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consequences of a director's failure to dissent as to any action taken by the board at a meeting at which ~~he~~ such director is present.

Note that under subsection (a), the articles are competent to delegate the powers and duties imposed by this chapter on directors. If the delegation is by the board to a committee consisting of some, but not all of the directors, it is governed by sec. 468. If the delegation is pursuant to the terms of the articles under sec. 450(a), such provisions may also extend to the delegates the privileges and liabilities conferred and exacted in this chapter. However, the mere fact of delegation does not relieve the directors of ultimate responsibility for the faithful discharge of their statutory responsibilities or the duties of care and loyalty owed to the corporation. In the event that a delegate acts or fails to act in a manner which would, in the absence of delegation, constitute an actionable cause against the director or directors, such delegate is liable to the corporation as an intended third party beneficiary of the delegated duty. The delegating directors are liable to the same extent as if they had remained primarily responsible for the act or omission. Recovery by the corporation of full damages against the delegate would exonerate the delegating directors. If recovery is sought directly against the delegating directors, they would have a right to implead the breaching delegate(s) and, upon satisfaction of any judgment to the corporation, be subrogated to its cause of action.

This chapter does not permit the substitution of persons other than directors as the individuals ultimately liable for the exercise of corporate powers or in the direction of corporate affairs. Because they remain ultimately liable, directors who have delegated their authority pursuant to provisions of the articles retain the full rights of inspection provided in subsection (d), nor are they deprived of their right to rely upon the sources specified in subsection (b).

CHANGE IN FORMER ALASKA LAW: Subsection (a) is premised upon the 1977 revision of Section 35 of the Model Act. Unlike the content of former AS 10.05.174, which required that the business and affairs of a corporation be managed by the board, sec. 450 permits board functions to be delegated to committees consisting of some but not all of the directors (see, sec. 468) or to nondirectors so long as such delegation is provided in this Chapter ~~or in the articles~~. Like former Alaska law, sec. 450 is not intended to permit substitution of individuals for directors as persons bearing ultimate responsibility and liability for the control and management of the corporation. Sec. 450 does represent a compromise between the traditional insistence upon governance by the board of directors and the recent position assumed by states following Delaware which would make it competent for a corporation to function without any board at all by substituting in designees the powers and responsibilities of directors. Under sec. 450 there must be a board of directors. There is virtually no substantive limitation upon the extent of the power of delegation contained in sec. 450. Note that the rights, privileges, and duties which the Chapter fixes upon directors devolve upon the delegates. ~~ACC sec. 450 differs from the Model Act language to make it clear that with this delegation flows the liabilities which the Chapter otherwise imposed upon the directors. This modification follows GCL 300(d).~~

Subsection (b) [balance of the text of the comment at pages 120-121 is to be retained as in the Journal Supplement].

Item 7. Minimum size of board committees: The Commissioners voted to adopt the RMBCA position (Section 8.25(a)) and require that any committee of the board have a minimum of two directors.

Section 10.06.468. EXECUTIVE AND OTHER BOARD COMMITTEES. [pp. 59-60 of HB 343 should be amended as follows]: (a) If authorized by the articles or the bylaws of the corporation, the board, by resolution adopted by a majority of the entire board, may designate from among its members an executive committee and other committees of the board. Unless the number of directors fixed in accordance with AS 10.06.453 is less than three, each committee shall have two or more members, who serve at the pleasure of the board of directors. Each committee, to the extent provided in the resolution or the articles or bylaws of the corporation, has the authority of the board, except that a committee may not

(1) [balance of Section .468 is to remain unchanged from the text found at pages 59-61 of HB 343.]

Sec.
468 Official Comment to ACC Section 10.06.468. EXECUTIVE AND OTHER BOARD COMMITTEES. [The official comment at pp. 128-129 of the Journal Supplement should be amended to read as follows]:

SCOPE: Sec. 468 permits inclusion in the articles or bylaws of provisions empowering the board to set up executive and other committees and to delegate, with noted exceptions, to such committee(s) the powers otherwise vested in the board. The duty of care of directors who are not members of such committees is particularized in sec. 468(b).

Note that sec. 468(a) incorporates the suggestion of the Revised Model Business Corporation Act respecting a minimum composition of board committees. It works an accommodation between the desire to streamline board functions via delegation and the necessity of protecting a meaningful role for representatives of minority interests. Under sec. 468, protection for the minority is found in two provisions: first, the elimination of "one director" committees in any corporation which is required to have a board of three members; and second, reservation of enumerated, critical board decisions which may not be delegated.

Under the terms of the coordinated coverage of sec. 453, if the corporation is required to have a board of at least three directors, then any committee created by the articles or bylaws must have a minimum membership of two. If the number of shareholders is two, then under sec. 453, the number of directors need not exceed the number of shareholders. Under sec. 468(a), a corporation with a two person board could provide in its articles or bylaws for one or more one director committees. The interests of the non-member director are protected since the committee could not be created nor could its jurisdiction be defined without the active consent of both members of a two person board. On such a board one of the directors could never constitute the "majority."

CHANGE IN FORMER ALASKA LAW: ACC sec. 468 is a modified version of ~~Section 42 of the Model Act~~ Section 8.25 of the Revised Model Business Corporation Act. It clarifies Alaska law, as set out in former AS 10.05.195, in several particulars. Sec. 468(a) departs from AS 10.05.195 by a clear indication that there may be such other committees of the board, in addition to an executive committee, as may be provided in the articles or bylaws of the corporation. Coordination with sec. 453 precludes one-director committees in any corporation required to have a board of at least three members. ~~Also dropped is the former requirement that two or more directors had to constitute the executive committee.~~ Sec. 468(a) continues to reflect the policy of old .195 in the requirement that the resolution setting up a committee permitted under the articles or bylaws be adopted by an absolute majority of the board and not merely of the directors then in office.

The most significant change worked by sec. 468(a) over former .195 is in the enumerated subjects which may not be delegated by the full board to any committee. This list accords with the suggested content of Section 8.25(e) of the Revised Model Business Corporation Act. The only modification ~~from new Model Act Section 42~~ is with respect to sec. 468(a)(6) on the capitalization of retained earnings and sec. 468(a)(9) on transactions with interested directors.

Sec. 468(b) expands upon the former provision of .195 with regard to a declaration that the directors who do not serve on board committees are not, by virtue of nonservice, relieved of their duties of care and loyalty with respect to the work of such committees, and that this includes the express recognition of a duty of reasonable inquiry which the ACC has engrafted onto the formulation of the classical and Revised Model

Acts. See, Heit v. Bixby, 276 F.Supp. 217, 231 (E.D. Mo. 1967).

Item 8. Secondary Liability of Officers and Directors: The Commission modified Section .488 of HB 343 on the secondary liability of officers and directors in three particulars. First, subsection (a) has been amended to make clear that the only persons potentially liable are directors (or their delegates) and "officers" (or their substitutes). The objection that an assistant secretary, performing at the command of the corporate president, might be liable, is thus expressly excluded. Second, the period of liability for an incorporator is now clearly defined by new subsection (b). Third, the maximum exposure provided in subsection (d) has been reduced by 90% to $2,500 per claimant, ratner than $25,000 as provided in HB 343.

Sec. 10.06.488. SECONDARY LIABILITY OF DIRECTORS AND OFFICERS. [pp. 67-68 of HB 343 should be amended as follows:] (a) Except as exempted in ~~(b)~~ (c) of this section and limited in ~~(c)~~ (d) of this section, incorporators, directors, other than a provisional director appointed under AS 10.06.640, or individuals exercising the authority of directors as permitted in AS 10.06.450(a), and the president, secretary, and treasurer in a domestic or foreign corporation, or individuals performing the functions of these offices in a ~~domestic or~~ foreign corporation doing business in this state, are, to the extent that the assets of the corporate entity prove insufficient, jointly and severally liable for contract indebtedness, whether formal or otherwise, for materials, supplies, inventory, or services furnished in the state during their period of service.

(b) For the purpose of this section, the period of service of an incorporator shall conclude with the designation (AS 10.06.210(3)) or election (AS 10.06.225) of initial directors.

~~(b)~~(c) The terms of a written contract between a corporation and a third party may modify or preclude the liability created by this section.

~~(c)~~(d) Notwithstanding division by assignment or otherwise, the total secondary liability created by this section for the benefit of a creditor under (a) of this section may not exceed ~~$25,000~~ $2,500 exclusive of costs of collection.

~~(d)~~(e) A party against whom a claim is asserted under this section is entitled to contribution from other persons enumerated in (a) of this section.

Sec. 488 Official Comment to ACC Section 10.06.488. SECONDARY LIABILITY OF DIRECTORS AND OFFICERS. [The official comment to Section .488 at pp. 140-143 of the Journal Supplement should be modified as follows:]

SCOPE: [The text at page 140 of the Journal Supplement through the conclusion of the paragraph which carries over to page 141 is to remain unchanged.]

Under sec. 488(a) officer liability is imposed upon the president, secretary and treasurer of an

Alaska or foreign corporation or upon individuals performing the functions of those offices in a foreign corporation. The reason for restricting the last reference to foreign corporations is because the ACC requires corporations to have these offices although a person may occupy any two offices except those of president and secretary. See, sec. 483(a). In some jurisdictions corporate offices are optional in which case it would be possible to form a corporation without a president, secretary or treasurer. If such a formation decision had been made, the liability imposed by sec. 488 would be fixed upon such person or persons who had performed functions which, were it an Alaska corporation, would have been appropriate to those offices.

If, in disregard of their duty to call an organization meeting and elect initial directors (ACC sec. 2235), incorporators were to transact business on behalf of an entity for which there had been issued a certificate of incorporation, they, too, would incur the potential personal liability created by ~~this section,~~ sec. 488(a). As provided in sec. 488(b), for the purpose of such liability their period of service would conclude with the designation or election of initial directors.

Traditional concepts of "limited liability" are venerated in the explicit provision that sec. 488 creates a "secondary liability" on the part of the designated directors, incorporators, and officers.

Funds invested by shareholders as well as accumulated earnings remain the first line of recourse for the contract indebtedness of the corporate entity. Exhaustion of that source, as discussed in Arenwald v. Douglas Machinery Co., 183 Misc. 627, 50 N.Y.S.2d 39 (1944), is a condition precedent to the assertion of the liability created by sec. 488. Further vindication of traditional limited liability is reflected in the imposition of ~~$25,000~~ $2,500 (excluding all costs of collection) as a ceiling upon this secondary liability. This limitation reflects two policy judgments: (1) for sums greater than this amount, the third party should bear the risk of negotiating for liability greater than that of corporate assets; and, (2) for sums in excess of ~~$25,000~~ $2,500, the costs of litigation do not pragmatically preclude the assertion of "thin capitalization" or other abuses of the corporate norm which would, if proven, establish liability upon certain or all of the shareholders. The intention has been to preserve these common law remedies in addition to the liability created in sec. 488. In this connection see, Mohawk Oil Co. v. McKibben, 667 P.2d 1223 (AK 1983); Eagle Air v. Corroon & Black/Dawson & Co., 648 P.2d 1000 (AK 1982).

[The balance of the comment, including the Change in Former Alaska Law discussion at page 143, remains unchanged from that printed in the Journal Supplement.]

Item 9. Indemnification---advances to defendants: The Commissioners voted to adopt the more restrictive provision on advances set forth in Section 8.53(a) of the Revised Model Business Corporation Act in lieu of the current content of ACC Section .490(e).

Section 10.06.490. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS: INSURANCE. [Pp. 68-70 of HB 343 should be amended as follows]: (a) [unchanged from current text].

(b) [unchanged from current text].

(c) [unchanged from current text].

(d) [unchanged from current text].

(e) ~~Expenses incurred in defending a civil or criminal action or proceeding may be paid by the corporation in advance of the final disposition of the action or proceeding as authorized in the manner provided in (d) of this section upon receipt of an undertaking by or on behalf of the director, officer, employee, or agent to repay the amount if it is ultimately determined that the person is not entitled to be indemnified by the corporation as authorized in this section.~~

(e) Reasonable expenses incurred in defending a civil or criminal action or proceeding may be paid or reimbursed by the corporation in advance of the final disposition in the manner provided in (d) of this section if:

(1) in the case of a director or officer, the corporation is furnished with a written affirmation of good faith belief that the standard of conduct described in AS

10.06.450(b) or AS 10.06.483(e) of this chapter has been met;

(2) the director, officer, employee, or agent furnishes the corporation a written unlimited general undertaking, executed personally or on behalf of the individual, to repay the advance if it is ultimately determined that an applicable standard of conduct was not met; and

(3) a determination is made that the facts then known to those making the determination would not preclude indemnification under this chapter.

