

**ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672**

**7060 HOUSE LABOR & COMMERCE**

HB

1977

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO : HB 197

Revision Date: \_\_\_\_\_  
Title: " An Act relating to surety bonds  
required of certain fish processors."  
Sponsor: Representative Jacko  
Requestor: House Labor & Commerce

Department Affected: Labor  
BFU: Labor Standards & Safety  
Component: \_\_\_\_\_  
Wage & Hour  
COMPONENT SERIAL NO. 345

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Robert Libbey, Director Phone: 264-2452  
Division: Labor Standards & Safety Date: 3/22/91

Approved by Commissioner: Nancy Bear Userra Date: 3/22/91  
Agency: Department of Labor

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

**Bill No:** House Bill No. 197

**Date:** April 8, 1991

**Title:** "An Act relating to surety bonds  
of certain fish processors."

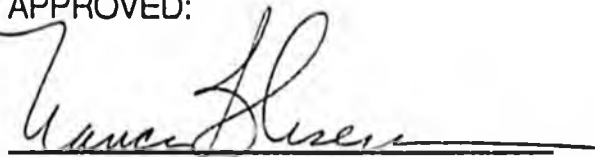
**Contact:** Robert Libbey  
264-2452

This bill amends AS 16.10.290(b) to lower the bond from \$10,000 to \$2,000 for fish processors that process less than 30,000 pounds of fish a year. Presently, all fish processors are required to have a \$10,000 bond, without regard to the processor's size.

A processor dealing with less than 30,000 pounds of fish a year is a very small processor (owner-operated and fish wheel operations). Accordingly, the Department does not believe the reduction this bill proposes will adversely affect the individuals the bonding requirements are intended to protect.

The Department supports this bill. It will not have a fiscal impact on the Department.

APPROVED:



Nancy Bear Usera, Commissioner  
Department of Labor

**POSITION PAPER/Department of Labor**

# House of Representatives

While in Session:  
Box V  
Juneau, AK 99811  
(907)465-4942

P.O. Box 47001  
Pedro Bay, Alaska 99647  
(907)850-2208



Member:  
Finance Committee

Finance  
Subcommittee Chair:  
Courts  
Department of Public Safety

Finance  
Subcommittee Member:  
Department of Fish and Game

Rep. George Jacko, Jr.

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

TO: Representative *David* Finkelstein, Chair  
House Labor and Commerce Committee

FROM: Representative *George* Jacko, Jr.

SUBJECT: HB 197 "Small Fish Processing"

DATE: April 9, 1991

=====

HB 197 proposes to reduce the surety bond required by the Department of Labor for fish processors. This legislation would reduce the bond requirement from \$10,000 to \$2,000. A small fish processor is defined as producing 30,000 pounds or less. The Department of Labor requires surety bonds for fish processors for wages and claims, and unemployment insurance contributions.

Through the work of the Bering Sea Fishermen's Association and others, technology and financial assistance is being provided to village people who are interested in starting fish processing facilities. An obstacle for many is the funds necessary to begin the business. In order to receive a \$10,000 surety bond, one must file with the Department of Labor a cash deposit or negotiable assets. For many rural Alaskans this is difficult. Lowering the bond requirement to \$2,000 would make a substantial difference for those interested in starting a small fish processing facility.

AG  
AUG 23 1990

Representative George Jacko  
P.O. V  
Juneau, Alaska 99811

August 3, 1990

Dear Representative Jacko,

Bering Sea Fishermen's Association, working in conjunction with the Department of Community and Regional Affairs, has helped form the Inter-Agency Working Group on Small Fisheries Development. This ad hoc group of state agencies along with some private industry advisors is working to streamline and simplify regulations which affect fishermen especially fishermen interested in value adding by doing such things as processing their fish or direct marketing. The goals and objectives of the IAWG as developed in the initial meeting are listed below:

**Overall Objectives:**

1. To further the economic development of the small processors and resource users of commercial fish throughout the state of Alaska.  
\* "small" is tailored to resources.
2. Make available a complete set of plans meeting minimum requirements for small processors/smokers.

**Specific Goals:**

1. Focus on western Alaska/Interior area to streamline regulatory process (later include all of Alaska).
2. Review the various department's regulations and definitions for consistency and attempt to establish definitions that match uniformly across agencies.
3. Review the Department's regulations for waiver systems for the small processor and perhaps try to find more.
4. Focus mainly on the following product types: fresh, frozen, smoked and roe.
5. Effect/Implement technology transfer and networking.
6. Try to provide consistent boundaries/jurisdiction among agencies.
7. Review existing and propose new mechanisms for R & D and financing. ex. (AST&F).

8. Provide floor plans and materials list for a minimal processor and smoker to the general public.

Agendas and meeting notes from the two previous meetings have been enclosed with this packet to provide your office with background information on IAWG activities so far. The second meeting of the IAWG came up with some specific recommendations for regulatory change which are listed on the second page of the IAWG 3/20/90 Meeting Notes under category 3 a) titled Labor Bonding Requirements. These recommended changes involve down-sizing bonding requirements regulated under A.S. 16.10.290, for a category of small processors which process under 30,000 pounds of round weight fish. Category 3 a) discussion notes are listed below:

3. Labor Bonding Requirements:

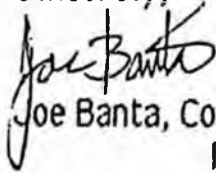
a) Proposed alternatives from the first meeting were discussed and consensus was reached which recommended researching whether or not processors buying under 30,000 lbs of round fish are even being assessed any of the bond forfeitures. It was also agreed to recommend a reduced bond requirement for small processors with a \$2,000 bond required for a processor which processes less than 30,000 lbs. Reporting prior to exceeding the maximum and an x day period to procure bonding at the higher amount would also be part of the changes. It was mentioned that while this \$2,000 bond would not cover all the possible wages and/or fish purchases needed to process 30,000 lbs, a \$10,000 bond doesn't cover all the wages earned by large processors either. These processors may process millions of pounds and produce more than \$10,000 worth of wages and/or fish purchases in a single day let alone an entire season. Another point brought up was that large processors can go and purchase a bond for a couple of hundred dollars while a small processor may not have the capital or assets to purchase a bond and would be required to come up with cash for the full \$10,000 bond amount.

This change is needed because many small business people cannot come up with the financial requirements to provide the large \$10,000 bond now needed. It is especially difficult for residents of rural and western Alaska to come up with collateral like real property for bonding, as they often have a lower income level or they have not yet received clear title to property due to land claims negotiations and/or survey needs. This need is further substantiated by the findings of the Governors December 1989 Conference on Small Business. Insurance and bonding difficulties tied for the number

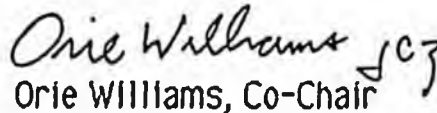
one problem facing small businesses according to a report from the Conference. In addition, problems with regulations and paperwork tied for the fourth worst problem facing small businessmen.

