recorded. A regulation may not impose a restriction on  
21 document recording unless the restriction is required by statute or  
22 furtheres a legitimate administrative need of the recorder; a "legiti-  
23 mate administrative need" includes ensuring the legibility of the  
24 documents and identifying the parties, the capacity of each party, and  
25 the affected property.

# Alaska State Legislature

## Committees:

Chair-State Affairs  
V. Chair-Judiciary  
Telecommunications  
Special Ethics  
Legislative Council  
Finance Subcommittee  
for the University of Alaska  
Joint Committee  
on Economic Recovery



APR 22 1988

P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4947

## REPRESENTATIVE FRAN ULMER

### MEMORANDUM

A handwritten signature in cursive, likely of Representative Fran Ulmer, written in dark ink.

April 21, 1988

TO: Senator Jalmar Kerttula, Chairman  
and Members of the Senate Judiciary Committee

FROM: Representative Fran Ulmer

SUBJECT: House Bill 266

I introduced House Bill 266, "An Act relating to the recording of documents", to bring consistency to the policies governing what documents should be recorded by the Recording Offices throughout the State of Alaska. House Bill 266 has received widespread support from the Alaska Miners Association, title companies and attorneys.

Section 1 is a statement of facts explaining the underlying purpose of the bill.

Section 2 adds a new section to AS 34.15 outlining recording criteria. When determining whether a document may be recorded, the recorder could not consider whether the contents of the document are legally sufficient to achieve the purposes of the document. Reasonable doubts would be resolved in favor of recording.

The bill also sets forth several instances when a document may not be rejected.

The recorder could not require that a document which serves more than one purpose be recorded separately for each of the purposes. This would not prevent the multiple recording of a document if the person requests that it be recorded for more than one purpose.

Finally, in Section 3, the bill amends AS 44.37.025 so that a regulation of the department could not impose a restriction on document recording unless the restriction is required by statute, or furthers a legitimate administrative need of the recorder.

Thank you for your support of HB 266.

District 4B — Juneau



# ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, AK 99503 (907) 276-0347

April 17, 1987

RECEIVED 4/22/87

Honorable Fran Ulmer  
Alaska State Legislature  
P.O. Box V (MS 3100)  
Juneau, Alaska 99811

Re: House Bill No. 266

Dear Rep. Ulmer:

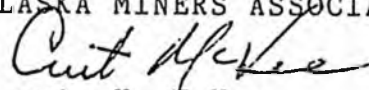
The Alaska Miners Association supports House Bill No. 266 and its passage this session of the legislature.

Since the majority of mining operations in Alaska are conducted by "small miners", in remote and unsurveyed areas of the state, and since the penalty for failure to timely file or record documents relating to mining claims can be loss of the claims, it is imperative that procedural or technical niceties do not preclude their recordation, as long as the intent of the documents is fairly stated.

We believe that House Bill No. 266 goes a long way toward accomplishing those objectives, and congratulate you for introducing that bill.

Sincerely,

ALASKA MINERS ASSOCIATION

  
Curtis V. McVee  
Executive Director

**TIA** TITLE  
INSURANCE  
AGENCY

Main Office  
201 N. Franklin St.  
Juneau, AK 99801  
(907) 586-6445

Valley Branch  
9110 Glacier Hwy.  
Juneau, AK 99801  
(907) 789-1671

April 17, 1987

Representative Fran Ulmer  
Pouch V  
Juneau, AK 99811

Dear Fran:

Your introduction of House Bill 266 is commendable. This type of legislation is long overdue.

The recording system has been kind of a step child for as long as I can remember, being administered according to the whims of various departments it has been in. It's encouraging to see an attempt to stabilize the system.

Sincerely,



Glen A. Prince  
Executive Vice President

GAP:bjk

RECEIVED APR 21 1987

RECEIVED  
RECEIVED APR 6 1987

DORIS LOENNIG  
A PROFESSIONAL CORPORATION  
ATTORNEY AT LAW

SUITE 120, 515 SEVENTH AVENUE - FAIRBANKS, ALASKA 99701  
907 452-2005

April 1, 1987  
(Dictated 3-31-87)

Representative Fran Ulmer  
P.O. Box V  
Juneau, Alaska 99811

Dear Mrs. Ulmer:

I received a memorandum March 9, 1987 from members of the Natural Resources and Real Estate Sections of the Alaska Bar Association asking me to review a proposed amendment to the Recording Act. I apologize for not responding more promptly, but I do want to advise you that I am strongly in favor of the amendment.

As is so often the case as governmental bodies develop, there is a tendency to draft laws and regulations that benefit the bureaucrats while not particularly serving the public. The Recorder's Office has become extremely stringent in what they will accept for recording with the result that vital documents are being denied recording. For instance, I am involved in a situation where a Deed necessary to the chain of title was damaged by flood water. It is readable, but the Recorder's Office will not record it because the microfilm record would not be readable. The solution would be to type an exact copy of the deed, certify it as a copy of the original and then record both ... the original and the certified copy. By the Recorder's Office refusal to record the document, there is a break in the chain of title which will require an expensive suit to quiet title.

Also, recently I had a very difficult time getting a certified copy of an Alaska State Patent recorded. The original Patent had not been

Mrs. Fran Ulmer  
Re: Recording of Documents

April 1, 1987  
Page two

recorded when issued, and had been lost. The present owner of the property was required to convey a marketable, insurable title, which he could not do without completing the chain of title by the recording of the Alaska State Patent. There should never have been raised any objection to the recording of the certified copy.

Very truly yours,

DORIS LOENNIG, P.C.

By:

  
\_\_\_\_\_  
DORIS LOENNIG

DL:dcm

## HUGHES THORSNESS GANTZ POWELL &amp; BRUNDIN

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 TELEPHONE (907) 586-5922  
 TELECOPIER (907) 463-3220

590 UNIVERSITY AVENUE  
 SUITE 200  
 FAIRBANKS, ALASKA 99709-3652  
 TELEPHONE (907) 479-3161

\*\*\*200 C-ENEGA STREET  
 P.O. BOX 787  
 VALDEZ, ALASKA 99686-0787  
 TELEPHONE (907) 835-2985

OF COUNSEL  
 JOHN C. HUGHES  
 RICHARD O. GANTZ

March 10, 1987

REPLY TO ANCHORAGE

Honorable Fran Ulmer  
 State Representative  
 P. O. Box V  
 Juneau, Alaska 99811

Dear Representative Ulmer:

I received the enclosed memorandum from the Alaska Bar Association, as I am a member of the Natural Resources Section Executive Committee of the Bar Association.

I support the language of the attached (proposed) House Bill, "An Act relating to the recording of documents", in its entirety. I wholeheartedly support the bill and the reasoning behind it. I urge you to introduce it, and not by request.

If for no other reason, I object to the current recording regulations and support the proposed bill on the grounds that the Department of Natural Resources has no business placing unreasonable and cumbersome limitations on the public's right to record documents. If it is to be done at all, it should be done by the legislature through elected representatives and not subject the right to record documents to the discretionary, often petty and whimsical "legal" interpretations of clerks. I have personally had the experience of the Fairbanks Recording Office (initially) refusing to record documents that are required by federal mining claim regulations to be recorded with the recording district; only after strenuous argument (the clerks adjourned to a private conference on the matter while I waited an hour) was the document accepted. If the documents had not been recorded, my clients' mining claims could have been declared invalid by the United States Bureau of Land Management.

Most of my practice consists of representing small miners. As a group, these people are bright, but have little formal education; they are literally overwhelmed by the legal and regulatory climate in which they are struggling to survive. As a user group, I would wager that miners use Alaska's recording

Honorable Fran Ulmer  
March 10, 1987  
Page 2

offices more than any other single group of people. They do so for a very good reason: they must annually file documents with recording offices to preserve their possessory rights, upon pain of losing the claims to rival claimants or the government.

Unlike persons wishing to record documents who are seeking to place themselves prior in time to the interest of another party, the failure to timely record a document for a miner does not simply place that miner's interest in a position subordinate to someone who has filed ahead of him. Instead, the failure to timely file various mining documents can, and usually does, result in a total loss of the miner's rights--e.g., by an administrative declaration from BLM to the fictional effect that their claims have been "abandoned". This abandonment penalty has been sustained as lawful by the United States Supreme Court recently and BLM may take such action, despite abundant evidence that the miner did not intend to abandon the claim.

As a group, miners stand to lose more than any other group under these current recording regulations, because miners typically wait until near the annual deadlines to file their documents. At that time, should a clerk narrowly or adversely interpret any one of the host of regulatory obstacles to recording with which DNR is now armed, it will be too late for the miner to correct the situation; in many instances, the miner will simply lose his rights. Often, the failure to record cannot be cured by filing another mining claim location certificate, because the ground upon which the claim was located is now in one of Alaska's many national parks or other areas now closed to mineral entry.

Long before there were recorder's offices, there were mining districts. Each mining district (many of which were established shortly after acquisition of Alaska from Russia) had a district recorder, whose job was almost exclusively to accept mining claim recordings. It is sad and ironic that State of Alaska recorder's offices, which succeeded to the duties of mining district recorders, now seek to limit the public's right to record.

Finally, I will conclude by suggesting that some teeth be placed in the bill proposed; otherwise, even though the intention of the legislation is clear, it could still be frustrated, without penalty, by State employees. You are probably aware of the fact that some Alaska statutes provide for penalties to be assessed against an employee who violates the statute. For example, I believe there is a statutory prohibition against Department of Revenue employees divulging confidential information about taxpayers; penalties are provided for releasing the information. I can say from personal experience that this penalty provision is

Honorable Fran Ulmer  
March 10, 1987  
Page 3

terribly effective, because I have sought to obtain seemingly unrelated and harmless information and the Attorney General's Office has always advised the employee to err on the side of caution by refusing to release it. The fear of this penalty is so great that I have even had cases wherein the Attorney General gave this same advice, even though the information was requested pursuant to a lawfully issued subpoena (I was able to obtain the information, but only after persuading the taxpayer to authorize its release).

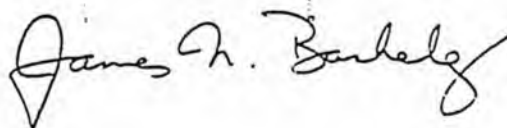
Thus, assuming a reasonable definition of "wrongful refusal to record" could be arrived at, I respectfully submit that penalties should be provided for under those circumstances--which penalties should include all losses proximately caused by the wrongful refusal--e.g., the loss of mining claims or other valuable property rights.

This is not a matter involving a particularly crusty, obstructionist clerk in one recording district; this is a matter of paramount importance and is of state-wide concern.

One last note: my opinions in this letter are conveyed to you from me as an individual, and they do not necessarily constitute the opinions of the Alaska Bar Association nor of Hughes, Thorsness, Gantz, Powell & Brundin.

Very truly yours,

HUGHES, THORSNESS, GANTZ,  
POWELL & BRUNDIN



By: James N. Barkeley

JNB/mt  
2793i

cc: Linda Nordstrand, Alaska Bar Association  
CLE Director

DOUGLAS L. GREGG, Esq.

A PROFESSIONAL CORPORATION  
 ATTORNEY-AT-LAW  
 130 SEWARD STREET, SUITE 417  
 JUNEAU, ALASKA 99901

March 4, 1987

Honorable Fran Ulmer  
 Representative District 4B  
 State House of Representatives  
 P.O. Box V  
 Juneau, Alaska 99811

Re: Amendments to Recording Statute AS 34.15  
 My File G-1579

Dear Representative Ulmer:

Thank you for having our bill drafted. It seems to cover all the bases. I am not certain my schedule will allow me to attend Friday's bar luncheon. As a committee member I certainly hope that you will get a bill in as quickly as possible. I keep hearing horror stories. Fred Baxter is currently having a problem getting a certified copy of a court order from Anchorage recorded down here. The reason for refusal: "It is not an original." Can you believe this?