(f) [unchanged from current text].

(g) [unchanged from current text].

Sec. 490 Official Comment to ACC Section 10.06.490. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS: INSURANCE. [The official comment at pp. 143-146 of the Journal Supplement should be amended to read as follows]:

SCOPE: [unchanged from text found at pages 143-144.]

CHANGE IN FORMER ALASKA LAW: [the text at pages 144, 145, through the first full paragraph at page 146 are to be left unchanged].

~~Sec. 490(e), governing the terms and circumstances under which the corporation may advance funds against the expenses incurred in defending either a direct or derivative action or criminal proceeding, differs from former AS 10.05.010(e). Former Alaska law left such a~~

~~decision to "the board of directors." Recognizing that there may be circumstances in which there is not a disinterested absolute majority of the board able (or willing) to act, sec. 490(e) follows the Model Act in making this decision delegable as under sec. 490(d).~~

Sec. 490(e) governs the circumstances and specifies the steps which must be observed before a corporation may advance expenses to a director, officer, employee, or agent who is a defendant in a civil or criminal action or proceeding. The provisions are adapted from Section 8.53 of the Revised Model Business Corporation Act.

Under sec. 490(e), a three step procedure must be observed in requesting and granting an advance of corporate assets. First, assuming that a determination has been arrived at under Sec. 490(d), the director or officer must furnish the corporation with a written affirmation of good faith belief that the applicable standard of care has been met. In the instance of a director that standard is set forth in sec. 450(b). The standard of care for corporate officers is set forth in sec. 483(e). In addition to the affirmation of belief in the observance of the applicable standard of conduct, the party seeking a disbursement of corporate assets must furnish a written unlimited general undertaking to repay the advance if it is ultimately determined that an acceptable standard of conduct has not been met. Finally, those charged with making the determination to comply with such a request must find that the facts then known would not preclude indemnification.

ARTICLE 7. AMENDMENTS AND CHANGES

Item 10. Procedure to amend articles of incorporation: The Commissioners voted to modify Section 504 engrafting a concept suggested by Section 10.02 of the Revised Model Business Corporation Act. Under the terms of the amendment, the board is to be given power to effectuate certain housekeeping amendments to the articles without the necessity of shareholder approval.

Sec. 10.06.504. PROCEDURE TO AMEND ARTICLES OF INCORPORATION. [pp. 73-74 of HB 343 should be amended as follows]: (a) A corporation shall amend its articles of incorporation in the following manner:

(1) If shares have not been issued, the board shall adopt a resolution setting out the proposed amendment or amendments.

(2) Subject to AS 10.06.506, if shares have been issued, an amendment shall be approved by the board and the outstanding shares. Approval may be initiated by the shareholders either before or after consideration by the board. If the board adopts a resolution setting out a proposed amendment, the board shall direct that the amendment be submitted to a vote at a meeting of shareholders that may be either the annual or a special meeting. If approval of the outstanding shares is obtained before action by the board, the board shall consider and either

approve or reject the amendment at the next regular or special meeting.

(3) Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more of the following amendments to the articles of incorporation without shareholder action:

(A) to delete the names and addresses of the initial directors;

(B) to delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the commissioner; or

(C) to change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding.

(b) [no chang.]

(c) [no change]

Sec 504 Official Comment to ACC Section 10.06.504. PROCEDURE TO AMEND ARTICLES OF INCORPORATION. [The official comment at pp. 149-151 of the Journal Supplement should be amended to read as follows]:

SCOPE: [The text at page 149 through the first full paragraph on page 150 is to be retained unchanged. Thereafter, insert the following]:

requisite vote. See, ACC sec. 508.

ACC sec. 504(a)(3) adopts an idea suggested by the

Revised Model Business Corporation Act. Unless the articles provide otherwise, the board is given authority to effect three types of amendments without the necessity of shareholder approval. The first two categories involve deletion of the names and addresses of the initial directors and registered agent. The third permits the board to change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding.

ACC sec. 504(c) requires that written notice setting forth the proposed amendment or amendments or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote in accordance with the general ACC provisions on time and manner for the giving of notice of shareholder meetings. If such notice is not given or fails to fairly apprise the shareholders of the content of the amendment or amendments, the vote taken on the question of approval shall be a nullity. In this connection the Legislature intends to approve the holding ~~holder~~ in Berger v. Amana Society, 253 Iowa 378, 111 N.W.2d 753 (1962).

CHANGE IN FORMER ALASKA LAW: ACC sec. 504's subsections (a)(1), (b), and (c) are taken from former AS 10.05.276 and Section 59 of the Model Act. Sec. 504(a)(2) is adapted from Section 902(a) of the GCL and changes former Alaska law by explicitly giving shareholders the power to initiate amendments to the articles. Former Alaska law required a two-third's majority of the shareholders to approve amendment to the articles. ACC sec. 504(a)(2) opts for a majority of the outstanding shares entitled to vote (see, ACC sec. 990(5)), but makes the articles competent to establish supermajority voting requirements which cannot be altered by amendment save by the affirmative consent of the supermajority. See ACC sec. 508.

Sec. 504(a)(3)is taken from RMBCA Section 10.02 with the following modifications: the first, fifth, and sixth categories of board amendments are eliminated. The first was unnecessary in Alaska since no prior law limited the life of corporations; the fifth (dealing with name changes) was not carried forward because of a perception that name changes ought to be approved by the shareholders; and the sixth was superfluous since the ACC does not vest the board with any other circumstances in which it is a sufficient power to amend the articles. The concept is new to Alaska law.

ARTICLE 8. ORGANIC CHANGE

Item 11. Dissenting shareholders' right to payment subject to corporate restraints upon distributions.

At its September meeting, the Commissioners directed this office to undertake a review of Sections .574 to .586 respecting the rights of shareholders to dissent and the payment obligations owed to such dissenters. We were to examine the content of Chapter 13, subchapter A of the Revised Model Business Corporation Act and determine if there were ideas which might improve the original content of the ACC. Accordingly, the following provisions have been extensively redrafted. Pending final action by the Commission, the official comments to the revised sections have not been prepared. What is included is a note which explains the major changes worked by the draft revision and cites the source materials employed in this project.

* [Note that Sec. 10.06.576 has been completely redrafted, and is to replace Sec. .576 found at pp. 91-92 of HB 343.]

Sec. 10.06.576. RIGHTS OF DISSENTING SHAREHOLDERS: PROCEDURE TO ENFORCE SHAREHOLDER'S RIGHT TO RECEIVE PAYMENT FOR SHARES; WITHDRAWAL OF DEMAND. (a) A shareholder electing to exercise a right to dissent shall file with the corporation, before or at the meeting of shareholders at which the proposed corporate action is submitted to a vote, a written objection to the proposed corporate action. The objection shall include a notice of election to dissent, the shareholder's name and residence address, the number and classes of shares as to which the shareholder dissents, and a demand for payment of the fair value of such shares if the action is taken. Such objection is not required from any shareholder to whom the corporation did not give notice of such meeting in accordance with this chapter.

(b) Within 10 days after the date on which the shareholders' vote authorizing such action was taken, the corporation shall give written notice of such authorization to each shareholder who filed written objection or from whom written objection was not required, excepting any shareholder who voted for the proposed action and who thereby is deemed to have elected not to enforce a right of dissent under this chapter.

(c) Within 20 days after the giving of notice under (b) of this section, any shareholder from whom written objection was not required under (a) of this section and who elects to dissent shall file with the corporation a written notice of such election, stating the shareholder's name and residence address, the number and classes of shares as to which the shareholder dissents, and a demand for payment of the fair value of such shares. Any shareholder who elects to dissent from a merger under AS 10.06.554 (Merger of Subsidiary Corporation) or AS 10.06.562 (Merger, Consolidation, or Exchange of Shares Between Domestic and Foreign Corporation) shall file a written notice of such election to dissent within 20 days after the plan of merger has been mailed to the shareholder.

(d) Upon consummation of the corporate action, the shareholder shall cease to have any of the rights of a shareholder except the right to be paid the fair value of the shares as to which dissenter's rights were perfected under this chapter. A notice of election may be withdrawn by the shareholder at any time prior to acceptance in writing of an offer made by the corporation under AS 10.06.578, but in no case later than 60 days from the date of consummation of the corporate action, except that if the corporation fails to make a timely offer under AS 10.06.578, the time for withdrawing a notice of election shall be extended until 60 days from the date an offer is made. Upon expiration of such time, withdrawal of a notice of election shall require the written consent of the corporation. In order to be effective, withdrawal of a notice of election must be accompanied by the return to the corporation of any advance payment made to the shareholder as provided in AS 10.06.578. If a notice of election is withdrawn, or the corporate action is rescinded, or a court shall determine that the shareholder is not entitled to a right to dissent, or the shareholder shall otherwise lose a right to dissent, the shareholder shall not have the right to receive payment for such shares and shall be reinstated to all rights as a shareholder as of the consummation of the corporate action. Such rights include any intervening preemptive rights and the right to payment of any intervening dividend or other distribution or, if any such rights have expired or any such dividend or distribution other than in cash has been completed, in lieu thereof, at the election of the corporation, the fair value thereof in cash as determined by the board as of the time of such expiration or completion, but without prejudice otherwise to any corporate proceedings that may have been taken in the interim.

(e) At the time of filing the notice of election to dissent or within one month thereafter, the shareholder shall submit the certificates representing the shares for which payment is claimed to the corporation, or to its transfer agent, which shall note conspicuously thereon that a notice of election has been filed, and shall return the certificates to the shareholder or other person who submitted them on the shareholder's behalf. Any shareholder who fails to comply with this subsection shall, at the option of corporation exercised by written notice to such shareholder within 45 days from the date of filing such notice of election to dissent, lose the right to dissent granted by this chapter unless a court, for good cause shown, shall otherwise direct. Upon transfer of a certificate bearing such notation, each new certificate issued therefor shall bear a similar notation together with the name of the original dissenting holder of the shares, and a transferee shall acquire no rights in the corporation except those which the original dissenting shareholder had at the time of transfer.

NOTE TO THE MEMBERS OF THE CODE REVISION COMMISSION:

The provisions of this draft section should be compared to those of Section .576 at pp. 91-92 of HB 343. The format has been altered to conform to the latest revisions of the New York Business Corporation Law. There are no substantive changes.

* [Note that Sec. 10.06.578 has been completely redrafted, and is to replace Sec. .578 found at pp. 92-93 of HB 343.]

Sec. 10.06.578. OFFER AND PAYMENT TO DISSENTING SHAREHOLDERS; CIRCUMSTANCES WHERE PROHIBITED. (a) Within fifteen days after the expiration of the period within which shareholders may file their notice of election to dissent under AS 10.06.576, or within fifteen days after the proposed corporate action is consummated, whichever is later, the corporation or, in the case of a merger or consolidation, the surviving or new corporation, shall make a written offer by registered mail to each shareholder who has filed such notice of election to pay the amount the corporation estimates to be the fair value of such shares. Such offer shall be made at the same price per share to all dissenting shareholders of the same class, or if divided into series, of the same series.

(b) The offer required by (a) of this section shall be accompanied by:

(1) a balance sheet of the corporation whose shares the dissenting shareholder holds as of the latest available date, which shall not be earlier than twelve months before the making of such offer;

(2) a profit and loss statement or statements for not less than a twelve month period ended on the date of such balance sheet or, if the corporation was not in existence throughout such twelve month period, for the portion thereof during which it was in existence; and

(3) a statement setting forth the aggregate number of shares with respect to which notices of election to dissent have been received and the aggregate number of holders of such shares.

(c) If the corporate action has been consummated, the offer required by (a) of this section shall also be accompanied by:

(1) advance payment to each such shareholder who has submitted the share certificates to the corporation as provided in AS 10.06.576(e), of an amount equal to eighty percent of the amount of such offer, or

(2) as to each shareholder who has not yet submitted the share certificates a statement that advance payment of an amount equal to eighty percent of the amount of such offer will be made by the corporation promptly upon submission of such certificates.