What would be needed to change the labor bonding requirement seems to require statutory address according to the Department of Labor. At this point the IAWG feels it should communicate the recommendations regarding this bonding requirement to you and other legislators to allow time for consideration and drafting of a statute which would best address the problem. Basically, a statute which addresses the concerns listed in Labor Bonding Requirements 3 a) listed above, is what we are recommending. We have drafted an amendment for your consideration. Please refer to attachment one to see it and the existing statute. We are available for questions at your convenience and would appreciate your assistance in forming these statutes and making it easier for fishermen/processors to develop their businesses.

Sincerely,



Joe Banta, Co-Chair



Orle Williams, Co-Chair

Inter-Agency Working Group

ADC	John Enge
ADCRA	Orle Williams, Elstun Lausen
ADEC	Marie Fried
ADF&G	Eric Smith
ADL	Snova Lockaby-Smith
ADR	Paul Dick, Mark Gruber
BSFA	Joe Banta, Jude Henzler

*Attachment One*

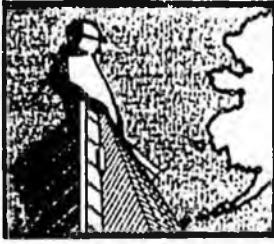
**Sec 16.10.290 Security and Collection of Wages and payment for raw fish.**

(b) The amount of the bond shall be \$10,000 unless, during the preceding five years, that amount was insufficient to satisfy a final judgment resulting from a claim asserted against the bond, cash deposits, or other security filed under this section. If \$10,000 was insufficient, the bond shall be \$50,000; if \$50,000 was insufficient, the bond shall be \$100,000. If the commissioner determines that during the preceding five years, a fish processor or primary fish buyer (1) has engaged in the business of fish processor or primary fish buyer in the state while not in compliance with this section and (2) has not yet satisfied a final judgment entered against the processor or fish buyer for payment for labor furnished to, or raw fishery resources purchased by, the processor or fish buyer, then the amount of the bond for the processor or fish buyer shall be \$100,000. In lieu of the surety bond the fish processor or primary fish buyer may file with the commissioner a cash deposit or other negotiable security acceptable to the commissioner in the amount specified for the bond. If no claim is asserted under this section within two years from the date the bond, cash deposit or other security is filed, the term of the bond, cash deposit or other security shall be two years, if a claim has been asserted within two years, the term of the bond, cash deposit or other security shall be for five years.

**Suggested changes:**

(b) The amount of the bond shall be \$10,000 unless, (1) during the preceding five years, that amount was insufficient to satisfy a final judgment resulting from a claim asserted against the bond, cash deposits, or other security filed under this section, (or 2) the amount of fish processed annually is less than 30,000 lbs.] If \$10,000 was insufficient, the bond shall be \$50,000; if \$50,000 was insufficient, the bond shall be \$100,000. If the commissioner determines that during the preceding five years, a fish processor or primary fish buyer (1) has engaged in the business of fish processor or primary fish buyer in the state while not in compliance with this section and (2) has not yet satisfied a final judgment entered against the processor or fish buyer for payment for labor furnished to, or raw fishery resources purchased by, the processor or fish buyer, then the amount of the bond for the processor or fish buyer shall be \$100,000. [ If the amount of fish processed annually is less than 30,000 pounds, then the bond amount shall be \$2,000. If the amount of fish processed goes over 30,000 pounds, the fish processor or primary fish buyer shall immediately notify the Department of Labor, and will then have seven days to increase their bond up from \$2,000 to \$10,000. If the bond is not increased then the

April 9, 1991



# Bering Sea Fishermen's Association

725 Christensen Drive  
Anchorage, Alaska 99501  
(907) 279-6519

Representative George Jacko  
Alaska State House of Representatives  
Juneau, Alaska 99811

Re: Amending State of Alaska labor bond requirements

Dear Representative Jacko:

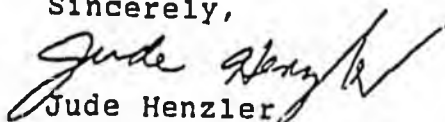
Thank you for this opportunity to speak to you about the work you have done attempting to reduce the present labor bond requirements from the present \$ 10,000.00 for all fish processors to \$ 2,000.00 for small fish processors.

As you know, we here at BSFA do all our work with rural Alaskans who are trying to figure out ways to make a go of it on very little financing. With mostly spit and glue and their own hard work they often can put together small catcher/seller operations and can begin to move up to small time fish smoking and other value adding procedures, but they really have a hard time coming up with either the \$ 10,000.00 cash or collateral now required for them to get into processing ventures. For instance, as just one example, small processors are presently required to put up a \$ 10,000.00 labor bond to protect their payroll even though that amount may well be in excess of their total payroll for a season. Whereas large processors with payrolls of hundreds of thousands of dollars theoretically protect their payrolls with that same \$ 10,000.00 figure. That seems inequitable to us, and a real deterrent to much-needed value adding efforts in bush Alaska. We think that changing the requirement will make it far more possible and far more likely that small rural Alaska entrepreneurs will be interested in trying to make a go of it in fish processing ventures.

Thursday I travel to Dillingham to attend the fish conference and to speak there at a "small-scale value added processing session" on Saturday. I will make a point of airing this issue at that conference and test our opinion that this proposed change in the required labor bond would be welcome and effective.

Thanks again for this opportunity to comment on this issue.

Sincerely,

  
Jude Henzler

\*\*\*END\*\*\*

AUG 23 1990

To: Ad Hoc Interagency Working Group on Small Fisheries Development

From: Elstun W. Lauesen II, SEDS  
State of Alaska/DCRA

Joe Banta, Development Specialist

Jude Hensler, Project Developer  
Bering Sea Fishermen's Association

Date: 07/12/89

Subj: Small Added-Value Fish Processors in Rural Alaska:  
Regulatory Reform, Technology Transfer, & Financing

\*\*\*\*\*

BACKGROUND: Increasing numbers of rural communities, corporations and individuals are turning to the processing of fish as a means of extending both value and productivity of their fishery. Larger units (250,000 #-plus p.a.) are based upon known technologies and are designed for a captured market (usually "capture" is achieved by exclusive marketing to venture partners like Towa or Whitney-Fidalgo who purchase the product).

Smaller Units (around 50,000# p.a. or less) are being looked to by sole proprietorships w/o exclusive markets and are designed to meet a variety of product needs that may change according to the vagaries of supply and demand.

"Doing more with less" requires efficiencies of design and a dedicated program of technology transfer by the small processors and the agencies that work with them.

Currently, both the state and the private sector are working with research, regulations, and financing schemes that are based upon the needs and requirements of larger processors.

The reason for this working group is to focus upon the needs of the smaller processors which will be established in greater numbers in rural Alaska and (1.) determine if alternative approaches to developing, regulating, and capitalizing these ventures are needed, and (2.), if needed, to propose those alternative approaches.