Very truly yours,

*Handwritten signature and date: Doug. 2/27/87*  
 DOUGLAS L. GREGG

DLG

cc: Fred J. Baxter, Esq.  
 Larry Weeks, Esq.  
 James E. Fisher, Esq.

DOUGLAS L. GREGG, Esq.

A PROFESSIONAL CORPORATION

ATTORNEY-AT-LAW

130 SEWARD STREET, SUITE 417.

JUNEAU, ALASKA 99801

January 28, 1987

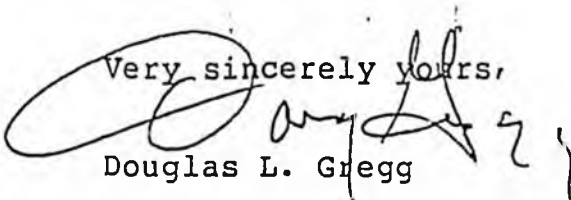
Honorable Fran Ulmer  
State Representative  
State Capitol  
P.O. Box V  
Juneau, Alaska 99811

Re: Amendments to AS 44.37.025 (Recording Documents);

Dear Fran:

I learned today that you may not have received a copy of the Juneau Bar letter and enclosures of January 7th. Here is a copy. The issue at hand may well relate to the budget in that the host of regulations which have been implemented in the last year or two cannot help but have added substantially to the work load of the recorder's offices around the state. In any event, we appreciate your assistance. We'd like to see a bill drafted to add a few amendments to the existing statute. Thank you.

Very sincerely yours,

  
Douglas L. Gregg

ENCLS:

cc:James E. Fisher, President  
Juneau Bar Association

J U N E A U B A R A S S O C I A T I O N

6645 N. Douglas Highway  
Juneau, Alaska

January 7, 1987

Honorable Jim Duncan  
State Senator  
State Capitol  
P.O. Box V  
Juneau, Alaska 99811

Honorable Fran Ulmer  
State Representative  
State Capitol  
P.O. Box V  
Juneau, Alaska 99811

Honorable Bill Hudson  
State Representative  
P.O. Box V  
Juneau, Alaska 99811

Re: Amendments to AS 44.37.025 (Recording Documents);

Dear Juneau Legislative Delegation:

There is a need for new legislation to correct a serious problem with recording documents in Alaska. In recognition of that difficulty, the Juneau Bar Association, at its regular meeting on December 5, 1986, adopted the recommendation of its Committee on the Office of the Recorder, copy enclosed. The committee was formed as the result of numerous complaints about the many new restrictions on the right to record documents that were imposed through the rule-making power of the Department of Natural Resources, which has jurisdiction over the Office of the Recorder.

In addition to amending existing legislation, we are requesting that new regulations be adopted by DNR. However, we request that a bill be drafted to provide guidelines restricting future rule-making power to those matters of legitimate concern to the Office of the Recorder. Such an amendment to the statute should make it clear that the public has a right to record legal documents and that the Office of the Recorder is not to judge the internal legal integrity of documents but simply to record them

if they meet certain minimum requirements.

As to the rule-making power of the department, six recommendations are contained within the committee's report. However, the department might well consider several other changes in its current regulations. The committee restricted itself to the most obvious areas of needed change. The regulations could be further amended to provide that the Recorder may not refuse to record or file a document because:

- it lacks a title reflecting its overall content;
- it does not contain a "return to" address;
- the individual who incurred an assessment is not named (even though the property against which the assessment is placed is described and the party claiming the assessment is identified).

The Juneau Bar Association is not opposed to all regulation of the right to record. The new regulations are, however, onerous. More importantly, they are constituting a substantial restriction on the right to place a document on the record as public notice. Many times a document serves that purpose even though the document could admittedly be improved in its context and could be more complete than it is. But the right to record and create the public notice for the protection of parties is of paramount importance. Perfection in legal documents is desirable but many people making use of the Recorder's Office are not lawyers or skilled title examiners. Failure to successfully record can have dire results when intervening filings place a party in a secondary position.

We will appreciate your assistance in correcting the problem through the amendment of AS 44.37.025 to insure that future regulations will not contravene public policy. Thank you for your cooperation in this matter.

Very sincerely yours,

*JEF*

James E. Fisher, President  
Juneau Bar Association

ENCL

COPY

REPORT OF COMMITTEE ON OFFICE OF THE RECORDER

The Committee met on August 22nd. The work of the Committee was assigned to its members, Larry Weeks, Fred J. Baxter, and Douglas Gregg. Bruce Hansen of Title Insurance Agency was invited to attend that meeting as an ex-officio member. He was requested to make inquiries of other title companies in an effort to obtain their viewpoints on the current difficulties in recording documents in Alaska. Fred Baxter spent some time outlining the essentials of a hypothetical complaint for damages. Larry Weeks explored the question whether the Office of the Recorder can, under the language of the statute requiring him to record instruments, refuse to record in reliance on the new regulations. Fred concluded that a person suffering damages by reason of the recorder's refusal to record an instrument could frame a good cause of action in many instances. Larry concluded that there would be a good chance, in a declaratory judgment action, to secure a judgment invalidating many of the regulations in question.

Your chairman met with Mr. Hansen on November 7th, at which time Mr. Hansen had received and compiled the results of an informal poll conducted among title insurance offices throughout the state. There were over 35 written responses (some did not answer every question.) Mr. Hansen had posed 15 questions in the poll. A simple "yes" or "no" was solicited to these questions.

The top of the poll asked whether the recipient felt that the Recorder should refuse to record or file a document when the document had certain attributes. These attributes were described in the 15 questions he selected. (Poll and results annexed.) There was near unanimity on several of the 15 items, with a more or less equal division of other items. Comments of respondents are omitted from this report. Several respondents sent letters praising Mr. Hansen for taking a personal hand in the difficulty.

A summary of the poll results shows general dissatisfaction with the system currently being employed by the Recorder in rejecting documents offered for recording.

Your committee's proposed amendments to the statute would help ensure that when new rules and regulations are adopted they will be circumscribed in such manner as to prevent unreasonable or unnecessary restrictions.

The Committee agrees that there is a need for modification in the existing regulations entirely apart from our proposed amendment to AS 44.37.025 which grants rule making power to the Department of Natural Resources. It may adopt regulations "... prescribing the records to be maintained and the instruments to be recorded." The statute currently lacks any restrictions or guidelines as to the scope of that power. An amendment would

help ensure that over-zealous rule-making will not in the future impair the ability of the public to make reasonable use of the Recorders' Offices.

Such an amendment to the statute could articulate a public policy. For example, it might state something along these lines:

PREAMBLE. The Legislature recognizes and therefore finds as follows:

1. The recording of legal documents of the kind customarily recorded throughout the United States is an essential State function.
2. The time and place that a document was placed of record may well be more important than the underlying sufficiency of that document from a strictly legal standpoint.
3. The Recorder's Office exists primarily for the benefit and convenience of the general public.
4. Commercial institutions, the business community, banks, and private individuals cannot safely function without the protections afforded by the right to give public notice through the ability to record their legal documents.

BE IT ENACTED etc. etc. . . . that public policy of this State is declared as follows: to maintain a convenient means of regularly recording legal documents and to obtain information concerning existing recorded documents. In the making of rules and regulations to facilitate the legitimate administrative needs of the various recording offices, reasonable doubts shall be resolved in favor of recording rather than of rejection. The Recorder shall not make judgments as to the legality of the contents of any document offered for recording. Nevertheless, the Department of Natural Resources shall adopt such rules and regulations as it requires to control indiscriminate filings of documents that do not meet certain minimum requirements. These regulations may include but shall not be limited to the requirement for a legal description, if needed, names of parties, capacity of parties, legibility and other such reasonably required information to assure that the Recorder's Office functions in a manner consistent with the needs of the citizens of this state.

The foregoing suggestions for a statutory change to control the rule-making authority of DNR is one suggestion. The second is that a request be made to DNR for proposed new amendments to the existing provisions contained in the Alaska Administrative Code relative to recording. Your Committee recommends that at least the following amendments be specifically requested of DNR:

1. All documents valid at the time they were made shall be recorded, notwithstanding that they may not meet the requirements contained in later-adopted rules and regulations.
2. A document shall not be rejected on the ground that it serves more than a single purpose nor shall it be required that a document be recorded separately for each of the

various purposes for which it may appear to stand. (This shall not preclude the multiple recording by the offering party of a document which has several purposes.)

3. A document which makes reference to an attached exhibit shall not be rejected on the ground that the exhibit does not contain a label.
4. A document shall not be rejected on the ground that it lacks the recording information contained in another document that is being amended by the one being offered.
5. An official certified document from any governmental office in this state or a sister state shall not be rejected on the ground that it is not the original provided it is legible.
6. A document shall not be rejected on the ground that it does not specify the name of the recording district provided that that information is given to the Recorder by the person offering the document, or such information is contained in a cover letter accompanying the document. (The information so received by the Recorder may be noted by the Recorder elsewhere on the document for future reference.)

CONCLUSION

It is recognized that many of the existing regulations may be desirable in the abstract. However, uncompromising loyalty to multiple details, often of questionable importance, result in the rejection of instruments and consequent delays in giving notice. Such delays can have disastrous results. All persons who are drawing legal instruments and submitting them for recording are not attorneys or title companies. The public's right to record ought to be paramount.

DATED: December 5, 1986.

Respectfully submitted,

---

Douglas L. Gregg

---

Larry Weeks

---

Fred J. Baxter

Do you feel that the recorder should refuse to record or file a document because:

YES NO

17 15 Contains no "return to" address.

30 4 Lacks trustee name on deed of trust.

29 8 Lacks real property description.

15 17 Lacks a title reflecting its overall content.

26 10 Document not executed entirely in English.

26 9 Lacks the recording information of the original document being amended, corrected, extended, modified, or released.

16 13 Document is larger than 8 1/2 by 14 inches.

29 9 Document must state in what capacity the signatory executed the document; individually, as attorney-in-fact, partner, corporate officer, executor, administrator, guardian or trustee.

22 11 Lacks the name of the recording district in which it is to be recorded.

16 14 Lacks reference to attached exhibit/Exhibit not clearly labeled.

26 5 Lacks attached exhibit when reference is made to such.

5 27 An original, recordable document may not be accepted as an attachment to another document.

3 32 The document serves more than one purpose. Recording fee is charged separately for each purpose.

19 14 Does not name person against whom assessment is placed.

3 29 Document is valid instrument executed prior to effective date of regulations but does not conform to current regulations.

282 217

COMMENTS:

499 RESPONSES

APPROX 35 INDIVIDUAL RESPONSES

H B

285

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

April 19, 1987

The Honorable Ben Grussendorf  
Speaker of the House  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that will permit the state bond committee to allocate the federal volume limitation for the issuance of tax-exempt private activity bonds in Alaska.

Before passage of the Tax Reform Act of 1986 (P.L. 99-514) by Congress last year, there was a \$200,000,000 limit on the amount of tax-exempt industrial development bonds that could be issued in Alaska each year (26 U.S.C. 103(n)(4)) and a separate \$200,000,000 limit on the amount of tax-exempt mortgage subsidy bonds (not including veterans' mortgage bonds) that could be issued in Alaska each year (26 U.S.C. 103A(g)(4)). The Tax Reform Act of 1986 combined those two amounts into a single limit which for 1987 and 1988 will be \$200,000,000 and for subsequent years will decline below that amount. 26 U.S.C. 146(d).