(d) If the corporate action has not been consummated at the time of the making of the offer required by (a) of this section, such advance payment or statement as to advance payment shall be sent to each shareholder entitled thereto upon consummation of the corporate action.

(e) Every advance payment or statement as to advance payment shall include advice to the shareholder that acceptance of such payment does not constitute a waiver of any dissenters' rights.

(f) If within 30 days after the making of the offer required by (a) of this section, it is accepted by any shareholder the corporation shall pay the remaining twenty percent of the offered price upon surrender of the share certificates. Thereafter, such shareholder ceases to have any interest in the shares or the outcome of any litigation commenced under AS 10.06.580.

(g) Notwithstanding any other provision of this section, if the payments otherwise required by (c), (d), and ~~(e)~~ (f) of this section would be distributions in violation of AS 10.06.358, .360, .363, .365, or .375, no distribution may be made to any dissenting shareholder. In such event, the corporation which would otherwise have the payment obligation under (c), (d), and (f) of this section shall, in addition to complying with (a) and (b) of this section and within the time limits there provided, give written notice of its inability to make payment to dissenting shareholders. That notice shall include:

(1) an explanation as to why the corporation is unable to make the payments otherwise required by this section; and

(2) a statement that each dissenting shareholder has a present option to:

(A) withdraw that shareholder's notice of election to dissent, which shall be deemed withdrawn with the written consent of the corporation; or

(B) retain the status of a dissenter and, if the corporation is liquidated, be subordinated to the rights of creditors of the corporation, but have rights superior to the non-dissenting shareholders, and if it is not liquidated, retain the right to be paid pursuant to (c), (d), and (f) of this section, which right the corporation shall be obliged to satisfy when the restrictions on distributions do not apply; and

(C) that if no written election is received by the corporation within 60 days after the giving of the notice required by this section, the shareholder will be deemed to have elected to withdraw the notice of election as under (A) of this section.

NOTE TO THE MEMBERS OF THE CODE REVISION COMMISSION:

This highly amended version of AS 10.06.578 accomplishes two of the directives given this office. First, it incorporates the gist of the idea attributed to Section 13.25 of the Revised Model Business Corporation Act wherein the corporation was obliged to advance payment to dissenting shareholders. Second, it resolves the impasse otherwise left unattended in the ACC and the RMBCA wherein an organic change is approved, shareholder perfect their rights to dissent, but payment would violate the restraints upon distributions. In each instance the draft here submitted reflects an election as between or among competing models provided by other states or the framers of the Revised Model Act.

Advance payment: I have drafted the new Section .578 to follow the New York Business Corporation Law, Section 623 as amended in 1965. You will note that the scheme involves mandating that the corporation formulate an offer to dissenting shareholders to make a uniform payment for what it determines to be the fair value of each dissenting share. Provided that it can do so without violation of the restraints upon distributions created in the ACC to protect corporate creditors and the holders of senior shares, the corporation is then obliged to make immediate tender of 80% of the offered amount to each shareholder who has perfected dissenters' rights. If the organic change has yet to be consummated, the offer is to make the payment as soon as that is accomplished. This last prudential step is necessary for, in the case of merger or consolidation, the corporation obliged to make the payment may not be the corporation in which the dissenter held shares.

Once the uniform offer is in place and the 80% payment distributed, the shareholder now has the option of either accepting that offer or proceeding to litigate under AS 10.06.580. This precludes any attempted horse trading wherein some shareholders strive for one price while others, ignorant of the private bargaining, settle for the offered price.

Resolving the conflict between payment to dissenters and observance of the restraints upon distribution: At its September meeting the Commission directed that this office look into this matter. We have done so. There are only four possible answers: (1) conclude that in such circumstances the organic change must be abandoned; (2) permit the organic change to go forward making the dissenters settle for the status of creditors of the surviving or resulting corporation; (3) seek some compromise between (1) and (2); or (4) permit the organic change to be consummated while prohibiting any payment to dissenters without any mention of their unresolved status. The few states which have recognized the potential for conflict have opted for all but the first of these solutions! We have not found any state which aborts the organic change in such circumstances. California follows alternative (2) and makes the dissenting shareholders involuntary, subordinated creditors of the resulting or surviving corporation. New York opts for a variety of alternative (3) and attempts to favor the organic change but gives the dissenting shareholders some freedom of choice. North Carolina is typical of states which may have blundered into alternative (4).

Section .578(g) follows the New York model while improving upon it by making the "default" choice in the event the shareholder fails to exercise the conferred choice. Under the New York scheme, a dissenting shareholder is not entitled to payment if such a step would render the corporation in conflict with statutory restraints upon distribution. In such circumstances, the BCL provides for an election to withdraw the election to dissent (in which case the shareholder goes along with the organic change) or become a corporate creditor of the resulting or surviving entity. We have added some features such as the notice to shareholders of the inability to make payment, the reasons therefore, and have anticipated what should be done if the shareholder merely sits there and does not respond to the invitation to make the election. We treat such a silent shareholder as electing to withdraw the notice of dissent.

The Commissioners should review this draft and the policy choices which underpin it. It can be altered to reflect any other mixture of policy decision.

* [Note that Sec. 10.06.580 has been completely redrafted, and replaces Sec. .580 found at p. 93 of HB 343. Also note that Sections .582 and .584 of HB 343 have been incorporated into new ACC Sections .576 and .578; thus, Sec. .586 of HB 343 would become Section 10.06.582 in a renumbering of Article 8.]

Sec. 10.06.580. ACTION TO DETERMINE VALUE OF SHARES UPON FAILURE TO ACCEPT CORPORATE OFFER. (a) If the corporation fails to make the offer required by AS 10.06.578(a) or the shareholder fails to accept it within the 30 day period specified in (f) of that section:

(1) the corporation shall, within 20 days after the expiration of the 30 day period specified in AS 10.06.578(f), file a petition in the court of the judicial district where the registered office of the corporation is located, requesting that the fair value of the shares be found and determined. If, in the case of a merger or consolidation, the surviving or new corporation is a foreign corporation, without a registered office in the state, the petition shall be filed in the judicial district where the registered office of the domestic corporation was last located; or

(2) if the corporation fails to institute a proceeding as provided in this section, a dissenting shareholder may institute a proceeding in the name of the corporation. If such proceeding is not instituted within 30 days after the expiration

of the 20 day period granted the corporation under (a)(1) of this section, all dissenters' rights shall be lost unless the superior court, for good cause shown, shall otherwise direct.

(b) All dissenting shareholders who have not accepted the corporate offer extended under AS 10.06.578(f), wherever residing, shall be made parties to the proceeding as an action against their shares quasi in rem. The corporation shall serve a copy of the petition in such proceeding upon each dissenting shareholder who is a resident of this state in the manner provided by law for the <u>service of a summons</u> (?), and upon each nonresident dissenting shareholder either by certified mail and publication, or in such other manner as is permitted by law. The jurisdiction of the court shall be plenary and exclusive. All shareholders who are parties to the proceeding are entitled to judgment against the corporation for the amount determined under (c) of this section to be the fair value of the shares.

(c) <u>The court shall determine whether each dissenting shareholder, as to whom the corporation requests the courts to make such determination, is entitled to receive payment for that shareholder's shares. If the corporation does not request any such determination, or if the court finds that any dissenting shareholder is so entitled, it shall proceed to fix the value of the shares, which, for the purposes of this section, shall be the fair value as of the close of business on the day before the date on which the vote was taken approving the proposed corporate action. In fixing the fair value of the shares, the court shall consider the nature of the transaction giving rise to the right to dissent under AS 10.06.576 and its effects on the</u>

corporation and its shareholders, the concepts and methods then customary in the relevant securities and financial markets for determining fair value of shares of a corporation engaging in a similar transaction under comparable circumstances, and all other relevant factors. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value of the shares. The appraisers shall have the power and authority as specified in the order of their appointment or as amended.

(d) The judgment shall include an allowance for interest at the rate the court finds to be fair and equitable, from the date on which the vote was taken on the proposed corporate action to the date of payment. In determining the rate of interest, the court shall consider all relevant factors, including the rate of interest which the corporation would have had to pay to borrow money during the pendency of the proceeding. If the court finds that the refusal of any shareholder to accept the corporate offer of payment for his shares was arbitrary, vexatious, or otherwise not in good faith, no interest shall be allowed to such shareholder.

(e) Each party to such proceeding shall bear its own costs and expenses, including the fees and expenses of its counsel and of any experts employed by it. Notwithstanding the foregoing, the court may, in its discretion, apportion and assess all or any part of the costs, expenses, and fees incurred by the corporation against any or all of the dissenting shareholders who are parties to the proceeding if the court finds that their refusal to accept the corporate offer was arbitrary, vexatious, or otherwise not in good faith. The court may, in its discretion, apportion and assess all or any part of the costs, expenses, and fees incurred by any or all of the dissenting shareholders who are parties to the proceeding against the corporation if the court finds any of the following:

(1) that the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay;

(2) that no offer or required advance payment was made by the corporation as provided in AS 10.06.578;

(3) that the corporation failed to institute the special proceeding within the period specified under (a) of this section;

(4) that the action of the corporation in complying with its obligations as provided in this article was arbitrary, vexatious, or otherwise not in good faith.

(f) Within 60 days after final determination of the proceeding, the corporation shall pay to each dissenting shareholder who is a party the amount determined under (e) of this section upon surrender of the certificate or certificates representing the dissenter's shares. Upon payment of the judgment, the dissenting shareholder ceases to have an interest in the shares.

NOTE TO THE MEMBERS OF THE CODE REVISION COMMISSION:

Section .580 represents incorporation of elements of the existing text of Section .582 [p. 93-94 of HB

343] and Section 623 of the New York Business Corporation Law as amended in 1982. If the paragraph contains no underlining you may assume that the language is taken from the BCL. If the paragraph contains underlining, those portions represent BCL interliniations in what is otherwise the text of ACC .582.

In the following particulars important changes have been made:

Resort to litigation: [See Section .580(a)] In the event that the corporation fails to make the offer required in Section .576, or the dissenting shareholder fails to accept it, the burden of inaugurating the judicial proceeding falls upon the corporation. If the corporation defaults on this obligation, the burden shifts to the dissenting shareholder to initiate the proceeding. If they, too, fail to enlist the aid of the court in fixing the fair value of the shares, their rights as dissenters are terminated. Except for this last feature, the provisions on inaugurating the proceeding accord with Section .582 of HB 343.

All remaining dissenters bound: [see Section .580(b)] Again, the object of making all of the shareholders who have not settled with the corporation parties to and bound by the results of this single judicial proceeding was found in Section .582(a) of HB 343. I am uncertain of the correct use of the phrase "service of a summons" given Alaska practice. Please instruct me.

Procedure employed by court: [see Section .580(c)]. When contrasted with Section 582(a) of HB 343, you will note that the new draft is far more explicit in guiding the trial court. Its first task is to handle any corporate challenge to the status of dissenters. Assuming that there is no challenge or that dissenters survive it, the next task is to judicially ascertain the "fair value" of the dissenters' shares. Note that I have drafted this language in efforts to make it very plain that what the court is to do is determine a figure which will then govern the rights of all remaining dissenters. It is not to ascertain differing figures as being fair to particular dissenters. Thus, if the corporate offer was uniformly at $100 per share, the court is to determine if this was "fair" and, if not, settle a uniform figure. Let us assume it finds that $115 is the fair value given the formula and indicators specified in this section. I intend that when read in conjunction with Section .580(d) and (e), that the figure awarded under (f) shall reflect the figure of $115 multiplied by the number of shares owned by each dissenter.

The 1982 amendment to the BCL (Section 623(h)(4)) excludes the use of a jury and any resort to appraisers. I have not incorporated these exclusions although you may wish to do so.

Interest: [see Section .580(d)] The only material departure from Section .582(b) of HB 343 involves the instructions on the factors to be considered in determining the rate of interest to be allowed, and excluding from such an award any shareholder who refused the corporate offer displaying conduct which was "arbitrary, vexatious, or otherwise not in good faith. . . ." Do you wish such an exclusion?