Areas to be considered include (but are not limited to) regulations affecting product QA/QC; regulations in the workplace; Insurance & Bonding; Financing; and Technical Assistance by agencies, non-profits, co-operatives, and others, and Research & Development.

HB

206

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. H.B. 206

Revision Date: \_\_\_\_\_ Department Affected: Commerce & Economic Development  
 Title: An Act Revising the Loan Authority of the AK Industrial Dev. & Exp. Auth. BRU: AK Industrial Deve. & Export Auth.  
 of the AK Industrial Dev. & Exp. Auth. Component: \_\_\_\_\_  
 Sponsor: Chequette and Baker  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 

1	2	3	4
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	25,000	25,000	25,000	25,000	25,000	25,000
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REVENUE	25,000	25,000	25,000	25,000	25,000	25,000
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER	25,000	25,000	25,000	25,000	25,000	25,000
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)  
  
SEE ATTACHED

Prepared By: Bertram L. Wagon Phone: 561-8050  
 Division: AK Industrial Development & Export Auth. Date: March 15, 1991

Approved by Commissioner: Glenn A. Olds  
 Agency: Department of Commerce & Economic Development Date: 3-18-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

**Analysis:**

The \$25 million cost per year is an estimate of the loans and guarantees which would be issued under this legislation. This estimate is dependent upon how much banks would utilize the program and upon overall economic conditions with the state which influence loan demand. It is expected that demand will be considerable given the differential amortization on the banks portion and no collateral requirement on loans of less than five years maturity.

**PHONE CALL**

FOR <i>Call</i>	DATE <i>4/26</i>	TIME <i>10:20</i>	<i>AM</i>
M. <i>Span</i>			
OF <i>RE: CS for HB206 (URGENT)</i>			PHONED
PHONE <i>1 x 2995</i>			RETURNED YOUR CALL
AREA CODE	NUMBER	EXTENSION	PLEASE CALL
MESSAGE <i>As per I rechecked the minutes for HB206. There is an error on the CS on page 2, line 17. The word 'and' should not be included. Please</i>			WILL CALL AGAIN
SIGNED			CAME TO SEE YOU
			WANTS TO SEE YOU
			TOPS FORM 4C03

*Check me on the proper procedure for striking the word from the CS before its Tuesday hearing in NY name.*

*Shank*

CS FOR HOUSE BILL NO. 206 (L&C)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 4/10/91  
Referred: Finance

Sponsor(s): REPRESENTATIVES CHOQUETTE, Baker

*Handwritten notes:*  
Jay  
pallone  
refers any  
of 9/15/91  
page

A BILL

FOR AN ACT ENTITLED

1 "An Act revising the loan authority of the Alaska Industrial Development and Export  
2 Authority, and amending the requirements relating to the authority's loan guarantee  
3 program; and providing for an effective date."

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

5 \* Section 1. AS 44.88.155(d) is amended to read:

6 (d) A loan purchased in whole or in part by the authority with assets of the enterprise  
7 development account or with proceeds of bonds secured by assets of the enterprise development  
8 account, other than a loan which is financed with the proceeds of bonds of the authority and  
9 secured only by a project applicant or a project,

10 (1) may not exceed \$15,000,000 [~~\$10,000,000~~];

11 (2) may not exceed the cost of the project or 75 percent of the appraised value  
12 of the project, whichever is less, unless the amount of the loan in excess of this limit is federally  
13 insured or guaranteed or is insured by a qualified mortgage insurance company;

14 (3) may not be for a term longer than three-quarters of the authority's estimate

1 of the life of the project or 25 years from the date the loan is made, whichever is earlier;

2 (4) shall contain [COMPLETE] amortization provisions; the amortization  
3 provisions

4 (A) must be complete and satisfactory to the authority and require  
5 [REQUIRING] periodic payments by the borrower;

6 (B) may not require the loan originator to amortize the portion of the  
7 loan retained by the loan originator for longer than the amortization period for the  
8 portion of the loan held by the authority or for 10 years, whichever is less;

9 (5) shall be in the form and contain the terms and provisions with respect to  
10 insurance, repairs, alterations, payment of taxes and assessments, default reserves, delinquency  
11 charges, default remedies, acceleration of maturity, secondary liens, and other matters the  
12 authority prescribes;

13 (6) shall be secured as to repayment by a mortgage or other security instrument  
14 in the manner the authority determines is feasible to assure timely repayment under a loan  
15 agreement entered into with the borrower;

16 (7) may not be made unless

17 (A) the project applicant is a ~~new~~ business venture;

18 (B) the project applicant is not, or, if the applicant is not a single  
19 proprietorship, all members of the business enterprise or enterprises constituting the  
20 project applicant are not, in default on another loan made by the state or by a  
21 public corporation of the state; and

22 (C) with respect to the loan,

23 (i) at least 20 percent of the principal amount of the loan is  
24 retained by the loan originator [OF THE LOAN AS LONG AS THE LOAN IS  
25 OUTSTANDING]; or

26 (ii) [(B)] 100 percent of the principal amount of the loan is  
27 guaranteed by the United States or an agency or instrumentality of the United  
28 States;

29 (8) must be

30 (A) financed from the proceeds of bonds; or

31 (B) expected by the authority to be financed from the proceeds of bonds.

i \* Sec. 2. AS 44.88.535(a) is amended to read:

2 (a) The authority may guarantee a loan under AS 44.88.500 - 44.88.599 if the

3 (1) loan

4 (A) is commercially reasonable;

5 (B) [,] contains amortization provisions satisfactory to the authority;

6 (C) [,] is secured by adequate collateral, except that security may not  
7 be required for a guarantee that is no more than \$50,000 for which the proposed  
8 loan amortization period does not exceed five years;

9 (2) [AND THE] net cash flow from the borrower provides adequate coverage for  
10 the debt service on the loan;

11 (3) [(2)] term of the loan does not exceed 20 years;

12 (4) [(3)] loan is originated with and serviced by a state chartered or federally  
13 chartered financial institution;

14 (5) [(4)] portion of the loan not guaranteed by the authority is held by the  
15 originating financial institution or another financial institution approved by the authority;

16 (6) [(5)] loan is made to a business with a majority interest held by state  
17 residents; and

18 (7) [(6)] loan guarantee provides a benefit to the borrower.

19 \* Sec. 3. AS 44.88.535(b) is amended to read:

20 (b) The authority may provide a guarantee from the fund

21 (1) of 80 percent of a loan of \$50,000 or less that qualifies under  
22 AS 44.88.500 - 44.88.599;

23 (2) for up to 80 percent of a loan of more than \$50,000 that qualifies under  
24 AS 44.88.500 - 44.88.599; the [, THE] ratio of the guarantee to the outstanding principal of the  
25 loan may not increase over the term of the loan.

26 \* Sec. 4. LOAN RATIOS NOT TO BE INCREASED. For a loan of \$50,000 or less for which a loan  
27 guarantee was made from the business assistance fund of the Alaska Industrial Development and Export  
28 Authority before the effective date of this Act, the authority may not increase the ratio of the guarantee  
29 to the outstanding principal of the loan in effect on the effective date of this Act over the term of the  
30 loan.