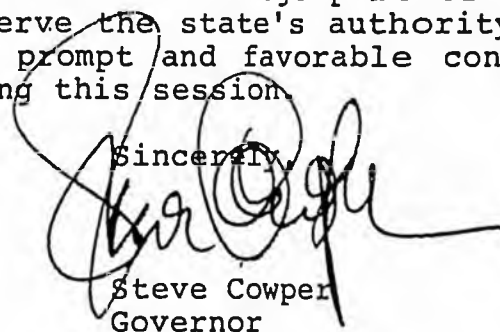
In sec. 1 of the attached bill, proposed AS 37.15.600 gives the state bond committee the authority to allocate the \$200,000,000 cap among eligible entities in Alaska, including municipalities. This changes the practice established by Governor Sheffield's November 24, 1986 executive proclamation, which allocated the cap equally between the Alaska Industrial Development Authority (AIDA) and the Alaska Housing Finance Corporation (AHFC). The amount of tax-exempt bonds actually issued each year by each of the eligible entities could be greater than that allocated by the bond committee because of various exemptions permitted by federal tax law. For example, under 26 U.S.C. 143(1), AHFC may issue \$302,500,000 of tax-exempt veterans' mortgage bonds per year, which, as mentioned earlier, are not included in the \$200,000,000 cap, and, under 26 U.S.C. 142, AIDA may issue unlimited amounts of tax-exempt bonds, not included in the cap, for certain types of "exempt facilities" -- subject, of course, to the limitations of state law.

AS 18.56.104 is repealed by sec. 2 of the bill. That statute allocates to AHFC, under 26 U.S.C. 103A, the amount of tax-exempt mortgage revenue bonds that may be issued in the state. Because that allocation is inconsistent with proposed AS 37.15.600 (sec. 1 of the bill), and because 26 U.S.C. 103A itself was repealed by the Tax Reform Act of 1986, AS 18.56.104 should be repealed.

Passage of this legislation during this legislative session is necessary to preserve the state's authority under 26 U.S.C. 146(e) over bond activity allocations. Under 26 U.S.C. 146(e)(2), the governor's authority to "proclaim" a bond activity allocation different from the one set under 26 U.S.C. 146(b) and (c) terminates on December 31, 1987. In the absence of enactment of a law this year, the allocation formula, by default, will revert to the federal formula, which allocates one-half of the total volume cap to the state and one-half, on a per capita basis, to other issuers in the state, including municipalities. 26 U.S.C. 146(b) and (c).

Under the federal formula, therefore, \$125,000,000 would, for the most part, be scattered among the 150 or so municipal entities of Alaska. Because of the small population of most of those entities, very little could be accomplished. The federally allocated caps for the 113 second class cities would, for example, range from \$113.89 for Kupreanof to \$10,225 for Bethel. The result of falling under the federal formula would be simply to waste a large part of the volume cap in Alaska. To preserve the state's authority over the allocation, I urge your prompt and favorable consideration of this legislation during this session.

Sincerely,



Steve Cowper  
Governor

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: CSHB 285 (Fin)  
Publish Date: HOUSE 5/11/87

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

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

Title: Issuance of Private Activity

Bonds \_\_\_\_\_

Sponsor: Rules by Request of Governor

Requestor: \_\_\_\_\_

Agency Affected: Department of Revenue  
BRU: Treasury

Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page for analysis.

Prepared By: Milt Barker MB  
Division: Treasury

Phone: 465-2350  
Date: April 16, 1987

Approved by Commissioner: [Signature]  
Agency: Department of Revenue

Date: 4/19/87

Distribution (by preparer):

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

HB

306

# State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION  
AND SOCIAL SERVICES  
HOUSE JUDICIARY  
HOUSE RULES



Representative Max F. Gruenberg, Jr.  
District 11  
Spenard, Upper Midtown Anchorage

P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3718  
465-4968/4986

914 CLAY COURT  
ANCHORAGE, ALASKA 99503  
(907) 276-6844

## M E M O R A N D U M

TO: Senator Jay M. Kerttula  
Chair  
Senate Judiciary Committee

FROM: Max F. Gruenberg, Jr. *MFG*

DATE: May 3, 1988

RE: SCSHB 306 (HESS), "An Act Relating to Anatomical Gifts."

I would very much appreciate it if you would schedule a hearing for SCSHB 306 (HESS) as soon as it is possible.

At the present time there are more recipients awaiting heart, liver and kidney transplants than there are organs available for transplants. SCSHB 306(HESS) will increase the availability of organs from Alaskan donors.

This bill amends the Uniform Anatomical Gift Act, AS 13.45.010-090. It makes needed changes to the Act similar to laws recently enacted in at least 19 other states.

The first major portion of the bill, found in Section 2, requires Alaskan hospitals to make organ donation requests under appropriate circumstances.

Section 2 also contains a provision which provides hospitals with immediate information about potential organ donors. This provision requires reporting from law enforcement and other emergency services who obtain donorship information about a fatality to which they respond.

The second major portion of the bill, found in Sections 7 - 9, requires that the Division of Motor Vehicles make oral

requests about organ donation when individuals register for driver's licenses, identification cards or to register their vehicles. If these transactions are made by mail, the Division will send information on organ donation with the application materials.

Representatives Grussendorf, Koponen, Martin, Boucher, Brown, Donley, Ellis, Hanley, Larson, Menard, Navarre, Pourchot, Springer, Sund, Taylor, Ulmer, Hudson, Phillips, Davis, and Zawacki have co-sponsored the bill.

I believe SCSHB 306 (HESS) has taken the best from recent developments in other state organ donor statutes and the recommendations of the Reagan Administration's Task Force on Organ Transplantation and tailored them to the particular needs and circumstances of Alaska.

When this bill is passed into law it will begin to save the lives of many Alaskans, who now await organ transplants.

Thank you very much.

Enclosure

SECTIONAL ANALYSIS OF SCSHB306 (HESS) AN ACT  
RELATING TO ANATOMICAL GIFTS

Prepared by Gruenberg

5/2/88

Section 1

Sec. 13.50.010 (a) Lowers the age at which a person can decide to become an organ donor from 19 to 18.

Section 2

Sec. 13.50.014 (a) Requires a hospital to make a request for anatomical gifts, in appropriate cases, when a person dies in the hospital.

Sec. 13.50.014 (b) Requires hospitals to develop procedures for identifying potential organ donors, making requests, and co-ordinating with organ banks.

Sec. 13.50.014 (c) Requires the Commissioner of Health and Social Services to exempt a hospital from the requirements of the act if the hospital lacks the resources to make suitable anatomical gifts available to organ banks.

Sec. 13.50.016 Requires law enforcement and medical personnel at a fatal accident scene to report that the victim is an organ donor, if they have knowledge of that fact, to the appropriate hospital personnel.

Section 3

Sec. 13.50.060 (a) Provides that the estate of an organ donor is not liable for costs associated with the retrieval, storage or transportation of an anatomical gift.

Section 4

AS.13.50.060 (c) Immunizes those that act in good faith in accordance with the Anatomical Gift Act of Alaska or the Anatomical Gift Act of another state or country from civil or criminal liability.

### Section 5

Sec. 13.50.065 Provides that the Commissioner of Health and Social Services shall adopt regulations for the implementation of the act and for the training of hospital employees who make anatomical gift requests.

### Section 6

Section 13.50.070 (8) Adds the definition of "gift" to the Anatomical Gift Act.

### Section 7, 8, and 9

Sec. 18.65.3111, 28.10.021 and 28.15.061. (d) Requires that the Division of Motor Vehicles orally ask persons applying for identification cards, drivers licenses and vehicle registration, whether they would like to become organ donors. If applications are made by mail, the Division will provide written information with the application or registration material.

H B

3 1 2



# Alaska State Legislature

## Select Committee on

### Legislative Ethics

Official Business

ANALYSIS OF SENATE CS FOR HB 312 (Judiciary)

P.O. Box V  
State Capitol  
Juneau, Alaska 99811

Section 1 AS 24.60.020 (APPLICABILITY)--Changed to reflect that covered employees are only those hired at 18A or above, not those compensated at the level of 18A or above (for example, a 16F). This also eliminates private employees of members from coverage.

Section 2 AS 24.60.050 (STATE PROGRAMS AND LOANS)--Repealed and re-enacted to allow spot audits of loans and programs so that auditors do not need to audit all 350+ state loans and programs as now required. Members and covered employees will check off their participation in discretionary loans and programs and report participation to Legislative Audit by February 1. The committee will establish the scope of the audits each year.

Section 3 AS 24.60.080 (GIFTS)--Repealed and re-enacted to clarify what gifts are acceptable. Current law allows gifts of nominal value from non-profits and gifts not meant to reward or influence. Since intent often cannot be determined, the current guidelines are untenable. This section prohibits acceptance of most gifts with a value of \$50 or more (with limited exceptions). The travel and hospitality to obtain legislative information exception must be disclosed if the value is more than \$100.

Section 4 AS 24.60.130(d) (SELECT COMMITTEE ON LEGISLATIVE ETHICS)--Ensures that the chair of the House and Senate subcommittees are members of the legislature, not a public member. It also eliminates confusion by clarifying the chair of the full committee changes on the first day of the regular session yearly.

Section 5 AS 24.60.130(e) (SELECT COMMITTEE ON LEGISLATIVE ETHICS)--Amends the method of appointment to a vacancy that occurs at the very end of the session or during the interim. It allows that a member may serve without ratification until the next session of the legislature.

Section 6 AS 24.60.130 (SELECT COMMITTEE ON LEGISLATIVE ETHICS)--Adds a new subsection that establishes that a subcommittee quorum does not exist unless at least two members are members of the legislature and a quorum of the full committee does not exist unless at least three members of the legislature are present.

Section 7 AS 24.60.170(d) (PROCEEDINGS BEFORE THE COMMITTEE)--Allows action on a complaint during the 60-day period preceding an election if two-thirds of the members of the committee so vote. Now, the only action allowed is on complaints initiated by the committee, not ones initiated by an individual.

Section 8 AS 24.60.080(e) is repealed. These provisions were incorporated in the new gift policy provided by Section 3.

Section 9 An immediate effective date.

5-0744L

Bradley  
5/2/88

Original sponsor: Pourchot

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 312 (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 standards of conduct for members  
7 of the legislature and employees of the legislature;  
8 and providing for an effective date."

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

10 \* Section 1. AS 24.60.020(a) is amended to read:

11 (a) Except as otherwise provided in this subsection, this chap-  
12 ter applies to a member of the legislature and to a person employed by  
13 the legislative branch of government. This chapter does not apply to

14 (1) a former member of the legislature or to a person  
15 formerly employed by the legislative branch of government unless the  
16 provision specifically states that it so applies;

17 (2) a person elected to the legislature who at the time of  
18 election is not a member of the legislature;

19 (3) a person employed by the legislative branch of govern-  
20 ment whose position [COMPENSATION] is established below [STEP A,]  
21 Range 18 of the state salary schedule established in AS 39.27.011(a)  
22 [;

23 (4) A PERSON EMPLOYED PRIVATELY BY A LEGISLATOR IF THE  
24 PERSON DOES NOT PERFORM LEGISLATIVE DUTIES].