Costs: [see Section .580(e)] This provision substitutes for Section .582(c) of HB 343. It is adapted from the latest revision of Section 623 of the BCL and is, I believe, quite superior. You will note that attorney fees could be recovered. We had excluded them while allowing a potential for recovery of fees paid to experts. I did not put in the RMBCA provision on the sharing of costs. It reads as follows:

> Section 13.31. COURT COSTS AND COUNSEL FEES
>
> (c) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to these counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefited.

Do you favor an inclusion of this provision? If so, it could easily be added to Section 580(e).

Status of dissenting shareholders who have accepted the corporate offer: This is one area of policy judgment which you should address. It is a vexing issue clearly avoided only in Delaware where the value of dissenters' shares is an exclusive matter of chancery court decree and not settlement between the shareholders and the corporation. Suppose, to continue our hypothetical, that XYZ corporation engages in an organic change. Ninety percent of the shareholders approve. Of the ten percent who do not, 100 perfect their status as dissenters by filing the notice of election. As to these shareholders the corporation makes an offer of $100 per share. Eighty accept the offer and surrender their certificates pursuant to AS 10.06.578(e). Twenty do not and litigation is commenced under Section .580. Eventually, the court finds the fair value of the dissenters' shares to be $115. It is clear that each of the 20 shareholders who refused the corporate offer are entitled to this amount. What of the 80 who accepted the offer of $100. Have we not established that their deal was deficient in that they received $15 per share less than the fair value of those shares? Should they, too, be entitled to payment of this larger sum? My current draft, because of the language in Section .578(e), concludes that they are not.

Note that the content of Sections .582 and .584 of HB 343 have been incorporated into the redrafted Sections .576 and .578. Section .586 of HB 343 would become Section 10.06.582 in a renumbering of Article 8.

ARTICLE 13. GENERAL PROVISIONS

Item 12. Accounting standards and procedures: At its September meeting the Commission voted to make observance of generally accepted accounting principles and practices options rather than mandatory as in 343. This office was directed to make this change while at the same time creating a "safe harbor" presumption of fairness and accuracy in the event such principles and practices had been observed.

Sec. 10.06.970. RULES OF CONSTRUCTION AND INTERPRETATION. [pp. 150-51 of HB 343 should be amended as follows]: Unless a provision or the context otherwise requires, the following general provisions and rules of construction govern this chapter:

(1) [unchanged]

(2) [unchanged]

(3) [unchanged]

(4) [unchanged]

(5) <u>Subject to any specific accounting treatment required by a particular section of this chapter:</u>

(a) References in this chapter to financial statements, balance sheets, income statements, and statements of changes in financial position of a corporation and references to assets, liabilities, earnings, retained earnings, and similar accounting items of a corporation mean financial statements or

~~items prepared or determined in accordance with generally accepted accounting principles then applicable, and fairly presenting the matters they purport to present, subject to any specific accounting treatment required by a particular section of this chapter. Unless otherwise expressly stated, references in this chapter to financial statements mean, in the case of a corporation that has subsidiaries, consolidated statements of the corporation and those of its subsidiaries, as are required or permitted to be included in the consolidated statements under generally accepted accounting principles then applicable, and all references to these accounting items mean items determined on a consolidated basis in accordance with consolidated financial statements,~~ fairly and reasonably to present the purported matters.

(b) Financial statements prepared or determined in accordance with generally accepted accounting principles then applicable are fair and reasonable.

(c) References in this chapter to financial statements mean, in the case of a corporation that has subsidiaries, consolidated statements of the corporation and those of its subsidiaries, and all references to these accounting items mean items determined on a consolidated basis in accordance with consolidated financial statements.

(6) [continue unchanged balance of existing text]

Sec.
970 REVISION OF THE TEXT OF THE OFFICIAL COMMENT TO ACC

Section 10.06.970. RULES OF CONSTRUCTION AND INTERPRE-

TATION. [The official comment at pp. 231-233 of the Journal Supplement should be amended to read as follows]:

SCOPE: [first paragraph (pp. 231-232) unchanged].

~~Note that subsection (5) makes the reliance on generally accepted accounting principles subject to any particular accounting required in the ACC. The definitions of "paid in capital" and "retained earnings" and the basic requirement of ACC sec. 358 that all distributions, including share redemptions and repurchases, be charged first to "retained earnings" and only when that account is exhausted, to "paid-in capital", are accounting practices mandated by the ACC which may not conform to generally accepted accounting principles' terminology or practice. These particular statutory specifications are necessary to the symmetry and clarity of the ACC and the design of the regulatory system imposed upon the dissipation of corporate assets. No deference to generally accepted accounting principles was made in these areas due to these considerations.~~

~~Note also that subsection (5) specifies the use of consolidated statements for corporations with subsidiaries as is required or permitted under generally accepted accounting principles.~~

Unless some other accounting principle is mandated by specific provision of the ACC, subsection (5)(a) requires that financial statements, balance sheets, income statements, and statements in changes in financial position of a corporation and references to assets, liabilities, earnings, retained earnings, and similar accounting items of a corporation be determined and expressed so as to fairly and reasonably present the purported matters. Within the specific provisions of the ACC there are two variations from this general norm. In some circumstances (e.g., Section 358(c)), the observance of generally accepted accounting principles is mandatory. In others, the ACC specifically defines terms such as "paid-in capital" and "retained earnings" in a manner which may not conform to generally accepted accounting principles terminology or practice. These particular statutory specifications are necessary to the symmetry and clarity of the ACC and the design of the regulatory system imposed upon the dissipation of corporate assets. For these reasons, no deference to a norm of "reasonableness" or generally accepted accounting principles is made in those areas.

In any area or usage not specifically defined or commanded by a provision of the ACC, subsection (5)(b) creates a safe harbor in the use of generally accepted accounting principles. They are conclusively presumed to be "fair and reasonable." Other principles or practices may meet the "fair and reasonable" standard mandated by subsection (5)(a), but the burden of establishing such compliance would be that of the litigant responsible for or defending the election of an alternative method.

Note also that subsection (5)(c) specifies the use of consolidated statements for corporations with subsidiaries.

CHANGE_IN_FORMER_ALASKA_LAW: All of the rules of construction in ACC sec. 970 are new to Alaska law. They derive from GCL Sections 5, 6, 7, 8, 113, 114, 118, 10, 11, 12, 13, 15, and 16, respectively. In adopting subsection (3), the phrase "in the English language" was deleted from GCL Section 8. Under the GCL use of generally accepted accounting principles is mandatory. In adopting subsection (5) the ACC follows the RMBCA suggestion and does not insist upon the use of such practices and procedures. See RMBCA Section 6.40 and official comment 4a. However, use of generally accepted accounting principles does invoke a presumption of a fair and reasonable presentation of the purported matters. In adopting subsection (6) the term "electronic means" was substituted for the GCL language "telephone or wireless."

Item 13. Comparison Charts

The following three charts provide a section by section comparison of the proposed Alaska Corporations Code (ACC), the existing Alaska Business Corporations Law, AS 10.05 (ABCL), and the 1984 Revised Model Business Corporation Act (RMBCA). These charts are intended as a general cross-reference of ACC provisions to comparable provisions in the ABCL and the RMBC^. However, with reference to the ABCL, many of the cross-references indicate provisions of the ABCL that have been substantially modified or completely replaced. The cross-references to the RMBCA indicate the existence of similar or substantially identical provisions; however, no attempt has been made to demonstrate a complete cross-referencing of RMBCA provisions that are not similar to ACC provisions. For these reasons, these charts will be most useful in conjunction with reference to a working paper produced by the Code Revision Commission entitled <u>A Section by Section Comparison of *** The Proposed Alaska Corporations Code With the Revised Model Business Corporartion Act</u> (March 25, 1984). The working paper provides detailed discussion of the origin of ACC sections, a summary of their coverage, and comparison with the tentative draft of the RMBCA. It should be noted that since the date of that working paper, the final draft of the RMBCA has been produced by the American Bar Association. After consideration of the final draft, the Commission has amended a number of ACC provisions to incorporate certain features of the RMBCA.

A section by section comparison of the proposed Alaska Corporations Code (ACC) with the Alaska Business Corporations Law ABCL), AS 10.05 and the 1984 Revised Model Business Corporation Act (RMBCA). N = No comparable provision.

ACC	ABCL	RMBCA
ARTICLE 1.		
.005	.003	3.01(a)
.010	.009	3.01(b)
.015	.018	3.04
.020	N	N
.025	N	N
ARTICLE 2.		
.105	.021	4.01
.110	.024	4.02
.115	.027	4.02
.120	.030	4.02
.125	.033	4.03
.130	.034	4.03
.135	.036	4.03
.140	.039	4.03
.145	.042	4.03
.150	.045	5.03
.155	.791	N
.160	.048	N
.165	.051	5.02
.170	.054	5.03
.175	.057	5.04
ARTICLE 3.		
.205	.252	N
.208	.255	N
.210	.255	N
.213	.258	N
.215	.259	N
.218	.810	2.03
.220	.810	2.04
.223	.267	2.05
.225	N	2.05(2)
.228	.135	10.20
.230	.135	2.06
.233	.237 - .249	N

ACC	ABCL	RMBCA

ARTICLE 4.

.305	.060, .069	6.01
.308	.063	6.02
.310	.066	6.03
.313	.069	6.03
.315	.072	6.03
.318	.075	6.03
.320	.078	6.03
.323	.084	6.03
.325	N	6.01(d)
.328	.087	6.20(a)
.330	.090	6.20(c)
.333	.093	6.20(d),(e)
.335	.096	6.21
.338	.099	6.21
.340	.102	6.21
.343	N	6.24
.345	.111	6.28
.348	.114	6.25
.350	.117	6.25
.353	.120	N
.355	.123	6.04
.358	.204(1), .012	6.40
.360	.201	6.40
.363	.207(4)	6.40
.365	.207(3)	6.40
.368	N	N
.370	N	N
.373	.204(5)	6.23
.375	N	6.40
.378	N	8.33(b)(2)
.380	.207(5)	N
.383	N	N
.385	N	6.31
.388	.312 - .345	6.31
.390	.108, .366	N

ARTICLE 5.

.405	.138	7.01, 7.02, 7.03
.408	.144	7.07, 7.05(c)
.410	.141	7.05
.413	.147, .150	7.20
.415	.153	7.25
.418	.159, .168	7.22
.420	.156 - .168	7.21, 7.14, 7.28
.423	.807	7.04
.425	.171	7.30, 7.31

ACC	ABCL	RMBCA
.428	.129	6.30
.430	.237 - .249	7.20, 16.01, 16.02, 16.03
.433	N	16.20, 16.21
.435	N	7.40
.438	.125	6.22

ARTICLE 6.

.450	.174, .222, .219	8.01, 8.30
.453	.177, .180, .183	8.03, 8.04, 8.05
.455	.186	8.06
.458	N	N
.460	N	8.08
.463	N	8.08
.465	.189	8.10
.468	.195	8.25
.470	.198	8.22, 8.23
.473	.192	8.24
.475	.199	8.20, 8.21
.478	N	8.31
.480	.216, .225	8.33
.483	.228, .231	8.40, 8.41, 8.42, 8.43, 8.44
.485	.213	8.32
.488	N	N
.490	.010	8.51, 8.54, 8.52, 8.53, 8.55, 8.56, 8.57

ARTICLE 7.

.502	.270, .273	10.01
.504	.276	10.05, 10.02, 10.03
.506	.282, .279	10.04
.508	N	7.27
.510	.285	10.06
.512	.288	10.06
.514	.291	10.09
.516	.294	10.07
.518	.303	10.07
.520	.306	10.07
.522	N	10.08
.524	N	10.08
.526	N	10.08

ARTICLE 8.

.530	.375	11.01, 11.02

ACC	ABCL	RMBCA
.532	.378	11.01, 11.02
.534	.381	11.01, 11.02
.536	.384	11.01, 11.02
.538	N	11.01, 11.02
.540	N	11.01, 11.02
.542	N	N
.544	N	11.03, 13.20(a)
.546	.390	N
.548	.393	11.03(i)
.550	.396	11.05
.552	.402	11.05
.554	N	11.04
.556	N	11.04
.558	N	11.04
.560	.405	11.06
.562	.408, .411, .414	11.07
.564	.250	N
.566	.435	12.01
.568	.438	12.02
.570	.441	12.02
.572	.444	12.02
.574	.417 - .432 .447 - .462	13.02
.576	N	13.20, 13.23
.578	N	13.22, 13.25
.580	.423, .453	13.28
.582	.426, .456	13.30, 13.31
.584	N	13.22, 13.23, 13.24
.586	.429, .462	N

ARTICLE 9.