31 \* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

# ALASKA LEGISLATURE

## Committees

JUDICIARY  
LABOR & COMMERCE  
BUDGET SUBCOMMITTEE  
ADMINISTRATION



JUNEAU

BOX V  
JUNEAU ALASKA 99811  
(907) 465-2647

ANCHORAGE

BOX 10-1776  
ANCHORAGE ALASKA 99510  
(907) 562-1776

**Kevin "Pat" Parnell**  
Representative  
University-Midtown, Anchorage

3-22-91

TO: REP. DAVID FINKELSTEIN, CHAIRMAN  
LABOR AND COMMERCE COMMITTEE

FM: REP. KEVIN "PAT" PARNELL

RE: HB 206 Subcommittee

Reps. Ivan, Choquette and I met this morning and recommend two amendments to the amended version of HB 206.

1. Section 1 AS 44.88.155 (d) (1) may not exceed \$15,000,000;
2. Section 1 AS 44.88.155 (a) add: Funds may be used only for new business ventures where none of the participants have borrowed from the State of Alaska in the past and failed to repay the full amount of the loan.

It is the recommendation of Rep. Ivan and myself with Rep. Choquette's approval that the Bill simply be amended rather than becoming a Committee Substitute.

Rep Choquett's office will prepare the revised/amended version for your office.

I believe most details have been worked out and concerns at this level have been met and would appreciate scheduling HB 206 at your earliest convenience.

Copies: L & C Committee members

Reps. Choquette & Baker

AMENDMENT #3

OFFERED IN THE HOUSE

TO: HB 206

BY REPRESENTATIVE CHOQUETTE

Page 1, line 10:

Delete "\$10,000,000"

Insert "\$15,000,000 [\$10,000,000]"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 206

Page 2, lines 16 - 20:

Delete all material and insert:

"(7) may not be made unless

(A) the project applicant is a new business venture;

(B) the project applicant or, if the applicant is not a single proprietorship, a member of the business enterprise or enterprises constituting the project applicant is not in default on another loan made by the state or by a public corporation of the state; and

(C) with respect to the loan,

(i) at least 20 percent of the principal amount of the loan is retained by the loan originator [OF THE LOAN AS LONG AS THE LOAN IS OUTSTANDING]; or

(ii) [(B)] 100 percent of the principal amount of the loan is guaranteed by the United States or an agency or instrumentality of the United States;"

Alaska State Legislature  
House of Representatives

INTERIM

3111 C Street  
Anchorage, Alaska 99503  
(907) 561-2032



SESSION

P.O. Box V  
Juneau, Alaska 99811  
(907) 465-2995

Representative Dabe Choquette



Amendment Number One Offered in the House to HB 206

By Representative Choquette

page 2, line 30, following "a"

Delete "loan"

insert "guarantee which is no more than \$50,000"



Alaska State Legislature  
House of Representatives

INTERIM

3111 C Street  
Anchorage, Alaska 99503  
(907) 561-2032



SESSION

P.O. Box V  
Juneau, Alaska 99811  
(907) 465-2995

Representative Dabe Choquette

Amendment Number Two Offered in the House to HB 206

By Representative Choquette

page 3, line 25, following "(4)"

delete "except as provided in (b) of this section"

page 4, lines 4 through 6

delete Section 5.

Position: My main concern for exempting loans of \$25,000 or less from loan application fees was to prevent any violation of Alaska usury statutes. Legal Affairs has specifically addressed this issue and determined that the fee will not violate the usury provisions (See attached analysis). Resultingly, this amendment is offered to reflect this position and remove the exemption in its entirety.



Amendment to CSHB 206

Page two, line 17, following "a":

delete "new"

Position: Inclusion of the word "new" in this section of the bill will limit the ability of AIDEA to refinance existing loans; a common practice at this time. Acceptance of the amendment will provide AIDEA with the authority to finance new loans, and refinance existing loans as long as a project applicant or all members of a business enterprise constituting a project applicant are not currently in default on another loan made by the state.

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

MEMORANDUM

March 28, 1991

**SUBJECT:** Do Alaska Industrial Development and Export Authority loan transaction fees for loans under \$25,000 violate the state's usury law? (HB 206)

**TO:** Representative Dave Choquette  
ATTN: Joan Nockels

**FROM:** Jack Chenoweth  
Legislative Counsel

In his March 4 letter urging amendment of various statutes governing operations of the Alaska Industrial Development and Export Authority, National Bank of Alaska Vice President Jan Sieberts asserts that the fee for loan transactions under \$25,000 should be eliminated "so that the transaction does not violate Alaska usury statutes."

I can't agree with the assertion.

Alaska's usury statute is AS 45.45.010. A copy of it is attached.

The legislature has explicitly exempted from application of the usury statute "loan[s] purchased or financed by the [Alaska Industrial Development and Export Authority] in whole or in part . . ." AS 44.88.190(c). The statute is phrased in absolute terms; it sets no exceptions or conditioning restrictions on the exemption. Loan transaction fees arise in the context of loan purchasing or loan financing activities of the Authority. Consequently, if presented with the question of whether the exemption from the usury rates should be read to extend to cover loan transaction fees, I would guess that a court would apply this statute and conclude that the loan transaction fee structure, part of the Authority's loan purchasing or loan financing activities, also falls within the AS 44.88.190(c) exception.

While there may be plenty of sound policy arguments to support elimination of transaction fees on small loans, as is proposed by your House Bill 206, the contention that the imposition of these fees violates the state usury law is not supported because of AS 44.88.190(c).

JBC:pl:mi  
91-217.plm

Post-It™ brand fax transmittal memo 7671		# of pages > /
To DAVE / JOAN	From V. SAMSON	
Co.	Co.	
Dept.	Phone #	
Fax # 465-2244	FAX # 278-5891	

To: Rep. Dave Choquette

From: Virginia Samson, (Former) Executive Director  
Governor's Conference on Small Business

Date: March 17, 1991

Subject: HB 206

Thank you for your follow up on the Recommendations from the 1989 Governor's Conference on Small Business and for asking me to comment on HB 206. Also, thanks to Rep. Baker for co-sponsoring the bill.

HB 206 responds to Problem 4A: "Small business requires better access to loans from \$10,000 to \$100,000". Within that problem area, this bill seems to address Recommendations:

1. The State guaranteed loan program should be simplified and have less costly documentation process; and
3. The State should provide incentives to banks to make \$10,000 - \$100,000 loans to small businesses in rural communities.

The main thrust of the bill seems to be to expand and clarify AID&EA's involvement with loan guarantees by allowing 80% guarantee for a qualifying loan under \$50,000 and allows the option of no security for an amortization period under 5 years.

To the extent that AID&EA will work with and provide incentives to private banks to make funds available to small businesses around the state, this bill will help. But, if the banks continue to think that "it's not worth the trouble to do small loans" (ie they can't make enough money for the time and paperwork it takes), no bill will help.