25 \* Sec. 2. AS 24.60.050 is repealed and reenacted to read:

26 Sec. 24.60.050. STATE PROGRAMS AND LOANS. (a) It is not a  
27 conflict of interest for a person to whom this chapter applies to  
28 participate in a state program or to receive a loan from the state if  
29 the program or loan

1 (1) is generally available to members of the public;  
2 (2) is subject to fixed eligibility standards; and  
3 (3) requires minimal discretion in determining qualifica-  
4 tion.

5 (b) The committee shall annually review state programs and state  
6 loans and publish a list of programs and loans that, in the view of  
7 the committee,

- 8 (1) meet the standards of (a) of this section;  
9 (2) do not meet the standards of (a) of this section.

10 (c) Each February 1, each person to whom this chapter applies  
11 shall deliver to the division of legislative audit a report of each  
12 participation by the person in a state program or receipt of a state  
13 loan as of January 15 of that year for a program or loan listed in  
14 (b)(2) of this section. The division of legislative audit shall  
15 prepare an appropriate report for the presiding officer of each house  
16 that lists the name of the person and kind of program participation or  
17 loan. The lists shall be published in the supplemental journals  
18 before February 15.

19 (d) Each person to whom this chapter applies who begins par-  
20 ticipation in a state program or who receives a loan listed under  
21 (b)(2) of this section after January 15 of each year shall deliver a  
22 report of the program or loan to the committee within 30 days after  
23 the participation in the state program or receipt of a state loan  
24 begins. The report shall be published in the appropriate supplemental  
25 journal if received by the committee during the regular session of the  
26 legislature. Each report filed with the committee under this subsec-  
27 tion is open to the public.

28 (e) Each record of a state agency relating to participation in a  
29 state program or receipt of a state loan by a person to whom this

1 chapter applies may be disclosed to the committee and to the division  
2 of legislative audit.

3 (f) The committee shall annually identify the programs and loans  
4 to be audited by the division of legislative audit during the follow-  
5 ing year, including the scope of the audit. The division of legisla-  
6 tive audit shall prepare a report to the committee on the audit of the  
7 participation in state programs and the receipt of loans from the  
8 state by persons to whom this chapter applies. The report to the  
9 committee is confidential until it is released by the committee.

10 (g) In this section "state program" means a program in which  
11 tangible assets of the state or a right to use tangible assets of the  
12 state are transferred from the state to a person to whom this chapter  
13 applies.

14 \* Sec. 3. AS 24.60.080 is repealed and reenacted to read:

15 Sec. 24.60.080. GIFTS. (a) A person to whom this chapter  
16 applies may not solicit, accept, or receive, directly or indirectly, a  
17 gift in any amount, whether in the form of money, services, a loan,  
18 travel, entertainment, hospitality, promise, or other form under  
19 circumstances in which it could reasonably be inferred that the gift  
20 is intended to influence the performance of official duties, actions,  
21 or judgment.

22 (b) Except as provided in (c) of this section, the receipt of a  
23 gift worth \$50 or more by a person to whom this chapter applies is  
24 prohibited.

25 (c) Notwithstanding (b) of this section, it is not a violation  
26 of this section for a person to whom this chapter applies to accept

27 (1) hospitality with incidental transportation at the  
28 residence of a person;

29 (2) discounts that are available generally to the public or

1 to a large class of persons to which the person belongs;

2 (3) food or foodstuffs indigenous to the state that are  
3 shared generally as a cultural or social norm;

4 (4) travel and hospitality primarily for the purpose of  
5 obtaining information on matters of legislative concern;

6 (5) gifts from the family of the person.

7 (d) A person to whom this chapter applies who accepts a gift of  
8 travel and hospitality primarily for the purpose of obtaining informa-  
9 tion on matters of legislative concern shall disclose the gift if it  
10 has a value of \$100 or more. The disclosure must include the name and  
11 occupation of the person making the gift and the approximate value of  
12 the gift. Each gift required to be disclosed under this subsection  
13 shall be disclosed within 30 days of the receipt of the gift in the  
14 journal of the appropriate body or, if the legislature is not in  
15 session, to the committee. The committee shall maintain a public  
16 record of the disclosures it receives and shall forward the disclosure  
17 to the appropriate house for inclusion in the journal by the fifth day  
18 of the next regular session.

19 (e) A political contribution that is reported under AS 15.13.040  
20 is not a gift under this section.

21 \* Sec. 4. AS 24.60.130(d) is amended to read:

22 (d) The members of each subcommittee shall elect a chair who  
23 must be a member of the legislature. The chair selected by the senate  
24 subcommittee shall chair the full committee beginning the first day of  
25 the regular session in odd-numbered years and the chair selected by  
26 the house subcommittee shall chair the full committee beginning the  
27 first day of the regular session in even-numbered years.

28 \* Sec. 5. AS 24.60.130(e) is amended to read:

29 (e) Except as provided in this subsection, a [A] vacancy on the

1 committee shall be filled under (b) of this section. An individual  
2 who is appointed to fill a vacancy that occurs during the last 10 days  
3 of the first regular session of a legislature or during the interim  
4 between regular sessions of that legislature serves without concur-  
5 rence or ratification through the 10th day of the second regular  
6 session of the legislature. An individual who is appointed to fill a  
7 vacancy that occurs during the last 10 days of the second regular  
8 session of a legislature or during the interim after the second regu-  
9 lar session serves without concurrence or ratification through the  
10 convening of the first regular session of the next legislature.

11 \* Sec. 6. AS 24.60.130 is amended by adding a new subsection to read:

12 (i) A quorum of a committee established under this section  
13 consists of a majority of the members of the committee. A quorum of a  
14 subcommittee established under this section consists of a majority of  
15 the members of the subcommittee. Notwithstanding the provisions of  
16 this subsection, a committee does not have a quorum unless three  
17 legislative members are present and a subcommittee does not have a  
18 quorum unless two legislative members are present.

19 \* Sec. 7. AS 24.60.170(d) is amended to read:

20 (d) A proceeding is commenced by the filing of a complaint with  
21 the committee. A complaint may be initiated by any person. A com-  
22 plaint shall be in writing and signed under oath by the person making  
23 the complaint. A [NO] complaint, other than a complaint initiated by  
24 at least two-thirds of the members of the committee, may not be filed  
25 within a period of 60 days preceding a state primary or general elec-  
26 tion. Each proceeding [ALL PROCEEDINGS] pending before the committee  
27 on the 60th day preceding a state primary or general election is [ARE]  
28 stayed until certification of the election unless the proceeding is  
29 [PROCEEDINGS ARE] based on a complaint initiated by at least two-

1 thirds of the members of the committee or, on a complaint initiated by  
2 a person who is not a member of the committee, if two-thirds of the  
3 members of the committee direct the continuation of the proceeding.

4 The committee shall notify in writing a person against whom a com-  
5 plaint has been filed of a stay of the proceeding. If the person  
6 objects in writing to the stay the proceedings shall continue.

7 \* Sec. 8. AS 24.60.030(e) is repealed.

8 \* Sec. 9. This Act takes effect immediately under AS 01.10.070(c).  
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AN ACT REVISING THE CORPORATIONS CODE; AMENDING ALASKA RULES OF CIVIL PROCEDURE 4, 10, 11, 19, 20, 23.1, 24, 65, 73, and 82 ALASKA RULES OF APPELLATE PROCEDURE 204 and 609, AND ALASKA RULE OF EVIDENCE 803(8); AND PROVIDING FOR AN EFFECTIVE DATE.

SUMMARY OF BILL FOR FLOOR COMMENTS

- \*\* EXISTING 10.05.010 ET SEQ. THE "CORPORATIONS CODE" WAS DRAFTED IN 1953 AND TAKEN FROM OREGON LAW IN 1957. THE CODE IS 35 YEARS OLD.
- \*\* THE EXISTING CORPORATION CODE IS POORLY ORGANIZED AND HORRIBLY OUT OF DATE, ONLY MINOR CHANGES HAVING BEEN MADE BY LEGISLATIVE AMENDMENTS TO THE CODE SINCE 1957.
- \*\* THE EXISTING CODE PROVISIONS ARE ANACHRONISTIC AND DO NOT COME CLOSE TO REFLECTING COURT DECISIONS AND LEGISLATIVE CHANGES TO CORPORATION CODES IN OTHER STATES.
- \*\* BECAUSE THE EXISTING CODE IS SO POORLY DRAFTED, FAILS TO ADDRESS SO MANY LEGAL QUESTIONS A CORPORATION MUST ANSWER, IT IS DIFFICULT FOR AN ATTORNEY TO UNDERSTAND AND IMPOSSIBLE FOR A LAY PERSON TO LEARN WHEN OBLIGATIONS EXIST WHEN ONE INCORPORATES.
- \*\* HB 322 WAS DRAFTED BY THE ALASKA CODE REVISION COMMISSION OVER A PERIOD OF EIGHT YEARS. OVER 30 PUBLIC SESSIONS WERE HELD BY THE COMMISSION FOR THE PURPOSE OF TAKING PUBLIC COMMENT.
- \*\* HB 322 HAS HAD MORE THAN EIGHT LEGISLATIVE HEARINGS OVER THE PAST SIX YEARS. IT HAS BEEN THE SUBJECT OF SEMINARS AND BAR ASSOCIATION CONVENTION TOPICS.
- \*\* MORE THAN \$500,000 HAS BEEN SPENT BY THE STATE OF ALASKA ON REVISING THE CODE AND THOUSANDS OF MAN HOURS HAVE BEEN SPENT ON REVISING AND REVIEWING THE PROPOSED CODE.
- \*\* THE PROPOSED CODE HAS DRAWN HEAVILY FROM THE CORPORATION CODES OF THE STATES OF: ALASKA, CALIFORNIA, NEW YORK, OREGON, WASHINGTON AND DELEWARE.
- \*\* THE PROPOSED CODE IS A "MIDDLE OF THE ROAD" CORPORATION CODE. IT NEITHER FAVORS MANAGEMENT OR SHAREHOLDERS ALTHOUGH IT PROVIDES HANDY OPTIONAL PROVISIONS FOR THE ARTICLES OF INCORPORATION WHICH WILL ALLOW THE INCORPORATOR TO CREATE EITHER A MANAGEMENT OR SHAREHOLDER ORIENTED CORPORATION.