.605	.465, .474, .477	14.02, 14.01
.608	.468, .474, .480, .483	14.03
.610	.492 - .504	14.04
.613	.507	14.04
.615	.486, .489(1)	14.05
.618	.489(3)	14.03(4)
.620	.510	N
.623	.513	N
.625	.516	N
.628	.540 - .543, .552	14.30
.630	N	N
.633	.519	14.20, 14.21, 14.23
.635	.519	14.30, 14.31
.638	.534	14.31
.640	N	14.31(c)
.643	.576, .567	14.32
.645	.537, .546, .549	14.33
.648	.555, .558	14.05, 14.06, 14.07

ACC	ABCL	RMBCA
.650	.573, .579, .582 .585	14.31(c)
.653	.579	14.06, 14.07, 14.40, 14.33
.655	.585	N
.658	.588	N
.660	.489(2), .564, .570	14.05
.663	N	N
.665	.489, .561	14.05(a)(4)
.668	N	14.05(a)(3), 14.40
.670	N	14.05(a)
.673	N	N
.675	N	14.07(d)(2)
.678	.594	14.05(b)

ARTICLE 10.

.705	.597	15.01(a)
.708	.687	17.02
.710	.696	15.02(d)
.713	.690	15.04
.715	.693	15.02(e)
.718	.600	15.01(b)
.720	.606	15.06
.723	.607	15.06
.725	.609	15.06
.728	.612	15.01(a)
.730	.615	15.01(b)
.733	.618, .621	15.01
.735	.624	15.05(a)
.738	.657	15.04
.740	.603	15.05(b)
.743	.675	15.30
.745	.678	15.31
.748	.681	15.31
.750	.684	15.31
.753	.627	15.07
.758	.633	15.08
.760	.635	15.08
.763	.639	15.10
.765	.642	N
.768	.645	N
.770	.648	N
.773	.651	N
.775	.654	N
.778	.660	15.20
.780	.663	15.20
.783	.666	N
.785	.669	15.20
.788	.672	15.20

ACC	ABCL	RMBCA
	ARTICLE 11.	
.805	.699	16.22
.808	.702	16.22
.811	.705	16.22
.813	.706	N
.815	.771	N
.818	.777	N
.820	.780	N
.823	.783, .786, .777	N
.825	.786	1.29
.828	.708	1.22(a)
.830	.714	1.22(a)
.833	.750	1.22(a)
.835	.753	1.22(a)
.838	.756	1.22(a)
.840	.762	1.22(a)
.843	.747	1.22(a)
.845	.717	N
.848	.720	N
.850	.723	N
.853	.726	N
.855	.765	N
.858	.768	N
.860	.773	N
.863	.792	1.26
.865	.794	N
.868	.798	1.21
.870	.799	N
	ARTICLE 12.	
.905	N	N
.910	.081, .258, .288, .303, .321, .339, .357, .402, .468, .483, .504, .513, .621, .669	1.25
.915	.792	1.25, 1.26
.920	N	1.24
.925	.795	1.27
.930	N	1.27
.935	.804	7.05(a)
	ARTICLE 13.	
.950	.813	1.30

ACC	ABCL	RMBCA
.953	.823	N
.955	.816	17.01, 17.02
.958	N	N
.960	.005	N
.963	N	17.04
.965	.822	1.02
.968	N	N
.970	N	6.40
.990	.825	1.40
.995	.828	1.01
Sec. 3	N	
Sec. 4	N	
Sec. 5	N	
Sec. 6	.276, .279, .282	
Sec. 7	N	
Sec. 8	N	
Sec. 9	N	
Sec. 10	N	
Sec. 11	N	

A section by section comparison of the Alaska Business Corporation Law (ABCL), AS 10.05, with the proposed Alaska Corporations Code (ACC) and the 1984 Revised Model Business Corporation Act (RMBCA). N = No comparable provision.

ABCL	ACC	RMBCA
	ARTICLE 1.	
.005	.960	N
.003	.005	3.01(a)
.009	.010	3.01(b)
.010	.490	8.51, 8.54, 8.52, 8.53, 8.55, 8.56, 8.57
.012	.358	6.40
.018	.015	3.04
.021	.105	4.01
.024	.110	4.02
.027	.115	4.02
.030	.120	4.02
.033	.125	4.03
.034	.130	4.03
.036	.135	4.03
.039	.140	4.03
.042	.145	4.03
.045	.150	5.03
.048	.160	N
.051	.165	5.02
.054	.170	5.03
.057	.175	5.04
.060	.305	6.01
.063	.308	6.02
.066	.310	6.03
.069	.305, .313	6.01, 6.03
.072	.315	6.03
.075	.318	6.03
.078	.320	6.03
.081	.910	1.25
.084	.323	6.03
.087	.328	6.20(a)
.090	.330	6.20(c)
.093	.333	6.20(d),(e)
.096	.335	6.21
.099	.338	6.21
.102	.340	6.21
.108	.390	N
.111	.345	6.28
.114	.348	6.25
.117	.350	6.25
.120	.353	N
.123	.355	6.04

ABCL	ACC	RMBCA
.125	.438	6.22
.129	.428	6.30
.135	.228, .230	2.06, 10.20
.138	.405	7.01, 7.02, 7.03
.141	.410	7.05
.144	.408	7.07, 7.05(c)
.147	.413	7.20
.150	.413	7.20
.153	.415	7.25
.156	.420	7.21, 7.14, 7.28
.159	.418, .420	7.22, 7.21, 7.14, 7.28
.162	.420	7.21, 7.14, 7.28
.165	.420	7.21, 7.14, 7.28
.168	.420	7.21, 7.22, 7.14, 7.28
.171	.425	7.30, 7.31
.174	.450	8.01, 8.30
.177	.453	8.03, 8.04, 8.05
.180	.453	8.03, 8.04, 8.05
.183	.453	8.03, 8.04, 8.05
.186	.455	8.06
.189	.465	8.10
.192	.473	8.24
.195	.468	8.25
.198	.470	8.22, 8.23
.199	.475	8.20, 8.21
.201	.360	6.40
.204	.358, .373	6.23, 6.40
.207	.363, .365, .380	6.40
.213	.485	8.32
.216	.480	8.33
.219	.450	8.01, 8.30
.222	.450	8.01, 8.30
.225	.480	8.33
.228	.483	8.40, 8.41, 8.42, 8.43, 8.44
.231	.483	8.40, 8.41, 8.42, 8.43, 8.44
.237	.233, .430	7.20, 16.01, 16.02, 16.03
.240	.233, .430	7.20, 16.01, 16.02, 16.03
.243	.233, .430	7.20, 16.01, 16.02, 16.03
.246	.233, .430	7.20, 16.01, 16.02, 16.03
.249	.233, .430	7.20, 16.01, 16.02, 16.03
.250	.564	N

ARTICLE 2.

.252	.205	N
.255	.208, .210	N
.258	.213, .910	1.25

ABCL	ACC	RMBCA
.259	.215	N
.267	.223	2.05

ARTICLE 3.

.270	.502	10.01
.273	.502	10.01
.276	.504, Sec. 6	10.05, 10.02, 10.03
.279	.506, Sec. 6	10.04
.282	.506, Sec. 6	10.04
.285	.510	10.06
.288	.512, .910	10.06, 1.25
.291	.514	10.09
.294	.516	10.07
.303	.518, .910	10.07, 1.25
.306	.520	10.07
.312	.388	6.31
.315	.388	6.31
.318	.388	6.31
.321	.910, .388	1.25, 6.31
.324	.388	6.31
.327	.388	6.31
.330	.388	6.31
.333	.388	6.31
.336	.388	6.31
.339	.910, .388	1.25, 6.31
.342	.388	6.31
.345	.388	6.31
.357	.910	1.25
.366	.390	N

ARTICLE 4.

.375	.530	11.01, 11.02
.378	.532	11.01, 11.02
.381	.534	11.01, 11.02
.384	.536	11.01, 11.02
.390	.546	N
.393	.548	11.03(i)
.396	.550	11.05
.402	.552, .910	11.05, 1.25
.405	.560	11.06
.408	.562	11.07
.411	.562	11.07
.414	.562	11.07
.417	.574	13.02
.420	.574	13.02
.423	.574, .580	13.02, 13.28

ABCL	ACC	RMBCA
.426	.574, .582	13.02, 13.30, 13.31
.429	.574, .586	13.02
.432	.574	13.02

ARTICLE 5.

ABCL	ACC	RMBCA
.435	.566	12.01
.438	.568	12.02
.441	.570	12.02
.444	.572	12.02
.447	.574	13.02
.450	.574	13.02
.453	.574, .580	13.02, 13.28
.456	.574, .582	13.02, 13.30, 13.31
.459	.574	13.02
.462	.574	13.02
	.574, .586	

ARTICLE 6.

ABCL	ACC	RMBCA
.465	.605	14.02, 14.01
.468	.608, .910	14.03, 1.25
.474	.605, .608	14.02, 14.01, 14.03
.477	.605	14.02, 14.01
.480	.608	14.03
.483	.608, .910	14.03, 1.25
.486	.615	14.05
.489	.615, .618, .660 .665	14.03, 14.05
.492	.610	14.04
.495	.610	14.04
.498	.610	14.04
.501	.610	14.04
.504	.610, .910	14.04, 1.25
.507	.613	14.04
.510	.620	N
.513	.623, .910	1.25
.516	.625	N
.519	.633, .635	14.20, 14.21, 14.23, 14.30, 14.31
.534	.638	14.31
.537	.645	14.33
.540	.628	14.30
.543	.628	14.30
.546	.645	14.33
.549	.645	14.33
.552	.628	14.30
.555	.648	14.05, 14.06, 14.07
.558	.648	14.05, 14.06, 14.07
.561	.665	14.05(a)(4)

CORRECTION

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HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

ABCL	ACC	RMBCA
.259	.215	N
.267	.223	2.05

ARTICLE 3.

.270	.502	10.01
.273	.502	10.01
.276	.504, Sec. 6	10.05, 10.02, 10.03
.279	.506, Sec. 6	10.04
.282	.506, Sec. 6	10.04
.285	.510	10.06
.288	.512, .910	10.06, 1.25
.291	.514	10.09
.294	.516	10.07
.303	.518, .910	10.07, 1.25
.306	.520	10.07
.312	.388	6.31
.315	.388	6.31
.318	.388	6.31
.321	.910, .388	1.25, 6.31
.324	.388	6.31
.327	.388	6.31
.330	.388	6.31
.333	.388	6.31
.336	.388	6.31
.339	.910, .388	1.25, 6.31
.342	.388	6.31
.345	.388	6.31
.357	.910	1.25
.366	.390	N

ARTICLE 4.

.375	.530	11.01, 11.02
.378	.532	11.01, 11.02
.381	.534	11.01, 11.02
.384	.536	11.01, 11.02
.390	.546	N
.393	.548	11.03(i)
.396	.550	11.05
.402	.552, .910	11.05, 1.25
.405	.560	11.06
.408	.562	11.07
.411	.562	11.07
.414	.562	11.07
.417	.574	13.02
.420	.574	13.02
.423	.574, .580	13.02, 13.28

ABCL	ACC	RMBCA
.426	.574, .582	13.02, 13.30, 13.31
.429	.574, .586	13.02
.432	.574	13.02

ARTICLE 5.

.435	.566	12.01
.438	.568	12.02
.441	.570	12.02
.444	.572	12.02
.447	.574	13.02
.450	.574	13.02
.453	.574, .580	13.02, 13.28
.456	.574, .582	13.02, 13.30, 13.31
.459	.574	13.02
.462	.574, .586	13.02

ARTICLE 6.