Administrative follow up is still needed on Recommendation 3: "The State needs to provide for the dissemination of information broadly throughout the state." Lack of knowledge about what financing programs are available through or assisted by the state is a big problem.

In summary, I support the general idea of HB 206 as a great step in the right direction to help make small loan amounts available to small businesses.



KENAI PENINSULA BOROUGH

ECONOMIC  
DEVELOPMENT  
DISTRICT, INC.

March 19, 1991

To: House Labor and Commerce Committee

From: Mike Tagliavento, Executive Director, Kenai Peninsula  
Borough Economic Development District

RE: HB 206, Act Revising Loan Authority of AIDEA

Our organization is working very closely with local entrepreneurs to create employment through the retention, expansion and creation of small businesses. I applaud the efforts of this bill's sponsors to find creative ways to overcome the problems small businesses are having in accessing capital.

AIDEA has the potential of contributing to the capital needs of small businesses to a greater extent than it has in the past. HB 206 provides new options for AIDEA in this regard, and I would urge your support.

MBT/ss

FAX #907-349-6438

TELECOPY TRANSMITTAL COVER SHEET

DATE: 19 MARCH 1991  
TO: HOUSE LABOR AND COMMERCE COMMITTEE  
FAX # 907-465-2294  
ATTN: REPRESENTATIVE DAVE CHOQUETTE  
FROM: BILL DUDLEY- ASBC (*Alaska Small Business Conference*)

NUMBER OF PAGES TO FOLLOW: ONE

MESSAGE: REVIEW COMMENTS REQUESTED ON HB #206

HOUSE BILL NO. 206

ALL ASPECTS OF THIS BILL APPEAR TO IMPROVE AIDEA'S  
AUTHORITY TO ASSIST ALASKAN SMALL BUSINESSES.

HOWEVER, TO MY KNOWLEDGE AIDEA HAS NOT BEEN AN ACTIVE  
SUPPORTER OF ALASKAN SMALL BUSINESS FIRMS. IT WOULD BE  
INTERESTING TO KNOW JUST HOW MANY LOANS AIDEA HAS MADE TO  
ALASKA SMALL BUSINESS FIRMS IN AMOUNTS OF \$100,000 OR LESS  
IN THE PAST FIVE YEARS. I BELIEVE NONE.

SUGGESTED IMPROVEMENT TO HB 206 WOULD BE TO INCREASE THE  
\$50,000 to \$100,000 UNDER THE 80% LOAN GUARANTEE.

HB

209

FISCAL NOTE

No. 1

Bill Version: HB 209

(H) Publish Date: 3/11/91

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Department Affected: Commerce & Economic Dev.  
Title: An act relating to time of filing periodic bank reports of condition. BRU: Banking, Securities & Corporations  
Component: Banking, Securities & Corporations

Sponsor: \_\_\_\_\_  
Requestor: Governor

COMPONENT SERIAL NO. 

--	--	--	--

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

<b>CAPITAL</b>	0	0	0	0	0	0
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<b>REVENUE</b>	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Willis F. Kirkpatrick, Director Phone: 465-2521  
Division: Banking, Securities & Corporations Date: \_\_\_\_\_

Approved by Commissioner: Dr. Glenn Olds Date: 2/14/91  
Agency: Department of Commerce & Economic Development

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

WALTER J. HICKEL  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

March 11, 1991

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

Dear Speaker Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to periodic bank reports of condition.

Under existing AS 06.05.045, state banks are required to file periodic reports of condition with the Department of Commerce and Economic Development. That statute requires these reports to be filed within 10 days after receipt of a request for filing from the department. This bill extends that filing deadline to 30 days following the end of the period covered by the report.

When the current law was passed, the financial report required consisted of a one-page balance sheet. Now, the call of condition frequently requires over 20 pages of financial information on all aspects of the bank. Additional time is necessary to ensure that this report will be complete and accurate. The 30-day period set by the bill corresponds with the time permitted by the Federal Deposit Insurance Corporation (FDIC) to file similar reports.

The bill also makes a minor technical amendment to the statute.

I urge your support of this bill.

Sincerely,

Walter J. Hickel  
Governor

HB

210

FISCAL NOTE

No. 1  
 Bill Version: HB 210  
 (H) Publish Date: 3/11/91

STATE OF ALASKA  
 1991 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Department Affected: Commerce & Economic Dev.  
 Title: Amend the Alaska Securities Act of 1959 BRU: Banking, Securities & Corporations  
 Component: Banking & Securities  
 Sponsor: Rules Committee  
 Requestor: Governor COMPONENT SERIAL NO. 

1	2	3	3
---	---	---	---

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	400.0	500.0	500.0	550.0	550.0	550.0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Willis F. Kirkpatrick, Director Phone: 465-2521  
 Division: Banking, Securities & Corporations Date: 2/20/91  
 Approved by Commissioner: Glenn A. Olds *Glenn A. Olds*  
 Agency: Department of Commerce & Economic Development Date: 2/20/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

WALTER J. HICKEL  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

March 11, 1991

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

Dear Speaker Grussendorf:

Under the authority of art. III, sec. 18 of the Alaska Constitution, I am transmitting a bill to amend the Alaska Securities Act of 1959. The bill addresses three administrative problems.

First, the bill would change existing statutes to allow the Department of Commerce and Economic Development (department) to set securities registration-related fees by regulation. Sections 1, 2, 4, and 6. Currently, almost all registration-related fees are expressly set by statute. Because those statutes have not been updated for many years, the fees are significantly below those charged by other jurisdictions and are inadequate to pay for the services provided. The intent of the department is to set the fees by regulation at an amount consistent with that charged by other states.


Second, in an effort to reduce the amount of duplicate filings and unnecessary paperwork handled by the department, the bill provides that the administrator of securities (the director of the division of banking, securities and corporations) may arrange with the National Association of Securities Dealers or the Securities and Exchange Commission to have coordinated national filings, and may accept certain uniform registration-related procedures. Section 3.

Third, the bill provides for new exemptions from the registration requirement for securities. At present, securities listed under a number of national stock exchanges are exempt from registration. AS 45.55.140(a)(10). The bill will add to that list two other recognized exchanges, the Chicago Board Options Exchange and the National Association of Securities Dealers Automated Quotation National Market System (NASDAQ/NMS). Additionally, the administrator would have the flexibility to add to that list as conditions dictated. Most jurisdictions have a similar form of administrator exemption approval.

The Honorable Ben Grussendorf -2-

The bill updates the Alaska Securities Act to bring it in line with current practice and to permit coordination with national enforcement authorities. I urge your support of this measure.

Sincerely,

A handwritten signature in cursive script that reads "Walter J. Hickel". The signature is written in dark ink and is positioned above the printed name.