- \*\* THE MOST CONTROVERSIAL PROVISION OF THE PROPOSED CODE, SECTION 488 HAS BEEN REMOVED FROM THE BILL. THIS PROVISION CREATED SECONDARY LIABILITY OF OFFICERS AND DIRECTORS.
- \*\* THE PROPOSED CODE HAS BEEN WRITTEN IN LAY LANGUAGE WHENEVER POSSIBLE, USING A "COOKBOOK" APPROACH. THE INDEX IS BROKEN DOWN INTO LOGICAL SECTIONS DEALING WITH SPECIFIC MATTERS RELATING TO CORPORATIONS; E.G. INCORPORATION, OFFICERS AND DIRECTORS, AMENDMENTS AND DISSOLUTION.
- \*\* UNLIKE THE EXISTING CODE, EVERY MATTER HAVING TO DO WITH A CORPORATION IS DEALT WITH IN A LOGICALLY ORGANIZED MANNER. MANY AREAS OF CORPORATION LAW NOT EVEN MENTIONED IN THE EXISTING CODE ARE EXHAUSTIVELY DEALT WITH IN THE PROPOSED DRAFT.
- \*\* A LAY PERSON CAN READ, FIND AND UNDERSTAND THE LEGAL REQUIREMENTS FOR INCORPORATION. UNDER THE EXISTING CODE IT IS NECESSARY TO READ THE ENTIRE CODE TO MAKE SURE YOU HAVE FOUND EVERYTHING HAVING TO DO WITH A PARTICULAR TOPIC.
- \*\* BECAUSE OF THE ORGANIZATION AND CLEAR, LAY LANGUAGE OF THE PROPOSED CODE, THE SERVICES OF AN ATTORNEY WILL BE MINIMIZED.
- \*\* THE PROPOSED CODE CONTAINS IMPORTANT INCORPORATION AND REPORTING REQUIREMENTS NEEDED BY THE DIVISION OF CORPORATIONS.
- \*\* THE PROPOSED CODE ADDRESSES IMPORTANT NEEDS AND UNIQUE PROBLEMS OF ALASKA NATIVE CORPORATIONS.
- \*\* MUCH OF EXISTING ALASKA LAW IS INCLUDED IN THE PROPOSED CODE.
- \*\* THE PROPOSED CODE HAS BEEN SPECIFICALLY TAILORED TO MEET THE NEEDS OF ALASKA CORPORATIONS.
- \*\* INTERNAL INCONSISTENCIES CONTAINED IN EXISTING ALASKA LAW HAVE BEEN RESOLVED IN THE PROPOSED CODE ALONG WITH LANGUAGE THAT IS EASIER TO UNDERSTAND.
- \*\* THE PROPOSED CODE CONTAINS IMPORTANT SECTIONS NOT PRESENTLY FOUND IN THE EXISTING LAW, INCLUDING:
  - A COMPLETE FINANCIALS SECTION
  - A SECTION DEALING WITH SHAREHOLDER DERIVATIVE SHAREHOLDER ACTIONS
  - A SECTION DEALING WITH DIRECTOR CONFLICTS OF INTERESTS
  - A SECTION DEALING WITH MINORITY SHAREHOLDER RIGHTS
  - A SECTION DEALING WITH OPTIONAL PROVISIONS FOR THE ARTICLES OF INCORPORATION

\*\* THE PROPOSED CODE APPLIES TO CORPORATIONS HAVING A LARGE NUMBER OF SHAREHOLDERS OR MOM AND POP CORPORATIONS (CLOSELY HELD CORPORATIONS).

\*\* THE PROPOSED CODE HAS BEEN RECOMMENDED FOR APPROVAL IN PAST LEGISLATIVE COMMITTEE HEARINGS BY:

-- ALASKA AIRLINES, THE LARGEST CORPORATION IN ALASKA  
THE ALASKA FEDERATION OF NATIVES SUBCOMMITTEE  
THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT,  
DIVISION OF CORPORATIONS.

\*\* BECAUSE THE PROPOSED CODE IS SO CLEARLY DRAFTED AND SO DETAILED IN DEALING WITH VIRTUALLY EVERY LEGAL MATTER INVOLVING A CORPORATION, IT SHOULD ENCOURAGE OUTSIDE BUSINESS TO INCORPORATE IN ALASKA. THEY WILL EASILY AND CLEARLY ANTICIPATE THE LEGAL CONSEQUENCES OF THEIR ACTIONS USING THE CORPORATE FORM.

\*\* THE PROPOSED CODE IS REVENUE NEUTRAL. IT WILL NOT COST THE STATE ONE PENNY TO ADOPT OR IMPLEMENT.

ALASKA CODE REVISION COMMISSION  
LEGISLATIVE AFFAIRS AGENCY  
POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811

March 27, 1988

The Honorable John Sund  
Chairman, House Judiciary Committee  
Room C-122 State Capitol Building  
Juneau, Alaska 99811

Re: HB 322; An Act revising the corporations code; Amendment  
to Section 10.06.678

Dear Representative Sund:

Recently, I have had brought to my attention a problem involving inconsistency between two sections of the corporations code. These sections were taken directly, without any language change from existing Alaska law. The sections deal with the ability of a corporation to initiate an action in Alaskan courts. The sections are as follows:

Sec. 10.06.678. CONTINUED EXISTENCE OF DIS-  
SOLVED CORPORATIONS; PURPOSES; ABATEMENT OF  
ACTIONS; DISTRIBUTION OF OMITTED ASSETS.

(a) A corporation that is dissolved voluntarily or involuntarily continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it, and enabling it to collect and discharge obligations, dispose of and convey its property, and collect and divide its assets. A dissolved corporation does not continue to exist for the purpose of continuing business except so far as necessary for winding up the business.  
(emphasis supplied)

.....

Sec. 10.06.348. FAILURE TO PAY TAX OR MAKE  
REPORT AS PRECLUDING SUIT BY CORPORATION. A  
domestic or foreign corporation may not commence  
or maintain a suit, action, or proceeding in

HON. JOHN SUND  
HB 322; CORPORATIONS CODE  
PAGE 1

a court in this state without alleging and proving that it has paid its biennial corporation tax last due and has filed its biennial report for the last reporting period. . . .


As you can see, Sec. 10.06.678 allows a dissolved or dissolving corporation to initiate an action as a plaintiff while Section 10.06.848 specifically prohibits the bringing of an action if the corporation has not filed its biennial report or paid its fees one of the most common reasons for involuntary dissolution.

Since Sec. 10.06.678 implements a good policy requiring corporations to be in good standing if they wish to avail themselves of Alaskan courts, it is preferable that this section be left intact. The only real sanction that the state has over a corporation after it dissolves is to deny it the use of the courts as plaintiff. Nothing in the language would prohibit the dissolved corporation from defending an action brought against it. While Section 10.06.648 thoughtfully allows actions for the purpose of marshaling assets of the corporation, it is my belief that a better approach would be to disallow the corporation access to the courts while involuntarily dissolved. The corporation will have a two-year period in which to seek reinstatement by curing the non-compliance. The only bad result that can occur is if a statute of limitations period runs prior to the reinstatement. On balance, it seems preferable to require that a corporation be in good standing if it desires to bring an action. Of course, in any judicial supervised dissolution, this question could be easily addressed. When the dissolution is involuntary, however, a problem is created.

In summary, it is my recommendation that Section 10.06.648<sup>678</sup> be amended to delete any reference to the corporation's ability to initiate an action, thus leaving in place the proscription of Section 10.06.848. The net result will be in all cases that a corporation not in good standing will be unable to initiate an action and the internal inconsistency between the two sections will be resolved.

Please let me know if you have any questions concerning these two sections or the proposed reconciliation.

Very truly yours,

  
JOHN W. ABBOTT, Chairman

STATE OF ALASKA  
THE LEGISLATURE

POUCHY STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 16, 1988

SUBJECT: Changes to HB 322

TO: Representative John Sund, Chair  
House Judiciary Committee

FROM: Theresa L. Bannister *TB*  
Legislative Counsel

This memo accompanies the version of CSHB 322 (Judiciary) that you have requested. In addition to the changes made in the previous version, this version includes the changes that John Abbott has suggested to coordinate proposed AS 10.06.675, 10.06.678, and 10.06.848, relating to the ability of corporations to bring court actions.

Court actions brought by corporations. This version deletes from proposed AS 10.06.678 the right of dissolved corporations to prosecute actions. In addition, a sentence has been added to subsection (b) to prohibit dissolved corporations from commencing court actions, except under AS 10.06.675 (relating to recovering improper distributions). The application of proposed AS 10.06.848 has been limited to commencing actions, not maintaining actions, and to alleging and proving that at the time of commencing the action the corporation had paid its biennial tax and filed its biennial report. Subsections (b) and (c) have been added to proposed AS 10.06.848. Subsection (b) allows involuntarily dissolved corporations to sue under proposed AS 10.06.675 without having to comply with AS 10.06.848(a). Subsection (c) clarifies that a dissolved corporation can continue to maintain a suit it started if it satisfied subsection (a) when it began the suit.

If I may be of further assistance, please advise.

Attachment

TLB:gc  
WKG3:004

MAR 30 1988

ALASKA CODE REVISION COMMISSION  
LEGISLATIVE AFFAIRS AGENCY  
POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811

March 27, 1988

The Honorable John Sund  
Chairman, House Judiciary Committee  
Room C-122 State Capitol Building  
Juneau, Alaska 99811

Re: HB 322; An Act revising the corporations code.

Dear Representative Sund:

This letter is in response to your recent request for information about HB 322, the corporations code bill.

Existing AS 10.05.010 et seq., Alaska's corporation code, was adopted from Oregon law in 1957. Oregon had previously passed its version of the American Bar Association Model Act, adopted by the ABA in 1953. As such, Alaska's corporation code is approximately 35 years old, having been amended to a small degree in 1978 and 1980. Most of the amendments dealt with specific sections of the code and no attempt was made to overhaul the entire code.

The existing Title 10 is poorly organized and horribly out of date. In order to locate all sections of the code dealing with a specific corporation matter, it is necessary to review the entire title to insure that no provisions have been overlooked. The index provides little guidance to anyone seeking to determine rights and obligations, as well as corporate procedures, under the existing law. It is written in language that makes the code difficult to use by the lay person.

In response to the great need to update and organize the corporation code, the Alaska Code Revision Commission undertook a complete rewrite of the code beginning in about 1980. In furtherance of this effort, the Commission engaged the services of Professor Daniel Wm. Fessler to serve as the reporter for the code revision project. Professor Fessler teaches corporate and business organization law at the University of California, Davis law school. He is presently the reporter for Corbin On Contracts and his texts on corporations and business associations are used

HON. JOHN SUND  
HB 322; CORPORATIONS CODE  
PAGE 1

in law schools throughout the United States. The Alaska Code Revision Commission is a legislatively created commission with representatives from all three branches of government as well as public members. Work on the corporations code continued through the period 1980 to the present, with the greatest emphasis on the period from 1981 to 1984. The Commission has spent more than \$350,000.00 in consulting fees, has spent literally thousands of man hours in drafting and research, has conducted more than 30 public meetings on the code, has made several presentations to the Alaska Bar Association and attorney groups, and has had a commissioner or its consultant testify before a number of legislative committees. The draft bill has drawn the most articulate statements of corporation law from Alaska, California, New York, Oregon, Washington and Delaware. It is a "middle of the road" bill, meaning that there is a balance between a strong management or strong shareholder corporation model. By using the optional incorporation provisions found in the draft, an incorporator can easily create either a strong management or strong shareholder corporation.

The most controversial provision of the draft bill, Section 428, has been removed from the draft. This provision dealt with secondary liability of officers and directors in the event the corporation became insolvent. Other criticisms of the bill have focused upon provisions of the draft which are only restatements or inclusions of existing Alaska law. While the "financial" provisions of the draft will certainly remove some flexibility from the manner in which corporations declare dividends, they have not been the subject of much attention by businesses or attorneys.

To summarize, the following features of the draft strongly argue in favor of its adoption by the Legislature as a new code for Alaskan corporations:

1. The code uses a "cookbook" approach to organization. All general topics are included in sections dealing only with those topics. One need only look to one section to determine how to incorporate or to dissolve. Under the existing code, it is necessary to review the entire code to make sure that no provision has been overlooked.

2. The topic headings are informative as to the area of substantive law that is covered in each section. The code is written in lay language whenever possible. The design of the format and its organization has been accomplished so that the lay person can easily discover how to incorporate and how to carry on business in the corporate form, thus minimizing the need to have an attorney guide you through simple incorporation matters.

3. The draft bill contains important incorporation and reporting requirements needed by the Division of Corporations. The Commission worked closely with the Division in the drafting of its corporations bill so as to insure that the Division's needs would be addressed.

4. The draft bill addresses important needs and unique problems of Alaska native corporations. The Commission worked closely with a special subcommittee of the Alaska Federation of Natives in the drafting of the bill.