.465	.605	14.02, 14.01
.468	.608, .910	14.03, 1.25
.474	.605, .608	14.02, 14.01, 14.03
.477	.605	14.02, 14.01
.480	.608	14.03
.483	.608, .910	14.03, 1.25
.486	.615	14.05
.489	.615, .618, .660 .665	14.03, 14.05
.492	.610	14.04
.495	.610	14.04
.498	.610	14.04
.501	.610	14.04
.504	.610, .910	14.04, 1.25
.507	.613	14.04
.510	.620	N
.513	.623, .910	1.25
.516	.625	N
.519	.633, .635	14.20, 14.21, 14.23, 14.30, 14.31
.534	.638	14.31
.537	.645	14.33
.540	.628	14.30
.543	.628	14.30
.546	.645	14.33
.549	.645	14.33
.552	.628	14.30
.555	.648	14.05, 14.06, 14.07
.558	.648	14.05, 14.06, 14.07
.561	.665	14.05(a)(4)

ABCL	ACC	RMBCA
.564	.660	14.05
.567	.643	14.32
.570	.660	14.05
.573	.650	14.31(c)
.576	.643	14.32
.579	.650, .653	14.31(c), 14.06, 14.07, 14.40, 14.33
.582	.650	14.31(c)
.585	.650, .655	14.31(c)
.588	.658	N
.594	.678	14.05(b)

ARTCLE 7.

.597	.705	15.01(a)
.600	.718	15.01(b)
.603	.740	15.05(b)
.606	.720	15.06
.607	.723	15.06
.609	.725	15.06
.612	.728	15.01(a)
.615	.730	15.01(b)
.618	.733	15.01
.621	.733, .910	15.01, 1.25
.624	.735	15.05(a)
.627	.753	15.07
.633	.758	15.08
.635	.760	15.08
.639	.763	15.10
.642	.765	N
.645	.768	N
.648	.770	N
.651	.773	N
.654	.775	N
.657	.738	15.04
.660	.778	15.20
.663	.780	15.20
.666	.783	N
.669	.785, .910	15.20, 1.25
.672	.788	15.20
.675	.743	15.30
.678	.745	15.31
.681	.748	15.31
.684	.750	15.31
.687	.708	17.02
.690	.713	15.04
.693	.715	15.02(e)
.696	.710	15.02(d)

ABCL	ACC	RMBCA
	ARTICLE 8.	
.699	.805	16.22
.702	.808	16.22
.705	.811	16.22
.706	.813	N
	ARTICLE 9.	
.708	.828	1.22(a)
.714	.830	1.22(a)
.717	.845	N
.720	.848	N
.723	.850	N
.726	.853	N
.747	.843	1.22(a)
.750	.833	1.22(a)
.753	.835	1.22(a)
.756	.838	1.22(a)
.762	.840	1.22(a)
.765	.855	N
.768	.858	N
.771	.815	N
.773	.860	N
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.777	.818, .823	N
.780	.820	N
.783	.823	N
.786	.823, .825	1.29
.791	.155	N
.792	.863, .915	1.25, 1.26
.794	.865	N
.795	.925	1.27
.798	.868	1.21
.799	.870	N
.804	.935	7.05(a)
.807	.423	7.04
.810	.218, .220	2.03, 2.04
	ARTICLE 11.	
.813	.950	1.30

ABCL	ACC	RMBCA
.816	.955	17.01, 17.02
.822	.965	1.02
.823	.953	N
.825	.990	1.40
.828	.995	1.01

A section by section comparison of the 1984 Revised Model Business Corporation Act (RMBCA) with the proposed Alaska Corporations Code (ACC) and the Alaska Business Corporation Law (ABCL), AS 10.05. N = No comparable provision.

RMBCA	ACC	ABCL
	CHAPTER 1.	
1.01	.995	.828
1.02	.965	.822
1.21	.868	.798
1.22	.828, .830, .833, .835, .838, .840, .843	.708, .714, .747, .750, .753, .756, .762,
1.24	.920	N
1.25	.910, .915	.081, .258, .288, .303, .321, .339, .357, .402, .468, .483, .504, .513, .621, .669, .792
1.26	.863, .915	.792
1.27	.925, .930	.795
1.29	.825	.786
1.30	.950	.813
1.40	.990	.825
	CHAPTER 2.	
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2.04	.220	.810
2.05	.223, .225	.267
2.06	.230	.135
	CHAPTER 3.	
3.01	.005, .010	.003, .009
3.04	.015	.018
	CHAPTER 4.	
4.01	.105	.021
4.02	.110, .115, .120	.024, .027, .030
4.03	.125, .130, .135, .140, .145	.033, .034, .036, .039, .042

RMBCA	ACC	ABCL
	CHAPTER 5.	
5.02	.165	.051
5.03	.150, .170	.045, .054
5.04	.175	.057
	CHAPTER 6.	
6.01	.305, .325	.060, .069
6.02	.308	.063
6.03	.310, .313, .315, .318, .320, .323	.066, .069, .072, .075, .078, .084
6.04	.355	.123
6.20	.328, .330, .333	.087, .090, .093
6.21	.335, .338, .340	.096, .099, .102
6.22	.438	.125
6.23	.373	.204(5)
6.24	.343	N
6.25	.348, .350	.114, .117
6.28	.345	.111
6.30	.428	.129
6.31	.385, .388	.312 - .345
6.40	.358, .360, .363, .365, .375, .970	.204(1), .012, .201 .207(3),(4)
	CHAPTER 7.	
7.01	.405	.138
7.02	.405	.138
7.03	.405	.138
7.04	.423	.807
7.05	.410, .408, .935	.141, .144, .804
7.07	.408	.144
7.14	.420	.156 - .168
7.20	.413, .430	.147, .150, .237 - .249
7.21	.420	.156 - .168
7.22	.418	.159, .168
7.25	.415	.153
7.27	.508	N
7.28	.420	.156 - .168
7.30	.425	.171
7.31	.425	.171
7.40	.435	N

RMBCA	ACC	ABCL
	CHAPTER 8.	
8.01	.450	.174, .222, .219
8.03	.453	.177, .180, .183
8.04	.453	.177, .180, .183
8.05	.453	.177, .180, .183
8.06	.455	.186
8.08	.460, .463	N
8.10	.465	.189
8.20	.475	.199
8.21	.475	.199
8.22	.470	.198
8.23	.470	.198
8.24	.473	.192
8.25	.468	.195
8.30	.450	.174, .222, .219
8.31	.478	N
8.32	.485	.213
8.33	.480	.216, .225
8.40	.483	.228, .231
8.41	.483	.228, .231
8.42	.483	.228, .231
8.43	.483	.228, .231
8.44	.483	.228, .231
8.51	.490	.010
8.52	.490	.010
8.53	.490	.010
8.54	.490	.010
8.55	.490	.010
8.56	.490	.010
8.57	.490	.010
	CHAPTER 10.	
10.01	.502	.270, .273
10.02	.504	.276
10.03	.504	.276
10.04	.506	.282, .279
10.05	.504	.276
10.06	.510, .512	.285, .288
10.07	.516, .518, .520	.294, .303, .306
10.08	.522, .524, .526	N
10.09	.514	.291
10.20	.228	.135

RMBCA	ACC	ABCL

CHAPTER 11.

RMBCA	ACC	ABCL
11.01	.530, .532, .534, .536, .538, .540	.375, .378, .381, .384
11.02	.530, .532, .534, .536, .538, .540	.375, .378, .381, .384
11.03	.544, .548	.393
11.04	.554, .556, .558	N
11.05	.550, .552	.396, .402
11.06	.560	.405
11.07	.562	.408, .411, .414

CHAPTER 12.

RMBCA	ACC	ABCL
12.01	.566	.435
12.02	.568, .570, .572	.438, .441, .444

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RMBCA	ACC	ABCL
13.02	.574	.417 - .432 .447 - .462
13.20	.544, .576	N
13.22	.578, .584	N
13.23	.576, .584	N
13.24	.584	N
13.25	.578	N
13.28	.580	.423, .453
13.30	.582	.426, .456
13.31	.582	.426, .456

CHAPTER 14.

RMBCA	ACC	ABCL
14.01	.605	.465, .474, .477
14.02	.605	.465, .474, .477
14.03	.608, .618	.468, .474, .480 .483, .489(3)
14.04	.610, .613	.492 - .504, .507
14.05	.615, .648, .660, .665, .668, .670 .678	.486, .489, .555 .558, .561, .564, .570, .594
14.06	.648, .653	.555, .558, .579
14.07	.648, .653, .675	.555, .558, .579
14.20	.633	.519
14.21	.633	.519
14.23	.633	.519
14.30	.628, .635	.540, .543, .552, .519

RMBCA	ACC	ABCL
14.31	.635, .638, .640 .650	.519, .534, .573, .579, .582, .585
14.32	.643	.576, .567
14.33	.645, .653	.537, .546, .549 .579
14.40	.653, .668	.579

CHAPTER 15.

15.01	.705, .718, .728, .730, .733	.597, .600, .612, .615, .618, .621
15.02	.710, .715	.693, .696
15.04	.713, .738	.690, .657
15.05	.735, .740	.624, .603
15.06	.720, .723, .725	.606, .607, .609
15.07	.753	.627
15.08	.758, .760	.633, .635
15.10	.763	.639
15.20	.778, .780, .785, .788	.660, .663, .669, .672
15.30	.743	.675
15.31	.745, .748, .750	.678, .681, .684

CHAPTER 16.

16.01	.430	.237 - .249
16.02	.430	.237 - .249
16.03	.430	.237 - .249
16.20	.433	N
16.21	.433	N
16.22	.805, .808, .811	.699, .702, .705

CHAPTER 17.

17.01	.955	.816
17.02	.955, .708	.816, .687
17.04	.963	N

THE ALASKA CODE REVISION COMMISSION

August Meeting, 1984

A WORKING PAPER IN THREE PARTS

THE ORIGINS OF THE ALASKA CORPORATIONS CODE

A SECTION BY SECTION COMPARISON OF THE ALASKA CORPORATIONS CODE

with the

FINAL DRAFT OF THE REVISED MODEL BUSINESS CORPORATIONS ACT

SUGGESTED AMENDMENTS TO THE ALASKA CORPORATIONS CODE

Prepared by

THE CODE REVISION PROJECT.

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PREFACE

This study paper consists of three parts each designed to familiarize the reader with the contents of the proposed Alaska Corporations Code [ACC] and its relationship to the final exposure draft of the Revised Model Business Corporations Act [RMBCA] (June 1, 1984). In Part I the reader will find a chart showing the origin of each provision of the ACC and its comparable coverage in existing Alaska law, the classical Model Act, and the Revised Model Act. Part II follows the organizational structure of the ACC and gives a brief description of the origin of each section, its content, and a specific comparison to provisions of the RMBCA. Part III sets an agenda for the August, 1984, meeting at which time the Code Revision Commission will consider modifications to the draft of the ACC incorporating potential improvements found in the RMBCA. The list reflects the consultant's tentative conclusions and should not be deemed exhaustive. Indeed, the August Commission meeting is an appropriate forum for the consideration of any modification to the draft content of the ACC.