Walter J. Hickel  
Governor

March 19, 1991

BY FAX

The Honorable David Finkelstein, Chairman  
House Labor & Commerce Committee  
Alaska State Legislature  
State Capitol  
P.O. Box V  
Juneau, AK 99811

RE: House Bill 210

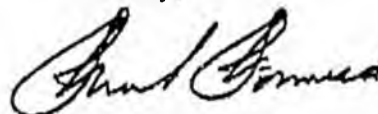
Dear Chairman Finkelstein:

On behalf of the National Association of Securities Dealers, Inc. (NASD), I am writing to urge your support of House Bill 210 to amend the Alaska Securities Act. The NASD is charged with the responsibility of regulating both the National Association of Securities Dealers Automated Quotation System (NASDAQ), which is the second largest securities market in the United States, and the over-the-counter securities markets. This task encompasses both regulation of virtually every broker/dealer firm in the country that conducts business with the public and the regulation and operation of the NASDAQ system.

The NASD strongly supports passage of HB 210 since it includes an important provision to exempt from state registration those securities that are listed on the NASDAQ National Market System (NMS). This legislation, like the Securities and Exchange Commission and the Federal Reserve, recognizes the equality of securities listed on NMS with those listed on the New York and American Stock Exchanges. Passage of HB 210 also promotes uniformity with other states since 41 states, to date, have provided this exemption for securities listed on NMS.

We urge you and your colleagues to favorably report this bill at the Labor & Commerce Committee hearing scheduled for March 21, 1991. If you have any questions, please call me at (202) 728-8289.

Sincerely,



Frank J. Formica  
Vice President  
Office of Congressional and  
State Liaison

cc: Mr. Larry Carroll

HB

219

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 219

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

Department Affected: Commerce & Econ. Dev.

Title: Nonprofit Corporation Code Revision

BRU: Banking, Securities & Corporations

Component: Corporations

Sponsor: Rules by Legislative Council

Requestor: House Labor & Commerce

COMPONENT SERIAL NO.	1	2	3	3
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	51.0	51.0	51.0	51.0	51.0	51.0
TRAVEL	4.0	4.0	4.0	4.0	4.0	4.0
CONTRACTUAL	21.0	21.0	21.0	21.0	21.0	21.0
SUPPLIES		2.0	1.0	1.0	1.0	1.0
EQUIPMENT	62.7	20.0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>138.7</b>	<b>98.0</b>	<b>77.0</b>	<b>77.0</b>	<b>77.0</b>	<b>77.0</b>
<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REVENUE FUND RESOURCE:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

FUNDING: (Thousands of Dollars)

GENERAL FUND	138.7	98.0	77.0	77.0	77.0	77.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
<b>TOTAL</b>	<b>138.7</b>	<b>98.0</b>	<b>77.0</b>	<b>77.0</b>	<b>77.0</b>	<b>77.0</b>

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS (Attach a separate page if necessary.)  
  
SEE ATTACHED  
  
*Willis*

Prepared By: Willis F. Kirkpatrick, Director Phone: 465-2521

Division: Banking, Securities & Corporations Date: 4/9/92

Approved by Commissioner: Glenn A. Olds *Glenn A. Olds*

Agency: Department of Commerce & Economic Development Date: 4.9.92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legls. Ofc., and Impacted Agency(ies).

FISCAL NOTE - HB 219

ANALYSIS:

The projected expenses include a new accounting position to audit financial statements/biennial reports; approve the dispositions of corporate assets, mergers and consolidations; involuntarily dissolve corporations for misrepresentations; and other examining responsibilities. Travel expenses would be needed on a quarterly basis to examine Anchorage-based corporations for complaints, examinations and investigations. Contractual expenses include the rights of the corporations to request hearings or administrative procedures for actions taken by the Commissioner. Equipment and Supplies would be used to purchase imaging equipment. The Corporations Staff is already inundated with excessive filings in hard copy, fiche and film. Retrieval is extremely slow and time-consuming. Rather than increase staff by requesting two additional persons, we could accomplish the additional filings and review with the expedited imaging retrieval system. (This was also recommended by the Governor's Efficiency Team.)

SUMMARY OF EXPENDITURES - FY 93

<u>Personal Services:</u>		\$51.0
Accountant II - Range 16 - Juneau		
<u>Travel:</u>		\$ 4.0
Quarterly investigations/examinations in Anchorage		
<u>Contractual:</u>		\$21.0
Postage for nonprofit mailouts	\$ 1.0	
Administrative Officer	20.0	
<u>Supplies:</u>		\$ 1.0
Imaging supplies-optical disks (not FY 93)		
<u>Equipment:</u>		\$62.7
Initial purchase of stand-alone optical imaging includes a workstation, PC, software, digitizer, printer and roll film backup	\$60.0	
Computer for accountant position	2.7	

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 219

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

Department Affected: Commerce & Econ. Dev.

Title: Nonprofit Corporation Code Revision

BRU: Banking, Securities & Corporations

Component: Corporations

Sponsor: Rules

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

COMPONENT SERIAL NO. 

1	2	3	3
---	---	---	---

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	51.0	51.0	51.0	51.0	51.0	51.0
TRAVEL	4.0	4.0	4.0	4.0	4.0	4.0
CONTRACTUAL	21.0	21.0	21.0	21.0	21.0	21.0
SUPPLIES		2.0	1.0	1.0	1.0	1.0
EQUIPMENT	62.7	20.0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	138.7	98.0	77.0	77.0	77.0	77.0
CAPITAL	0	0	0	0	0	0
REVENUE FUND RESOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	138.7	98.0	77.0	77.0	77.0	77.0
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL	138.7	98.0	77.0	77.0	77.0	77.0

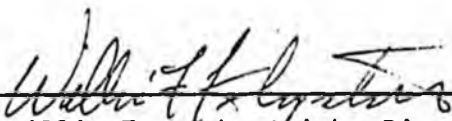
POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS (Attach a separate page if necessary.)

SEE ATTACHED



Prepared By: Willis F. Kirkpatrick, Director

Phone: 465-2521

Division: Banking, Securities & Corporations

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

Approved by Commissioner: Glenn A. Olds

Agency: Department of Commerce & Economic Development Date: \_\_\_\_\_

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., and Impacted Agency(ies).

Page 1 of 2

FISCAL NOTE - HB 219

ANALYSIS:

The projected expenses include a new accounting position to audit financial statements/biennial reports; approve the dispositions of corporate assets, mergers and consolidations; involuntarily dissolve corporations for misrepresentations; and other examining responsibilities. Travel expenses would be needed on a quarterly basis to examine Anchorage-based corporations for complaints, examinations and investigations. Contractual expenses include the rights of the corporations to request hearings or administrative procedures for actions taken by the Commissioner. Equipment and Supplies would be used to purchase imaging equipment. The Corporations Staff is already inundated with excessive filings in hard copy, fiche and film. Retrieval is extremely slow and time-consuming. Rather than increase staff by requesting two additional persons, we could accomplish the additional filings and review with the expedited imaging retrieval system. (This was also recommended by the Governor's Efficiency Team.)