5. Much of existing Alaska law is continued in the present draft, although the language has been rewritten in many instances to make it more understandable to the lay person.

6. Because the language is concisely drafted, internal inconsistencies existing in present Alaska law have been resolved, and because of its superior organization and length, commentary indicating the source of its provisions, the draft should reduce considerably the need for litigation over the meaning of the language contained in HB 322.

7. The draft contains important new sections not currently found in Title 10. They include:

a. A new section dealing with corporation financial activities, specifically defining the conditions when a distribution is appropriate;

b. A new section dealing with shareholder derivative actions, an area only minimally covered by rules of the Alaska Supreme Court under existing law;

c. A new, expanded section dealing with all matters involved in corporation dissolution;

d. New sections dealing with conflicts of interest by directors, minority shareholder rights, rights and obligations of various classes of shares, and the purchase of shares of a deceased shareholder.

e. A number of optional provisions for the Articles that will determine corporate bias for management or shareholders. These provisions can be easily selected and inserted by the incorporator depending upon what type of corporation is desired.

8. While drawing heavily from the best laws of other states, the draft has been carefully crafted to address corporate problems unique to Alaska. The draft can be truly characterized as an Alaska drafted code. Additionally, the draft incorporates a great many of the substantive provisions found in the recently adopted ABA revised model business corporations act.

No attempt has been made by the Commission to address the extremely complex problem of corporate takeovers. Because of the radical and rapid changes that have taken place in the past or 6 years, such an undertaking would require much study and considerable expenditure of time in order to even formulate policy for dealing with takeovers.

The existing Title 10 is woefully outdated and poorly organized. It is difficult for the lay person and even the practitioner to use. It is full of anachronistic provisions and internal inconsistencies. It does not reflect changes in corporation law that have occurred over the past 35 years. It doesn't even contain much needed sections dealing with shareholder derivative actions, conflict of interest, indemnification of officers and directors or financial accountability. The draft has previously been approved by the Division of Corporations, the Alaska Federation of Natives and Alaska Airlines, the largest private (non-native) corporation in Alaska. It is organized and written so that it can be easily used by the lay person, but contains all of the features needed by the practitioner to advise a corporate client on sophisticated matters. There is nothing in the draft that would discourage outside business from choosing Alaska as a domicile for incorporation because the corporation can be tailored to the needs of any business. It should encourage businesses to locate in Alaska because the rights and obligations of the corporation are so clearly spelled out in the draft. Finally, the code should greatly decrease the need for litigation because of the lengthy and comprehensive commentary accompanying the draft.

If you have any questions concerning the draft, please contact me and I will attempt to answer those questions.

Very truly yours,

  
\_\_\_\_\_  
JOHN W. ABBOTT, Chairman

REVISION OF THE PROPOSED

ALASKA CORPORATIONS CODE

WORKING PAPER # 2

FOR

THE ALASKA CODE REVISION COMMISSION

NOVEMBER MEETING, 1984

BY

THE CODE REVISION PROJECT

231 G. STREET, # 26

DAVIS, CALIFORNIA 95616

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The following are the changes in the content of former House Bill No. 343 (Senate Bill No. 246) and the Official Comment found in the House and Senate Joint Journal Supplement under date of April 8, 1984. These changes reflect preliminary determinations made by the Alaska Code Revision Commission at its August and September, 1984, meetings and are to be formally considered for final adoption at the Commission's November meeting.

THE ALASKA CODE REVISION COMMISSION'S RECOMMENDED CONTENT  
OF A NEW ALASKA CORPORATIONS CODE:

Item 1: The letter of transmittal.

Dear :

Pursuant to the authority granted in AS 24.20.075(c), the Alaska Code Revision Commission has prepared the attached bill on the Alaska Corporations Code and requests its introduction.

For more than four years the Commission has labored to review the content of existing Alaska statutory law on profit corporations. Comment has been invited and received from numerous Alaskans including a special subcommittee set up by the Alaska Federation of Natives. Most recently, an ad hoc committee of the business law section the Bar Association examined a draft of the Commission's recommendation to the Thirteenth Legislature and made numerous formal and informal suggestions and comments. While there remain differences of opinion among some commentators, there would appear to be widespread agreement that existing legislation on this subject is in serious need of revision. Let me comment first upon the general need for revision, then describe the approach taken by the Commission, and conclude by pointing out some of the more important features of the recommendation which I am forwarding with this letter.

The need for reform of Alaska's statutory law respecting profit seeking corporations: Existing legislation on this subject, currently found as Chapter 5 of Title 10 of the Alaska Statutes, was adopted shortly after statehood and was predicated upon the then existing content of Oregon law. At that time, the State of Oregon had adopted a 1953 version of the Model Business Corporation Act, which was formulated by a committee of the American Bar Association. From the date of that enactment until the present time, this model has served as the foundation of all Alaska legislation in the corporate field. The interest of the Alaska Code Revision Commission in reviewing the current legislation was prompted by several factors. First was a recognition that the level and diversity of business operations in our state has expanded to the point that many of the basic assumptions valid in the 1950's may have produced a statute no longer serviceable as Alaska approaches the 1990's. We were aware that corporations formed in response to the Alaska Native Claims Settlement Act found themselves under provision of a statutory scheme adopted long before Congress conceived the scheme of forcing the corporate organization upon substantial segments of our population and economy. Within less than six years, the stock of these corporations will become freely transferable, special federal law provisions will expire, and Native corporations will be subject to state corporations law for all purposes. These developments and challenges convinced the Commission that no legislation enacted or recommended in other states could be blindly relied upon to best function in the conditions encountered by Alaskans.

In particular, the Commission became convinced that the Model Act, which represented an "off the rack" wholesale adoption of a statute never intended for the needs of any particular state, represented a poor choice for current Alaska law and an even poorer vehicle for our future. Other states have reached similar conclusions. Both New York and California have undertaken systematic revision of their corporate statutes in the past decade, and their work products differ significantly from the Model Act. Even as the Commission was making these determinations, the Business Law Section of the American Bar Association concluded that the Model Act was in serious need of revision. In 1983, a tentative draft of that Section's recommended content of a Revised Model Business Corporation Act was brought to our attention by our consultant. In June, 1984, a final draft of this recommended statute was circulated. The Commission has reviewed both drafts of the Revised Model Act, as well as the current content of corporate statutes in California, New York, Oregon, Washington, and Delaware. In each instance our goal has been to determine the most useful approaches to the enabling of corporate activity in Alaska and securing accountability for such conduct.

The Commission's approach to a recommended revision: In undertaking a revision of the Alaska profit seeking corporations code, the Commission found philosophical as well technical differences in the corporate legislation of sister states. De-

laware is widely regarded as a "pro management" jurisdiction with an approach to corporate regulation which places emphasis upon a strong board of directors calculated to be in a dominant position relative to the interests of shareholders. Standing at the opposite extreme is California, long regarded as a "pro shareholder" jurisdiction with statutes designed to enhance the protection of shareholders at the expense of incumbent management.

A basic enabling statute which leaves the major decisions respecting the power of shareholders and management to the individuals framing the articles of incorporation: An initial decision of the Commission was to avoid mandating either the Delaware or California extreme. Instead, the Commission sought to design a statute that was first and foremost understandable to the average individual desiring to do business in the corporate form. Both the organization and content of the new act are designed to clearly impart the minimum requirements established by the state as a price tag for the privilege of doing business in the corporate form; to set forth the choices which ought to be made by each group seeking incorporation with respect to the division of powers between shareholders and directors; and to standardize the methods of essential reporting on corporate activities made to shareholders and the state. Finally, the proposed statute has gone to substantial length to replace complex and frequently misunderstood accounting concepts with clearly defined guidelines as to the circumstances in which it is permissible to pay a dividend to shareholders. Few areas have presented greater opportunity for abuse in the past. The potentially adverse interests of corporate creditors, shareholders, and directors require that all concerned be readily able to apply the minimum standards for socially responsible behavior which are mandated by the statute.

No attempt to subject foreign corporations to the organizational framework of this recommended statute: The status of "foreign corporations" in Alaska came under close scrutiny. A foreign corporation is organized under the laws of another state or nation and thereafter seeks permission to transact business in Alaska. The degree to which these corporations ought to conform to the structure and practices mandated for entities organized under the laws of Alaska was debated in view of the recent experience in California. California legislators felt that foreign incorporation was frequently used by businesses intending to conduct the bulk of their affairs in California and intending to have as the majority of their employees and shareholders Californians, and yet organized under the laws of other jurisdictions (frequently Delaware) for the sole purpose of avoiding the public policy judgments expressed in the California General Corporations Law. To counter this perceived abuse, the 1977 California Act developed the concept of "pseudo foreign corporations" and as to these entities attempted to apply California law regarding internal management and financial operations. The result has been litigation which will shortly be before the United States Supreme Court. Prominent among the

federal constitutional objections is the charge that California is refusing to extend "full faith and credit" to the public acts of the sister state which created the "pseudo foreign" corporation.

Foreign and domestic corporations treated alike for purposes of disclosure and reporting: After substantial discussion, it was concluded that Alaska should not, for the present, follow the California approach. As noted, the proposed Alaska Corporations Code is a middle of the road statute which does not attempt to force upon domestic corporations a particular bias toward shareholder status. Under the proposed Code, it is possible to create a corporation which features rights for shareholders which go beyond even the California model. However, this is not mandatory. Because the proposed Code has left these matters up to the Alaskans forming the corporation, it was felt that the idea of foreign incorporation was less objectionable. However, the Commission is interested in making foreign corporations which elect the privilege of doing business in Alaska as responsible for their activities as are domestic (Alaska) corporations. To that end, the proposed Code has made uniform the basic reporting and disclosure requirements and has applied them to both domestic and foreign corporate entities. The organizational framework of the Code is designed to make it easy for a non-Alaskan to determine the scope of these responsibilities, since they are gathered together in a single article rather than being intermixed throughout the text, as in the existing statute.

Evolving needs of Alaska Native Corporations anticipated and accommodated within a unitary statute: The proposed Code will enable the Legislature to ensure that when the exemptions and special provisions in federal law relating to Native Corporations expire, those vital entities will be governed by statutory law developed after an extensive survey of their needs. The Commission has adopted the strongly felt sentiment of the Alaska Federation of Natives Task Force that Native corporations should not be governed by a separate code. If they are to play a vital social and economic role in advancing the interests of their shareholders, it was felt that these corporations cannot be hobbled by some unique statutory scheme causing doubt and encouraging litigation as to their powers and responsibilities.

Specific features: Two specific features of the proposed legislation are worthy of special mention. They relate to shareholder litigation and an abuse of limited liability.

Shareholder actions brought in the name of the corporation (derivative suits) were previously unregulated by statute in Alaska. In other jurisdictions few areas of corporate law have proven a greater source of conflict. On the one hand, the ability of a single shareholder to bring an action against a director or officer of that corporation and to recover for a breach of the duty of loyalty or care owed to the entity has been hailed as an essential weapon in the fight for social

responsibility. Yet it cannot be denied that such litigation is both time consuming and costly. Further, there is an unhappy history of shareholders commencing an action on the most tenuous of grounds in the hope that the defendants would buy their peace with an out of court settlement rather than stand and defend their record. Money paid in this fashion was usually pocketed by the shareholder even though the alleged injury had been to the corporation. This obvious abuse has been termed a "strike suit." The challenge is to draft a statute which facilitates the legitimate derivative action while at the same time removing the financial incentives from the strike suit. Section 10.06.435 of the proposed Code is the most balanced and specific derivative suit statute in the United States. It combines the best features of federal, California, New York, and Delaware approaches to this previously unregulated area. In a June, 1984 address before a section of the Alaska Bar Association, Professor Robert Hamilton, who acted as the reporter in framing the recommended content of the Revised Model Act, praised the Commission's efforts and work product in this important regard.