TABLE OF CONTENTS

PART ONE

CORRESPONDING STATUTORY COVERAGE TO EACH SECTION OF

THE PROPOSED ALASKA CORPORATIONS CODE

ACC	ABCL	MBCA	GCL	NBCL	OTHER	RMBCA

ARTICLE 1. CORPORATE PURPOSES AND POWERS

ACC	ABCL	MBCA	GCL	NBCL	OTHER	RMBCA
.005	P	X				X
.010	X	X				P
.015	P	P	P	P		X
.020			X			
.025			X			

ARTICLE 2. NAME AND SERVICE OF PROCESS

ACC	ABCL	MBCA	GCL	NBCL	OTHER	RMBCA
.105	X	X				X
.110	X	X				X
.115	X	X				X
.120	X	X				X
.125	X	X				X
.130	X	X				P
.135	X	X				X
.140	X	X				X
.145	X	X				X
.150	X	X				X
.155	X					
.160	X					
.165	X	X				X
.170	X	X				P
.175	X	X			ORE	P

ARTICLE 3. FORMATION OF CORPORATIONS

ACC	ABCL	MBCA	GCL	NBCL	OTHER	RMBCA
.205	X					
.208	X	X	X			
.210	X	X	X		DEL	
.213	X	X				
.215	X	X				
.218	X	X				P
.220	X	X				P
.223	X	X				X
.225			X		DEL	X
.228			X		DEL	P
.230			X			P
.233			X			

ARTICLE 4. CORPORATE FINANCE

ACC	ABCL	MBCA	GCL	NBCL	OTHER	RMBCA
.305	X	X	X			X
.308	X	X				X
.310	X	X				P
.313	X	X				P
.315	X	X				P
.318	X	X				P
.320	X	X				P
.323	X	X				P
.325			X			P

ACC	ABCL	MBCA	GCL	NBCL	OTHER	RMBCA
.328	X	X				X
.330	X	X				X
.333	X	X				X
.335	X	X				X
.338	X	X				X
.340	X	X				X
.343		X				P
.345	X	X				P
.348	X	X				P
.350	X	X				P
.353	X	X				
.355	X	X				X
.358			X			P
.360			X			P
.363			X			P
.365			X			P
.368			X			
.370			X			
.373	X	X				X
.375	X					X
.378			X			P
.380			X			
.383			X			
.385			X			P
.388			X			X
.390	X					

ARTICLE 5. MEETINGS OF SHAREHOLDERS

ACC	ABCL	MBCA	GCL	NBCL	OTHER	RMBCA
.405		X	P			P
.408		P				X
.410	X	X				X
.413	X	X				X
.415	X	X	P			X
.418			X			X
.420		X	P			P
.423	X	X	P			P
.425	X	X	P			P
.428		X				
.430	X	X				P
.433			X			P
.435		P		P		P
.438	X	X				X

ARTICLE 6. DIRECTORS AND OFFICERS

ACC	ABCL	MBCA	GCL	NBCL	OTHER	RMBCA
.450		X				P
.453				P		P
.455		X				P
.458			X			
.460			X			P
.463			X			X
.465			X			P

X = functionally identical
P = partially identical

ACC	ABCL	MBCA	GCL	NBCL	OTHER	RMBCA
.468		X				X
.470			X			X
.473	X	X				X
.475	X	X				X
.478			X			X
.480	X	X				X
.483			X	X		X
.485		X	X			
.488				P		
.490	X	X				X

ARTICLE 7. AMENDMENTS AND CHANGES

.502	X	X	X			X
.504	X	X	X			P
.506	X	X				P
.508			X			X
.510	X					
.512	X					X
.514	X	X				P
.516	X					P
.518	X					P
.520	X					P
.522		X				X
.524		X				X
.526		X				X

ARTICLE 8. ORGANIC CHANGE

.530	X	X				X
.532	X	X				X
.534	X	X				
.536	X	X				X
.538	X	X				X
.540	X	X				X
.542			X			
.544		X				P
.546	X	X				
.548	X	X				X
.550		X				X
.552	X	X				X
.554		X				X
.556		X				X
.558		X				X
.560		X				P
.562		X				X
.564	X					
.566		X				X
.568		X				P
.570	X	X				P
.572	X	X				P
.574	X	X				P
.576		X				X

ACC	ABCL	MBCA	GCL	NBCL	OTHER	RMBCA
.578		X				P
.580	X	X				P
.582		X				P
.584			X			P
.586	X	X				

ARTICLE 9. DISSOLUTION

ACC	ABCL	MBCA	GCL	NBCL	OTHER	RMBCA
.605	X		X			P
.608	X	X	X			X
.610	X	X	X			P
.613	X	X				P
.615			X			X
.618	X	X	X			P
.620			X			
.623	X	X				
.625	X	X				
.628			X			P
.630			X			
.633	X	X				P
.635	X				ORE	X
.638	X	X				
.640			X			P
.643	X	X	X			
.645			X			
.648			X			X
.650			X			P
.653			X			X
.655			X			
.658	X	X				
.660			X			P
.663			X			
.665			X			
.668			X			
.670			X			
.673			X			
.675			X			X
.678	X	X				X

ARTICLE 10. FOREIGN CORPORATIONS

ACC	ABCL	MBCA	GCL	NBCL	OTHER	RMBCA
.705	X	X				X
.708	X	X				X
.710	X	X				X
.713	X	X				X
.715	X					X
.718	X	X				X
.720	X	X				X
.723	X	X				X
.725	X	X				X
.728	X	X				X
.730	X	X				X
.733	X	X				X

ACC	ABCL	MBCA	GCL	NBCL	OTHER	RMBCA
.735	X	X				X
.738	X	X				P
.740	X	X				X
.743	X	X				P
.745	X	X				X
.748	X	X				X
.750	X	X				X
.753	X	X				X
.758	X	X				X
.760	X	X				X
.763	X	X				P
.765	X	X				
.768	X	X				
.770	X	X				
.773	X	X				
.775	X	X				
.778	X	X				X
.780	X	X				P
.783	X	X				
.785	X	X				X
.788	X	X				X

ARTICLE 11. REPORTS, FEES, AND PENALTIES

ACC	ABCL	MBCA	GCL	NBCL	OTHER	RMBCA
.805	X	X				P
.808	X	X				P
.811	X	X				X
.813	X					
.815	X	X				
.818	X	X				
.820	X	X				
.823	X	X				
.825	X	X				P
.828	X	X				P
.830	X	X				P
.833	X	X				P
.835	X	X				P
.838	X	X				P
.840	X	X				P
.843	X	X				P
.850	X	X				
.853	X	X				
.855	X	X				
.858	X	X				
.860	X					
.863	X	X				X
.865	X					
.868	X	X				P
.870	X					

ARTICLE 12. MISCELLANEOUS PROVISIONS

ACC	ABCL	MBCA	GCL	NBCL	OTHER	RMBCA
.905			X			
.910	P					X
.915	X	X				P
.920				X		X
.925	P	P		P		P
.930				X		
.935	X	X				X
ARTICLE 13. GENERAL PROVISIONS						
.950	X	X				X
.953	X					
.955			P	P		X
.958			X			
.960	X					
.963				X		X
.965	X	X		P		X
.968			X			
.970			X			
.990	P	P	P			P
.995	P					P

"X" indicates the presence of identical or functionally identical statutory language.

"P" indicates the presence of partial congruence between the ACC and the source code or the RMBCA. The "origin" and "comparison" discussion for each section of the ACC should be consulted in order to determine the differences.

ACC: CSSB 246/HB 343, The Alaska Corporations Code

ABCL: AS 10.05, The Alaska Business Corporations Law

MBCA: Model Business Corporations Act

GCL: California General Corporations Law

NBCL: New York Business Corporations Law

RMBCA: Tentative exposure draft of the Revised Model Business Corporations Act

PART TWO

A COMPARATIVE SURVEY OF THE CONTENTS

of the

PROPOSED ALASKA CORPORATIONS CODE

with the

REVISED MODEL BUSINESS CORPORATIONS ACT

ARTICLE 1. CORPORATE PURPOSES AND POWERS

Section .005 PURPOSES

ORIGIN: ACC Section .005 alters the content of AS 10.05.003 to conform to the content of Section 3 of the Model Business Corporation Act (MBCA).

SUMMARY OF COVERAGE: ACC Section .005 permits an Alaska corporation to be formed for any lawful purpose(s) other than insurance and banking. Stock and mutual insurance companies are formed under AS 21.69; the companies are of a corporate nature and are governed by the ACC to the extent provided in AS 21.69.020. Reciprocal insurance companies, noncorporate in nature, are formed under AS 21.75.

COMPARED WITH THE FINAL DRAFT OF THE RMBCA: ACC Section .005 is functionally identical to RMBCA Section 3.01(a). The limitations spelled out in RMBCA Section 3.01(b) are found in ACC Section .010.

Section .010 GENERAL POWERS

ORIGIN: ACC Section .010 is predicated upon AS 10.05.009 which was, in turn, predicated upon Section 4 of the Model Business Corporation Act.

SUMMARY OF COVERAGE: The introductory phrase was adopted from Section 207 of the California General Corporation Law (hereafter the "GCL") and makes explicit that while the general grant of powers are co-extensive with that of a natural person, this grant is subject to limitation by provisions in the articles of incorporation or other law. Subsection (6) makes direct reference to the new provisions on loans to officers and directors (Section . 485). Subsection (15) adds "stock option plans" to the list of incentive plans which a corporation may establish for its directors, officers and employees.

COMPARED WITH THE FINAL DRAFT OF THE RMBCA: Section 3.02 also contains a general grant and specific enumeration of corporate powers. It is functionally identical to ACC Section .009, except that it does not contain express authority to make loans to corporate officers and directors. Within the RMBCA loans to directors are governed by Section 8.32. They are licit if approved by a majority of the outstanding voting shares. The loan may also be authorized by the directors if the board, in its collective judgment, determines that the loan is in the best interest of the corporation.

Section 3.02 follows ACC Section .009 in specifically listing "share option plans" among the incentive plans which a corporation may establish. The idea that a corporation has powers which are presumptively coextensive with those of a natural person is explicit in ACC Section .009. It is left to implication in the comment to RMBCA 3.02.

Section .015 DEFENSE OF ULTRA VIRES

ORIGIN: ACC Section .015(a) is predicated upon Section 203 of the New York Business Corporation Law (hereafter the "NBCL"). It is a modified version of former AS 10.05.018 and Section 7 of the MBCA. Section .015(b) is new and is taken from Section 208 of the GCL.

SUMMARY OF COVERAGE: ACC Section .015 governs the limited circumstances in which a claim of "ultra vires" may affect the rights of third parties who have dealt with a corporate entity and the impact of such behavior in creating liability on the part of the corporate officers and directors of the corporation. While the concept of "ultra vires" is frequently included in the discussion of agency problems within the corporate framework, properly understood it is not a traditional doctrine of agency law. A transaction is ultra vires when it is beyond the powers of the corporation as those powers are conferred by law and the terms of the articles of incorporation.

COMPARED WITH THE FINAL DRAFT OF THE RMBCA: The provisions of ACC Section .015 and those of RMBCA 3.04 are functionally identical.

Section .020 LIMITATIONS ON AUTHORITY OF CORPORATE AGENTS

ORIGIN: ACC Section .020 is predicated upon GCL Section 208.

SUMMARY OF CONTENT: Unlike conduct assailed as beyond the powers of the corporation, a subject covered by ACC Section .015, Section .020 deals with the consequences of an abuse of authority which was within the power of the corporate principal to confer. The provisions of Section .020 confront the common law of agency as it has been applied to the unique problems generated by an artificial corporate person as principal. The thrust of Section .020 is to shift the risk of transactions which exceed the authority of corporate agents to the corporation thus relieving the interests of innocent third persons. Subsection (3) makes it clear that either the corporation or a shareholder suing in a derivative capacity may assert lack of authority in any action against the faithless agent.

COMPARED WITH THE FINAL DRAFT OF THE RMBCA: The official comment to RMBCA Section 3.04 makes it clear that the Model Act has no coverage of this important question at all. See pp. 3-17, 18.

Section .025 CONTRACTS OR CONVEYANCES BINDING DOMESTIC AND FOREIGN CORPORATIONS

ORIGIN: ACC Section .025 is predicated upon GCL Section 208.

SCOPE OF COVERAGE: ACC Section .025 settles two important questions associated with contracts or conveyances entered by corporate agents who have exceeded their actual authority. If the transaction is within the scope of the agent's "apparent authority", it is binding upon the corporate principal and upon the third party. Thus, the defect in the authority of the agent does not defeat the corporation's liability on the transaction, nor does it prevent it from acquiring rights against the third party measured by the terms of the transaction.

COMPARED WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA has no statutory provision covering this important question.

Notes

ARTICLE 2. NAME AND SERVICE OF PROCESS

Section .105 CORPORATE NAME

ORIGIN: ACC Section .105 is a reenactment of AS 10.05.021 as amended.

SUMMARY OF COVERAGE: ACC .105 requires that a corporation adopt as part of its name one of the listed alternatives designed to warn third parties that they are dealing with a corporate entity. ACC .105 also prohibits a person from adopting a name that contains words suggesting a corporation unless that person has either been issued a certificate of incorporation in Alaska or has obtained a certificate of authority for a foreign corporation.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: ACC Section .105 is functionally identical to RMBCA Section 4.01(a) and (b). There are, however, differences in content.