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<u>Quarterly investigations/examinations in Anchorage</u>		
<u>Contractual:</u>		\$21.0
<u>Postage</u> for nonprofit mailouts	\$ 1.0	
Administrative Officer	20.0	
<u>Supplies:</u>		\$ 1.0
<u>Imaging supplies-optical disks</u> (not FY 93)		
<u>Equipment:</u>		\$62.7
<u>Initial</u> purchase of stand-alone optical imaging includes a workstation, PC, software, digitizer, printer and roll film backup	\$60.0	
Computer for accountant position	2.7	

**STATE OF ALASKA  
OFFICE OF THE GOVERNOR**

**BILL ANALYSIS**

DEPARTMENT Commerce & Economic Development	Banking, Insurance & Corporations	BILL NUMBER HB 219/SB 205	SPONSOR Rules by Legislative Council
SHORT TITLE OF BILL Nonprofit Corporation Code Revision			
DEPARTMENT POSITION: The department supports this legislation with amendments.			
PREPARED BY Willis F. Kirkpatrick	DATE 2/21/92	COMMISSIONER'S SIGNATURE	DATE

**SUMMARY**

OTHER AGENCIES AFFECTED BY BILL None	CONSTITUENT GROUPS AFFECTED BY BILL Nonprofit and Religious Corporations
ORGANIZATIONAL SUPPORT FOR BILL Code Review Commission	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT:  NONE;  FISCAL NOTE ATTACHED

**BACKGROUND LEGISLATIVE INTENT**

The existing statute governing nonprofit corporations and religious corporations is antiquated. The intent of this legislation is to provide a statute consistent with model legislation being adopted in most states. In addition, the bill would create provisions for the regulation of public benefit corporations for the purpose of protecting the public from fraudulent fund raising activities. The legislation would also allow recognition of corporations formed for religious purposes.

**ANALYSIS OF BILL PROGRAM EFFECTS**

- Section 1 - Establishes the powers, rights, and procedures for nonprofit corporations. Creates two types of nonprofit corporations: public benefit corporations, and mutual benefit corporations. Establishes separate procedures governing the activities of each type of nonprofit corporation. Gives the Commissioner of Commerce an increased role in the regulation of public benefit corporations.
- Section 2 - Establishes the powers, rights, and procedures for religious corporations. Creates three types of religious corporations: corporations governed by a corporate sole; corporations governed by trustees; and corporations governed by its members. Gives the Commissioner of Commerce an increased role in the regulation of religious corporations.

(CONTINUED NEXT PAGE)

**AMENDMENTS PROPOSED**

- 10.21.050(d) - Unnecessary wording. These limitations are inconsistent with 10.06 and will create additional name problems. The department would prefer to see the standard for determining name availability changed from "deceptively similar" to "distinguishable on the record." *Am to 10.06 to change to "dist on record."*
- 10.21.053 - Adding *OK* corporate name exceptions is inconsistent, and adds to the numerous problems that this Division has currently with name debates.

(CONTINUED NEXT PAGE)

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

**BILL ANALYSIS - HB 219/SB 205**

**ANALYSIS OF BILL/PROGRAM EFFECTS - CONTINUED**

- Section 3 - Repeals existing statutes.
- Section 4 - Replaces existing statutory references.
- Section 5 - Establishes statutory authority.
- Section 6 - Establishes applicable provisions.
- Section 7 - Establishes applicability to corporations formed under 43 U.S.C. 1601-1629e.
- Section 8 - Establishes provision for continuation of existing board members.
- Section 9 - Establishes provision for applicability of indemnification of officers and directors.
- Section 10 - Establishes applicability toward existing actions or proceedings.
- Sections 11 and 12 - Amends civil rules of procedure in relation to this legislation.
- Section 13 - Establishes an effective date.

**AMENDMENTS PROPOSED - CONTINUED**

*no obj.*  
10.21.065 - Repetitious, this information is already stated in AS 10.21.050. Stating that registration grants exclusive rights ignores common law rights and assumes that the department conducts searches beyond its own records.

*TAKE OUT OF THIS § 10.06*  
10.21.080 - Filin; with Superior Court. Old problem that Code Revision Commission can't seem to grasp. How many attorneys check court records or have someone do it for them? Few, I suspect. They call the division and get written record from us if important. A recent survey of the courts indicates that most courts do not wish to receive weekly reams of paper.

*OK* [ 10.21.115 - To be consistent with 10.06, I would like the requirement for duplicate originals changed to an original and an exact copy.

*no prob.*  
*Conform to 10.06* [ 10.21.190(5) - Remedy for breach should be by Law the need to file notice of action taken to remedy a breach of trust with the commissioner should not be mandatory. If the plaintiff is unable to serve the corporation, they can always serve the commissioner as stated in 10.12.088(b). The requirement to file all litigation would place a regulatory burden on this division.

*no prob.*

10.21.195(b) and 10.21.198(a)(e) - The requirement for the commissioner to approve all dispositions of corporate assets would put the division in the position of an enforcement agency. In addition, the requirement may necessitate the need for professional financial examiners, such as accountants, which would increase the budgetary needs for the section. The section would additionally require additional staff to handle the increase in administrative proceedings.

*no prob.*

10.21.198 - Petition For Approval by Commissioner - Budget - This is a very broad new delegation of responsibility to the Commissioner, one not even contemplated in ACC.

*OK to change*

10.21.233(b) - The department would encourage a requirement of annual meetings, once every three years is not frequent enough.

*no obj - obj withdrawn.*

10.21.243-10.21.245 - Having separate procedures for board elections based upon the size of the nonprofit corporation's membership may work well for California or New York, but the entire population of the State of Alaska is under 500,000! This requirement will slow down filing approval; this is too complicated for the average small nonprofit corporation to follow, and the majority of the registered corporations are small.

*withdraw obj.*

10.21.415 - The department would suggest removal of reference to commissioner approval. The internal operations of the corporation should not be regulated by the division. If a plaintiff has cause to bring suit against an officer or director, then let the litigation rest between that person and the corporation. Involvement of the commissioner in such proceedings would place a heavy regulatory burden on the department and require additional investigatory personnel.

*withdrawn.*

10.21.420(b) - Commissioner may bring action against officers and directors for misconduct. Be assured that there will be many claims by members and nonmembers of corporate misconduct and, since they do not have the money or legal resources to redress grievances, it is the responsibility of the state to do so. In many cases, they might well be correct, but "the state," the Commissioner, likewise does not have the resources and it is extremely unlikely the Legislature will authorize funds to carry out the responsibilities.

*withdrawn*

10.21.440(b)(1) - The same indemnification privileges should apply to public benefit corporations as apply to mutual benefit corporations.

*withdrawn*

10.21.453(b) & (c) - Eliminate completely for the same reasons as stated in commentary to 10.21.195(b).

*orig + copy*

10.21.463 - Change duplicate originals to an original and an exact copy.

*orig + copy*

10.21.470 - Change duplicate originals to an original and an exact copy.

*withdrawn*

10.21.500-10.21.503 - The requirement that consolidation and/or merger have prior consent of the commissioner, and the limitations on whom the corporation may merge with is very regulatory and restrictive in nature. The same allowances as stated in 10.06 should apply, i.e., a plan of merger and/or consolidation should be permitted to be filed with the articles of merger. The plan and articles should be in statutory compliance, but the approval of the commissioner should not be a prerequisite.