Limited liability is an extraordinary advantage afforded to those citizens who elect to do business in the corporate form. In undertaking its study, the Commission has been concerned with the balance between the legitimate interest of enterprisers against the not infrequent fact of and constant potential for abuse of other citizens who must deal, voluntarily or involuntarily, with a corporate entity. No provision of the proposed Code has drawn more interest, comment, and criticism than Section .488 of the draft introduced by Legislative Council as H.B. 343 and S.B. 246 in the Thirteenth Legislature. Because of this interest and the variety of strongly held beliefs advanced by a number of attorneys who have testified in hearings before the last Legislature, I would like to explain the Commission's perception of a social problem, recount how the Commission originally proposed to resolve that problem, and explain the changes now suggested by the Commission in that approach.

It is an assumption on the part of those doing business in the corporate form that their personal assets are insulated from creditor claims against the corporation. This insulation from personal responsibility is a privilege conferred by the state upon some citizens which works to the substantial economic injury of others. The Commission suggests that such an extraordinary privilege is not, and should not be, without limits. In the marketplace, large institutional lenders and suppliers are protected by the presence of market leverage, the advice of counsel, and significant experience. This strength allows them to insist that participants in a corporate venture considered a poor risk pledge their personal liability as guarantors of the corporate obligation. If a tort claim arises, and the victim's injury or loss exceeds the corporation's assets, there are common law doctrines to "pierce the corporate veil" and obtain the personal assets of shareholders. Contingent fee arrangements, whereby the tort victim's lawyer is paid only if there is

a recovery from the defendant, offer a reasonable probability that the tort victim can find legal representation. However, this combination of economic and legal self-help for third parties has failed to protect the class of individuals most frequently victimized. These are the creditors of businesses which are incorporated with insubstantial assets and thereafter operated for the convenience of owners for so long as this proves advantageous. Thereafter, the corporation is simply abandoned, usually without any effort to comply with the statutory procedures for corporate dissolution. When this happens, suppliers, materialmen, employees, and others who have extended informal credit to the business are left without practical recourse. Because their business relationships have been informal, it is rarely the case that they will have contracted for the personal liability of those operating behind the corporate veil. Because their unpaid claims rarely exceed a few thousand dollars, the cost of litigation makes legal remedies impractical. The net result is that these creditors absorb a loss which they then pass on to the general public in the form of higher prices for their goods and services. In the worst case, they simply go out of business, depriving the public of their presence as competitors, employers, and taxpayers in the community.

To date, the only jurisdiction which has consistently attempted to address this problem has been New York. As early as 1848, that state imposed personal liability on shareholders for any unpaid claims of corporate servants or employees. While that liability has been modified, it remains a feature of New York's Business Corporation Law. After lengthy debate, which included consultation with immediate past and present officials in the Department of Commerce and Economic Development, the Commission decided to confront the problem in a different manner. Placing liability on the shareholders was rejected because it would frequently expose individuals who may have had no active part in running the business along with those who should be held accountable. Instead, the Commission proposed a secondary liability on the part of designated directors and officers, on the theory that these individuals have either made all of the business decisions or have had it within their immediate power to discipline those who have run the corporation. As initially proposed, their liability was both secondary and limited. It was secondary in that all creditors must first exhaust the assets of the defunct corporation before any claim against directors or officers may arise. It was also limited in that Section .488 made no effort to protect parties who had a traditional opportunity to bargain for greater liability, such as banks and other institutional lenders. Liability arose only in favor of contract indebtedness for materials, supplies, inventory, or services furnished within Alaska. Further, that liability was limited to twenty-five thousand dollars on any contract indebtedness. Finally, individuals were free to preclude the liability created by Section .488 by the terms of a written contract.

Critical comment directed at Section .488 has been reviewed and given serious consideration by the Commission. While some persons felt that there should be no discipline of the limited liability privilege beyond that suggested at common law, others objected to two features of the Commission's suggestion: the very large potential for liability when the limitation was \$25,000 per creditor; and the potential that a court could interpret the original language to fix liability on an assistant secretary or some other subordinate officer. Upon reconsideration, these criticisms have been deemed valid and accordingly the Commission now recommends a significantly altered provision on secondary liability for directors and certain officers.

As currently revised, the recommended provision on secondary liability differs in three important particulars from the one submitted to the Thirteenth Legislature. First, sub-section (a) has been amended to make clear that the only persons potentially liable are directors (or their delegates) and three specific officers in any Alaska corporation. In the instance of a foreign corporation doing in business in Alaska, if the law of its state of incorporation permits substitutes for the officers who would otherwise have liability, such persons are liable to Alaskans for debts arising from transactions in our state. The objection that any employee performing at the command of the corporate president might be liable is thus expressly precluded. Second, the period of liability for an incorporator is now clearly defined by the new sub-section (b). Third, the maximum exposure has been reduced by 90% to \$2,500 per claimant, rather than \$25,000, by the amended content of sub-section (d). As redrafted, the liability preserved by this provision will work only in favor of the smallest creditors for whom the cost of litigation would be totally out of proportion to any vindication of their just claims.

As the Council is doubtless aware, prior versions of this proposed Alaska Corporations Code were introduced in March, 1982, and March, 1983. The press of business precluded its consideration in the first session of the Thirteenth Legislature. In the second session, the recommended Code was reported with a "do pass" recommendation out of the Senate Labor and Commerce Committee. It had not moved further at the expiration of the Thirteenth Legislature. The Commission has attempted to find in such circumstances further opportunity to refine the proposed Code and to expose its contents to interested segments of the community. In addition to the activities summarized in my letter of March 3, 1983, members of the Commission appeared as witnesses before both House and Senate Committees. Representatives of the Alaska Federation of Natives also appeared expressing orally their support for passage of this Code, which they have asserted in writing to members of the leadership in both bodies. The initial and final drafts of the proposed Revised Model Business Corporation Act were carefully reviewed, as well as the comments of its reporter who appeared in Anchorage during the June convention of the Alaska Bar Association. Many positive suggestions were found in the comments received

from numerous quarters. The original recommended content of the Alaska Corporations Code continued the strong influence of the original Model Act. In a much simplified and more understandable organizational scheme, that influence continues, but is now heavily augmented by the work product of the drafters of the Revised Model Act. The Commission recommends that the organizational scheme of the new Code be adapted from that of the New York Business Corporation Law. In contrast to the more elaborate organization adopted for the Revised Model Act, the attached proposal draws related provisions of the statute together into twelve substantive articles creating a comprehensive and easily understandable organization.

Respectfully submitted,

John W. Abbott, Chairman  
Alaska Code Revision  
Commission

Attachment

#### ARTICLE 4: Corporate Finance

Item 2. Restraints upon distributions: at page 71 the Official Comment should be modified and expanded as follows:

Sec.  
358-383 Official Comment to ACC Sections 10.06.358-383. IN-

TRODUCTION: STATUTORY RESTRAINTS UPON THE DISSIPATION OF CORPORATE ASSETS -- THE "FINANCIALS" OF THE ALASKA CORPORATIONS CODE. [The official comment, pp. 64-78 of the Journal Supplement should be amended as follows: the text from page 64 up to the first full paragraph on page 71 remains un-

changed. The first full paragraph on page 71 should be modified and expanded as follows]:

In 1980, the Alaska Code Revision Commission concluded that both the substantive scheme and deference to the accounting profession pioneered in California were worthy models for the new Alaska Corporations Code. While this recommendation was pending in the Legislature, a final recommended draft of the Revised Model Business Corporation Act was published. The official comment to Section 6.40 makes it clear that the framers of that recommended statute agree that classical concepts of legal accounting predicated upon various types of "surplus" are to be discarded. However, the Revised Model Act relies upon an equitable insolvency test rather than the ratio/assets surplus standard pioneered in California. Further, the Revised Model Act would not require utilization of Generally Accepted Accounting Principles, insisting only upon "practices and principles that are reasonable in the circumstances. . . ."

In 1984, the Commission considered the position of the framers of the Revised Model Act and partially concurred in their judgment. They rejected total reliance upon an equitable insolvency test and continued to recommend adoption of the ratio/assets surplus test now embodied in Section .358. The Commission noted that the ratio/assets surplus test of Section 500 of

the California General Corporation Law has been in effect in that jurisdiction since 1977 and appears quite successful. Not a single reported case exists suggesting that the concept is difficult to comprehend or apply. By contrast, there is no experience with the test suggested by the Revised Model Act. Finally, the protection of creditors afforded by requiring the retention of five dollars in assets for every four dollars in corporate liabilities was judged part of the prudent balance sought between the legitimate quest for entrepreneurial activity and fiscal responsibility. Under the scheme of the ACC, the criteria of Section .358 are supplemented by the equitable insolvency test embodied in Section .360, and the protection of liquidation preferences for senior shares contained in Section .363.

However, Section .970(5) was amended to remove the general insistence upon the obligatory utilization of Generally Accepted Accounting Principles. For an elaboration of the standard now embodied in that section, see the specific official comment, infra. However, note that in certain sections (e.g. .358(c)), observance of Generally Accepted Accounting Principles for specific determinations is required. Accordingly, with the modifications hereinafter noted, Alaska has become the second state to adopt the ratio/assets surplus test.

[The remaining text beginning with the paragraph THE TEST on page

71 through page 78 is unchanged.]

## ARTICLE 5. SHAREHOLDERS

Item 3. Notice Requirements: The Commission has voted to alter the notice formula for shareholder action from the minimum of twenty and maximum of fifty days contained in HB 343. Section 7.05 of the Revised Model Business Corporation Act suggests a formula of a ten day minimum and a sixty day maximum. In reconsidering its position the Commission affirmed the twenty day minimum notice period as accommodating the physical and climactic barriers to communication in Alaska. However, the sixty day maximum period for effective notice was deemed a reasonable substitute for the fifty day period and adopted in the interest of harmony with the Revised Model Act.

CHANGES: Two provisions of HB 343 are in need of amendment to reflect the altered notice formula.

Section 10.06.408. CLOSING OF TRANSFER BOOKS AND FIXING RECORD DATE. [p. 36 of HB 343 should be amended as follows]:

(a) To determine the shareholders entitled to notice of or to vote at a meeting of shareholders or an adjournment of a meeting, or to determine the shareholders entitled to receive payment of a dividend, or to determine the shareholders for any other proper purpose, the board of a corporation may provide that the stock transfer books shall be closed for a stated period not exceeding 60 70 days. If the stock transfer books are closed to determine

shareholders entitled to notice of or to vote at a meeting of shareholders, they shall be closed for at least 20 days immediately preceding the meeting.

(b) Instead of closing the stock transfer books, the bylaws or, in the absence of an applicable bylaw, the board may fix a date as the record date for the determination of shareholders. This record date may not be more than ~~59~~ 60 days and, in the case of a meeting of shareholders, not less than 20 days before the date on which the particular action requiring the determination of shareholders is to be taken. If the stock transfer books are not closed and a record date is not fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders or for the determination of shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board declaring the dividend is adopted, is the record date for the determination of shareholders. When a determination of shareholders entitled to vote at a meeting of shareholders has been made as provided in this section, the determination applies to an adjournment of the meeting of shareholders.