RMBCA Section 4.01(a)(1) requires that a corporation include as part of its name one of the traditional words or abbreviation designed to indicate corporate status. In a break with the prior Model Act and exposure draft, the final version would allow this requirement to be satisfied by the inclusion of "words or abbreviations of like import in another language. . . ." The official comment merely indicates that the change has been made. It offers no justification. At least two reasons to oppose such permission come to mind. First, I doubt that many persons would appreciate the import of initials such as "GmbH" as a signal that this was a limited liability entity. Further, even if one knew that this was a German designation for a corporation she might be fooled into belief that the entity was <u>in fact</u> a German entity.

RMBCA Section 4.01(c) contains provisions whereby a corporation may give written consent to the use by another entity of a name which would otherwise be deceptively similar.

The final draft of Section 4.01(b)(4) requires that a corporate name be distinct from the name of a registered nonprofit corporation. This provision is not contained in the ACC.

ACC Section .105(b) continues a 1976 amendment by the terms of which the Legislature forbade a corporation from adopting a name which contained the word "city", "borough", or "village" or otherwise implying that the corporation is a municipality. Reflecting its detachment from Alaskan concerns, RMBCA Section 4.01 contains no similar prohibition.

Section .110 RESERVATION OF CORPORATE NAME

Section .115 APPLICATION TO RESERVE CORPORATE NAME

Section .120 TRANSFER OF RESERVED NAME

ORIGIN: ACC Sections .110, .115, and .120 are reenactments without change of former AS 10.05.024, .027, and .030 which were, in turn, predicated upon Section 9 of the MBCA.

SUMMARY OF COVERAGE: ACC Sections .110, .115, and .120 set forth the natural or corporate persons who may reserve a corporate name.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 4.02 is functionally identical to these provisions of the ACC except for their substitution of the commissioner for the "secretary of state."

Section .125 REGISTRATION OF CORPORATE NAME

Section .130 USE OF SAME OR DECEPTIVELY SIMILAR NAME

Section .135 PROCEDURE FOR REGISTRATION OF CORPORATE NAME

Section .140 FEE FOR AND DURATION OF REGISTERED NAME

Section .145 RENEWAL OF REGISTERED NAME

ORIGIN: ACC Sections .125, .130, .135, .140, and .145 are reenactments of AS 10.05.033, 034, .036, .039, and .042, and are based on Sections 10 and 11 of the MBCA. Section .034 was added by the Legislature in 1966. Minor language changes have been incorporated to recognize the recently enacted scheme to allow the Department of Commerce and Economic Development to determine various fees by administrative regulation.

SUMMARY OF COVERAGE: ACC Sections .125, .130, .135, .140, and .145 provide for the registration, protection, duration, and renewal of a corporate name. Under ACC Section .130, registration of a corporate name gives the registered holder the right to seek an injunction against the use of that name or a deceptively similar name by another. The registered name must be renewed each year under ACC Section .145.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 4.03 combines the coverage of former Model Act Sections 10 and 11. Unlike ACC Section .130, RMBCA Section 4.03 does not explicitly confer exclusive right to the use of a registered corporate name, nor does it declare that a person who has registered the corporate name may enjoin the use of the same or a deceptively similar name. Section .130 clearly provides that the remedy available for abuse of a registered corporate name is not limited to injunctive relief, but may be a cause of action for damages. RMBCA Section 4.03 contains no such provision.

Section .150 REGISTERED OFFICE AND REGISTERED AGENT

ORIGIN: ACC Section .150 is a reenactment without change of AS 10.05.045 which was based on Section 12 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .150 establishes the requirement that a corporation maintain both a registered office and a registered agent in the State of Alaska. The agent is necessary for service of process; and, the office is required to serve as the depository for various books and records as provided or required by the the ACC.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 5.03 is functionally identical to ACC Section .150.

Section .155 REGISTRATION OF AGENT BY NONRESIDENT WITH CONTROLLING INTEREST

ORIGIN: ACC Section .155 is a reenactment without substantive change of AS 10.05.791 as amended in 1980. A rewording has been undertaken to make explicit that the designated agent must be within the State of Alaska.

SUMMARY OF COVERAGE: In order that the commissioner may readily establish official contact with a nonresident possessed of a controlling interest (ACC Section .955(12)), ACC Section .155 requires such a person to designate an agent within Alaska upon whom notice and process may be served.

Service on the Section .155 agent is equivalent to personal service on the controlling nonresident. Section .155(b) enforces this requirement by forbidding, in the event of noncompliance, either the controlling person or the controlled corporation use of the courts of the State of Alaska.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: Again, reflective of its concern with the problems of no particular jurisdiction, the content of the Revised Model Act contains no provision requiring designation of agents by nonresidents with a controlling interest.

Section .160 FILING LIST OF REGISTERED CORPORATIONS WITH SUPERIOR COURT; UPDATING AND PUBLISHING

ORIGIN: ACC Section .160 is a reenactment of AS 10.05.048 which, has been changed to require yearly compilation and weekly updating of the stipulated information.

SUMMARY OF COVERAGE: ACC Section .160 reflects the view that it is vital that the practicing attorney be able to quickly ascertain information concerning the corporate name, address of the registered office, and the name and address of the registered agent of both domestic and authorized foreign corporations. Both geographical and communications considerations have dictated that such information be available locally and updated frequently.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.20 contains absolutely no provision requiring that this vital information be maintained or made available.

Section .165 CHANGE OF REGISTERED OFFICE OR AGENT

ORIGIN: ACC Section .165 is a reenactment of AS 10.05.051 which was, in turn, predicated upon Section 13 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .165 establishes the procedure whereby a domestic or foreign corporation may change its registered office or agent.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 5.02(a) is identical to ACC Section .165. Subsection (b) differs only in that the ACC has a uniform provision on filing with the commissioner which is not reflected in the RMBCA.

Section .170 CHANGE OR RESIGNATION OF REGISTERED AGENT

ORIGIN: ACC Section .170 is a reenactment of AS 10.05.054, which was based on Section 13 of the MBCA. The final sentence has been changed to permit a resignation of the registered agent, to become effective sooner than 30 days after the filing of written notice with the commissioner if the corporation appoints a successor within this shortened period. This change is based upon Section 57.070(3) of the Oregon Revised Statutes.

SUMMARY OF COVERAGE: ACC Section .170 establishes the procedure by which a registered agent may change address or resign. Unless and until the registered agent follows these statutory procedures, the commissioner may continue to regard the last address of record as effective for all notice provisions under the ACC.

Subsection (b) sets forth the procedures which must be observed for a registered agent to effectively resign. Unless and until such procedures are followed, the commissioner may continue to deal with the agent and effectively notice or bind the corporate principal. In the event that such an agent ceases to function without observing these statutory provision, there would be a breach of the contract of agency with the corporation but such a breach would not serve as a defense to the corporate principal in dealing with or accounting to the commissioner.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 5.03 does not provide for a shortened effective date if the corporation appoints a successor registered agent. The minimum information to be contained in the written resignation is governed by Section 5.02. The "circularity problems" noted in the official comment to RMBCA Section 5.03 have been directly solved by ACC Section .170(b). The commissioner is directed to mail a copy of the written notice of resignation to "the corporation at its principal office."

Section .175 SERVICE OF PROCESS ON CORPORATION

ORIGIN: ACC Section .175(a), (c), and (d) are a reenactment of AS 10.05.057, and are based on Section 14 of the MBCA. ACC Section .175(b) is new to the law of Alaska. It is taken from Section 57.075(3) and (4) of the Oregon Revised Statutes and eliminates the commissioner's burden under prior law to transmit process served on the commissioner given the default of a registered agent. Under ACC Section .175(b), that burden is placed upon the party seeking to initiate litigation against the corporation.

SUMMARY OF COVERAGE: To assure that notice sent to a corporation without a registered agent is the best available under the circumstances, ACC Section .175(b)(2)(B) requires that the moving party send notice to such address as it knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice. Under ACC Section .175(b)(3), the moving party is obliged to file proof of the attempted service in the appropriate superior court or other tribunal.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 5.04 admits that there were substantial problems with the provisions of former MBCA Section 14. It, too, eliminates the burden formerly placed upon a state official to serve the substitute process. Unlike the Oregon law and the ACC, RMBCA Section 5.04(b) does not require that a best effort be made to find the actual address of the corporation. It is content if the notice is mailed to the principal office. Given the official comment's express solicitude that actual notice be communicated to the foreign corporation, it would appear that the Oregon/ACC approach is superior.

Notes

ARTICLE 3. FORMATION OF CORPORATIONS

Section .205 INCORPORATORS

ORIGIN: ACC Section .205 is a reenactment with one change of AS 10.05.252 as amended in 1976 by the Legislature.

SUMMARY OF COVERAGE: The minimum age for an incorporator has been reduced from 19 to 18 to bring Section .205 into conformity with Alaska's general policy on legal majority. ACC Section .205 varies from Section 53 of the MBCA in the requirement that incorporators be natural persons. This is a continuation of prior Alaska law.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 2.01 differs from ACC Section .205 and existing Alaska law by permitting artificial persons (including unincorporated associations, partnerships, trusts, estates, and governments) to act as incorporators. There is no minimum age for natural persons to so function. Further, the requirement that the incorporators sign a verified copy of the articles has been eliminated.

Section .208 ARTICLES OF INCORPORATION

Section .210 ARTICLES OF INCORPORATION; OPTIONAL PROVISIONS

ORIGIN: ACC Section .208 subsections (1),(2), and (3) are predicated upon AS 10.05.255(1), (3), and (10), which were derived from Section 54 of the MBCA. Subsections (4) and (5) are taken from Section 202 of the GCL. Subsection (6) reenacts AS 10.05.255(13) as amended. The provision of the ACC governing the content of the articles is modeled upon Sections 202 and 204 of the GCL. ACC Section .210 is based upon GCL Section 204, Delaware Section 102(b)(4) and (5), and AS 10.05.255.

SUMMARY OF COVERAGE: In addition to the specific changes noted, Sections .208 and .210 make vital a drafting decision which was unimportant under prior Alaska law. The goal of the ACC is to follow California's example requiring that the articles of incorporation function as the fundamental agreement which structures the basic purpose of the corporation, the prerogatives of management, and the rights of shareholders. Section .208 requires that several fundamental decisions be addressed in the articles. While the provisions may be amended by following the procedures outlined in the ACC, at all times the subject matter content of Section .208 must be defined in the current corporate articles. Section .210 enumerates provisions which are optional as contents of the articles. The critical point is that if the subject matters enumerated in Section .210(1) are not settled by the initial or amended provisions of the articles, they may not be resolved or governed by the bylaws, shareholder agreements, or any other form of treaty.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: An initial comparison between RMBCA Section 2.02 and ACC Sections .208 and .210 would suggest significant differences. It would be misleading. It is true that RMBCA Section 2.02(a) has a rather short list of mandatory provisions when contrasted with ACC Section .208. In part this is because ACC Section .208(4) reflects Alaska's concern for identification of alien affiliates, a concept unknown to the Model Act. Further, there is no single provision in the RMBCA which is comparable to ACC Section .210 in gathering into one convenient place all of the optional decisions which cannot be made effective unless they are reflected in the articles. The MBCA does have such requirements, only they are scattered throughout the act. See the official comment to RMBCA Section 2.02 at page 2-9,10.

The topics which are conveniently gathered in ACC Section .210(1) and scattered throughout the lengthy text of the RMBCA are not identical. In general, it may be said that the ACC is more protective of the interests of shareholders (both actual and potential) and their interest in locating in one document a definitive statement of these basic decisions. Under the RMBCA, such decisions could be found in extrinsic resolutions or agreements which might be known and available to some but not to others.

Section .213 FILING OF ARTICLES OF INCORPORATION

ORIGIN: ACC Section .213 continues the policy of AS 10.05.258, which had been predicated upon Section 55 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .213 also reflects the general scheme of the ACC to standardize the procedures for filing with the commissioner as set forth in ACC Section .910.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 2.03 suggests to the legislatures of the several states that they abolish the concept and practice of a "certificate of incorporation." Instead, filing is completed upon delivering a copy of the articles to the secretary of state and having it "stamped and filed." There is to be no certificate of incorporation. Elimination of the certificate of incorporation would destroy the "bright line" event selected by the Commission for fixing the de jure commencement of corporate existence.