Sec.  
408 Official Comment to ACC Section 10.06.408 CLOSING OF  
TRANSFER BOOKS AND FIXING RECORD DATE. [The official  
comment, pp. 91-92 of the Journal Supplement should be  
amended to read as follows]:

SCOPE: One of the essential attributes of corpo-

rate status is the free transferability of share interests. Such ongoing transactions threaten havoc when it is necessary to determine the identity of shareholders who may be entitled to vote in an annual or special meeting or to participate in a distribution.

Sec. 408 provides three alternatives for effecting a determination as to share membership for these purposes. Under the first alternative the board may simply close the stock transfer books. Such a closure inhibits trading in the shares and hence the statutory limitation on the period of time during which the transfer books may be closed (60 70 days). A second alternative is for the board to simply declare a "record date" for such determination. Shares traded after that date may be effectively transferred, but the corporation is under no obligation to recognize the transferee for the purpose for which the record date has been declared. Here, too, sec. 408(b) imposes a maximum of 60 days before the action requiring determination of shareholders upon the power of the board to close the stock transfer books. Finally, if the board had neither closed the transfer books nor declared a record date, the default mode for determining the shareholders is to adopt the date on which the notice of the meeting is called or the resolution of the board declaring the distribution is adopted. Shareholders of record on those dates only would be recognized.

CHANGE IN FORMER ALASKA LAW: ACC sec. 408 is predicated upon Section 30 of the Model Act with two modifications. Section 7.05 of the Revised Model Business Corporation Act with one modification. In both subsections (a) and (b), the Revised Model Act's ten day minimum period before the action is taken has been extended to twenty (20) days in sec. 408. Former AS 10.05.144 had utilized the Model Act's ten day period. The change in ACC sec. 408 was adopted in order to further the general use of twenty day notice periods which are deemed a more realistic accommodation to physical and climactic barriers to communication in Alaska. Seventy and sixty day limitations have replaced the fifty day formula in former Alaska law respecting the closing of transfer books or fixing of a record date. This change brings Alaska law into compliance with the terms of the Revised Model Business Corporation Act, Section 7.05. Finally, the ACC follows the Revised Model Act in making a shareholder list compiled from the closed transfer books or by virtue of the record date effective as to any adjournment of the meeting. The phrase in former AS 10.05.144 which modified this concept in the event of closure of the stock transfer books has been eliminated.

Item 4. Notice requirements for shareholder meetings:

Sec. 10.06.410. NOTICE OF SHAREHOLDERS' MEETINGS. [pp.36-

37 of HB 343 should be amended to read as follows:] Written or printed notice stating the place, day, and hour of the meeting and, in the case of a special meeting, the purpose for which the meeting is called, shall be delivered not less than 20 or more than 50 60 days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, the officer, or persons calling the meeting, to each shareholder of record entitled to vote at the meeting. If mailed, the notice is considered delivered when deposited with postage prepaid in the United States mail addressed to the shareholder at the address of the shareholder as it appears on the stock transfer books of the corporation, or, if the shareholder shall have filed with the secretary of the corporation a written request that notice be mailed to some other address, then directed to that address. An affidavit of the secretary or other person giving the notice or of a transfer agent of the corporation that the notice required by this section has been given shall be prima facie evidence of the facts therein stated.

Sec.  
410 Official Comment to ACC Section 10.06.410 NOTICE OF SHAREHOLDER'S MEETINGS. [The official comment at pp. 92-93 of the Journal Supplement should be amended to read as follows]:

SCOPE: ACC sec. 410 establishes the minimum content and the minimum and maximum time restraints on written or printed notice for annual or special meetings. Such notice must be "delivered" not less than

twenty (20) nor more than  ~~fifty (50)~~  sixty (60) days before the date of either an annual or special meeting. In every instance the notice must state the place, day, and hour of the meeting. With respect to special meetings only, the notice must also declare the purpose(s) for which the shareholders are being convened. Note that the general provisions of sec. 410 are subject to specific notice requirements of other sections of this Chapter.

Assuming that there has been compliance with the terms of this section, the risk of delay or non-delivery of the notice by the postal authorities is borne by the addressee. An affidavit which complies with this section is prima facie evidence that such steps have been taken and notice thereby effected. Such a prima facie showing may be overcome by contrary evidence adduced to the satisfaction of the trial court.

CHANGE IN FORMER ALASKA LAW: ACC sec. 410 is predicated upon Model Act Section 29 Section 7.05 of the Revised Model Business Corporation Act, Section 605 of the New York Business Corporation Law, and former AS 10.05.141. The only change made is to set a Unlike the recommended content of the RMBCA, sec. 410 sets a twenty (20) day minimum for the delivery of notice as opposed to the previously stated ten (10) day minimum. The sixty (60) day maximum was adopted from the RMBCA. The provision detailing the address to be used in

communicating with shareholders and the prima facie evidence of compliance achieved by the officer's affidavit are taken from the BCL. Again, the intention is to establish a general policy in the AGG to use twenty (20) day notice periods.

Item 5. Civil liability consequences for failure or refusal to accord inspection rights: The Commissioners have voted to retain the policy that the Alaska Corporations Code should not prescribe a duty and then remain silent on the consequences of its non-observance. Accordingly, the sanctions in ACC Sections .430 and .433 are to be retained as set forth in HB 343. Section .413 is to be brought into harmony with this policy by inclusion of a penalty of \$5,000 which is to be paid to the shareholder or shareholders jointly making written request for performance of the duties relating to the preparation and availability of the voting list.

Sec. 10.06.413. VOTING LIST; LIABILITY. [p. 37-38 of HB 343 should be amended as follows]: (a) At least 20 days before each meeting of shareholders, the officer or agent having charge of the stock transfer books for shares of a corporation shall make a list of the shareholders entitled to vote at the meeting or an adjournment of the meeting arranged in alphabetical order, with the address of and the number of shares held by each shareholder. The list shall be kept on file at the registered office of the corporation and is subject to inspection by a shareholder or the agent or attorney of a shareholder at any time during

usual business hours for a period of 20 days before the meeting. The list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of a shareholder during the meeting. The original stock transfer books are prima facie evidence as to the shareholders who are entitled to examine the list or transfer books or to vote at a meeting of shareholders.

(b) Failure to comply with the requirements of this section does not affect the validity of the action taken at the meeting.

(c) An officer or agent having charge of the stock transfer books who fails to prepare the list of shareholders, keep it on file for a period of 20 days, or produce and keep it open for inspection at the meeting, as provided in this section, is liable to a shareholder suffering damage because of the failure to the extent of the damage, for a penalty of \$5,000. This sum shall be paid to the shareholder or shareholders jointly making written request for performance of the duties imposed by this section.

Sec.

413 Official Comment to ACC Section 10.06.413.

VOTING

LIST; LIABILITY. [The Official Comment, pp. 93-94 of the Journal Supplement, should be amended to read as follows]:

SCOPE: ACC sec. 413 counters a potential disposition on the part of incumbent management ~~counter incumbent~~ management's disposition to keep to itself the shareholder list showing the names, addresses, and

number of shares held by each shareholder. The historical inclination of management not to favor access to this information is ~~the recognition~~ rooted in recognition that it is the precise data which a shareholder intent upon challenging incumbents would desire to obtain in order to calculate strategy. Sec. 413 mandates that at least twenty days prior to each meeting (annual or special) of the shareholders the officer or agent having charge of the stock transfer books shall make a list of all shareholders entitled to vote (sec. 408), and that this list shall be kept open and subject to inspection by a shareholder at any time during usual business hours for a period of twenty days prior to the meeting. The right of inspection prior to the meeting may be exercised by an agent or attorney of the shareholder. Once the meeting is convened, the shareholder list shall be kept open for inspection by shareholders.

Sec. 413(c) imposes a civil liability penalty of \$5,000 upon an officer or agent having charge of the stock transfer books who refuses to prepare, pre-exhibit, and exhibit such a list as provided by sec. 413(a). Such liability shall run to any shareholder(s) able to establish damage as a consequence of this failure or refusal and shall be in such amount as the court shall determine necessary to compensate said shareholder(s). Such a penalty shall be paid to the shareholder or shareholders jointly making written request for performance of the duties imposed by this

section. Note that a written request is not necessary to invoke the powers of inspection conferred by this section but is required as a predicate for gaining the remedy imposed by sec. 413(c).

CHANGE IN FORMER ALASKA LAW: ACC sec. 413 is predicated upon former AS 10.05.147 which was based on the pre-1962 version of Section 31 of the Model Act. The legislature has elected to retain the explicit requirement of an exposition of the shareholder list for a period prior to the meeting. The ten day minimum period of former AS 10.05.147 has been supplanted by a twenty (20) day minimum period in ACC sec. 413.

ACC sec. 413(c) is based upon the Model Act Section 31, and former AS 10.05.150. There are two changes. One The only change reflects the enlargement of the pre-exhibition period for ten (10) to twenty (20) days. The second change inheres in the provision of a \$5,000 penalty as a civil liability for failure to observe the duties prescribed by this section in the face of a written request that this be done. In enacting this section, it is the intention of the legislature to grant to shareholders an absolute right of inspection during the stipulated periods. Such right is not subject to the "proper purpose" line of common law authorities.

## ARTICLE 6. DIRECTORS AND OFFICERS

Item 6. Delegation of board functions: The Commission has opted to preclude substitution of individuals for the directors required by the ACC. Delegation of functions otherwise fixed by the statute upon the directors is permitted if done pursuant to provisions in the articles of incorporation. Both Section .450 and its official comment have been redrafted to make it clear that the directors remain ultimately liable for the powers and duties performed by delegates and do not evade liability for their faithful discharge by setting up an immediate performance obligation in a delegate.

Section 10.06.450. BOARD OF DIRECTORS; DUTY OF CARE; RIGHT OF INSPECTION; FAILURE TO DISSENT. [p. 52-53 of HB 343 should be amended as follows]: (a) All corporate powers shall be exercised by or under the authority of, and the business and affairs of a corporation shall be managed under the direction of, a board of directors except as may be otherwise provided in this chapter. ~~or the articles incorporation.~~ If a provision is made under AS 10.06.468 or in the articles, the powers, duties, privileges, and liabilities conferred or imposed upon the board by this chapter shall be exercised, performed, extended, and assumed to the extent and by the person or persons to whom they are delegated as provided in AS 10.06.468 or in the articles. Directors need not be residents of this state or shareholders of the corporation unless required by the articles or bylaws. The articles or bylaws may prescribe other qualification for directors. The board may fix the compensation of directors unless otherwise provided in the articles.

(b) [no change]

(c) [no change]

(d) [no change]

Sec.  
450

Official Comment to ACC Section 10.06.450. BOARD OF DIRECTORS; DUTY OF CARE; RIGHT OF INSPECTION; FAILURE TO DISSENT. [The official comment at pp. 119-121 of the Journal Supplement should be amended to read as follows]:

SCOPE: This section replaces former AS 10.05.174 (Board of Directors), .222 (Presumption of Consent of Director and Filing of Dissent), and .219 (Effect of Good Faith Reliance on Financial Statements). These Alaska provisions were drawn from the pre-1969 version of Model Act Sections 35 and 48. Sec. 450 gathers into one place basic provisions on four major questions: (1) the exercise and potential delegation of board functions; (2) the articulation of a standard for the discharge of the duty of care which must be observed by directors and their right to rely upon certain information, opinions, reports, or statements from officers, experts, or committees of the board on which they do not serve; (3) the grant of an absolute right of inspection to every director as to all corporate books, records, and documents of every kind together with the right to use an agent or attorney and the right to make copies or extracts of such information; and (4) the