*OK* 10.21.520 - Change duplicate originals to an original and an exact copy.

*withdrawn - will not opt Comm as Rec.*

10.21.563 - Voluntary dissolution jurisdiction - Commissioner and others can petition the court to appoint a receiver - assume there are no assets to pay a receiver and the court will appoint the Commissioner. Where will the latter's assets come from?

*withdrawn.*

10.21.573 - Commissioner can go to court and request involuntary dissolution. Again Department of Law should have this opportunity. Commissioner is an "indispensable party." 10.21.658 (Mutual benefit corp.).

*withdrawn*

10.21.578 - Administrative involuntary dissolution by commissioner. Similar to present process in some respects. 10.21.578(a)(6) allows commissioner to dissolve for a misrepresentation in a filing. Is that in ACC? Pretty broad. Similar for mutual benefit corporation, 10.21.653, 100. 10.21.655(b) - 101.

*withdrawn*

10.21.768(a)(1) and (b) - The reference to exceptions in 10.21.053 is unwarranted. To be consistent, adoption of the language in 10.21.050 would be preferable; the wording as stated is confusing.

*OK*

10.21.770 - Assumed corporate name index to be maintained by commissioner - reasonable. Same for 10.41.535.

*withdrawn*

10.21.778(a)(1) - It is unnecessary to restate the name requirements all over again as stated in 10.21.768, just leave it at "corporate name."

*SEE  
change?  
to 780*

10.21.780 - We do not need to have copies of the articles, amendments, or any other paperwork other than the application and a certificate of evidence of the filing. Some of these corporations have articles and amendments running hundreds of pages in length. All this requirement will do is bury the division in paperwork. Let the state of domicile handle the filing. We do not need duplicate originals, just an original and an exact copy.

*withdrawn*

10.21.818-10.21.820 - We need to have certified copies of the amended articles.

*OK*

10.21.830 - Change duplicate originals to an original and an exact copy.

Remove 748 OK

10.21.852 - The requirements for the contents of the biennial report are extremely excessive. If it is the intent to know as much financial information as possible, use a different vehicle than the biennial report. For instance, require audited financial reports to be filed annually by the corporation and made available to the general public. As it is, we dissolve between 20-25% of the active corporations on file for improperly filed biennial reports. Once again, this requirement puts the division in the position of being financial examiners. There needs to be an additional requirement that the report be signed by an officer, or chairperson of the corporation.

*withdrawn*

10.21.858 - It is curious that the penalties proposed far exceed those assessed profit corporations. Regulations consistent with AS 10.06.816 and 10.06.845 would be more appropriate.

*withdrawn*

10.41.175(a)(5) - Commissioner can bring action for breach of charitable trust. Same objections as to 10.21.190.

*OK - change "fines" to "dofz"*

10.41.615 - Records kept by commissioner. Requires maintenance of record of time, not just date. Same for 10.21.813. OK.

**CS FOR HOUSE BILL NO. 219 (L&C)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**SEVENTEENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE LABOR AND COMMERCE COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE COUNCIL**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act revising the nonprofit corporations code and the religious corporations code;  
2 amending Alaska Rules of Civil Procedure 3, 4, 8, 17, 19, 23.1, 24, 79, and 82, Alaska  
3 Rule of Evidence 803, and Alaska Rules of Appellate Procedure 602 and 609; and  
4 providing for an effective date."

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

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

7 **CHAPTER 21. ALASKA NONPROFIT CORPORATION CODE.**

8 **ARTICLE 1. CORPORATE PURPOSES AND POWERS.**

9 **Sec. 10.21.005. PURPOSES.** A domestic corporation may be organized under this  
10 chapter for any lawful purpose except for the purposes of banking and insurance. A trade union  
11 or other labor organization may be organized under this chapter, but a cooperative corporation,  
12 religious corporation, or electric or telephone cooperative may not be organized under this  
13 chapter.

14 **Sec. 10.21.010. GENERAL POWERS.** (a) Subject to the limitations in its articles, the

1 provisions of this chapter, and other applicable law, a domestic corporation has all the powers  
2 of a natural person to carry out its business activities, including, without limitation, the power  
3 to

4 (1) have perpetual succession by its corporate name;

5 (2) sue and be sued in its corporate name;

6 (3) adopt a corporate seal and alter it, and use it by having it or a facsimile of  
7 it impressed, affixed, or reproduced;

8 (4) buy, take, receive, lease, or otherwise acquire, own, hold, improve, use, and  
9 otherwise deal in real or personal property or an interest in the property, wherever situated;

10 (5) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise  
11 dispose of all or a part of its property and assets;

12 (6) make contracts and incur liabilities, borrow money at reasonable rates of  
13 interest as the corporation determines, issue notes, bonds, and other obligations, and secure its  
14 obligations by mortgage or pledge of all or any of its property, franchise, and income;

15 (7) lend money at reasonable rates of interest as the corporation determines for  
16 its corporate purposes, invest and reinvest its funds, and take and hold real and personal property  
17 as security for the payment of money loaned or invested;

18 (8) conduct affairs, carry on operations, and have offices and exercise the powers  
19 granted by this chapter in a state or in a foreign country;

20 (9) elect or appoint officers and agents of the corporation and define their duties  
21 and fix their compensation;

22 (10) make and alter bylaws not inconsistent with its articles of incorporation or  
23 with the laws of the state, for the administration and regulation of the affairs of the corporation;

24 (11) to the extent provided in the articles of incorporation, donate for the public  
25 welfare or for charitable, scientific, or educational purposes, and in time of war, donate in aid  
26 of war activities;

27 (12) pay pensions and establish pension plans, pension trusts and other incentive  
28 plans for its directors, officers, and employees;

29 (13) cease its corporate activities and surrender its corporate franchise;

30 (14) act as a trustee under a trust incidental to the principal affairs of the  
31 corporation, and receive, hold, administer, exchange, and expend money and property subject to

1 the trust;

2 (15) issue memberships and levy dues, assessments, and admission fees;

3 (16) subject to the provisions of this chapter, carry on business at a profit and  
4 apply the profit to activities in which the corporation may lawfully engage;

5 (17) have and exercise all powers necessary or convenient to carry out the  
6 purposes for which the corporation was organized.

7 (b) As used in (a)(6) of this section a rate of interest is unreasonable if it is more than  
8 a rate 15 percentage points above the annual rate charged member banks for advances by the 12th  
9 Federal Reserve District that prevailed on the 25th day of the month preceding the  
10 commencement of the calendar quarter during which the loan is made.

11 (c) As used in (a)(7) of this section a rate of interest is unreasonable if it is less than the  
12 annual rate charged member banks for advances by the 12th Federal Reserve District that  
13 prevailed on the 25th day of the month preceding the calendar quarter during which the loan is  
14 made.

15 Sec. 10.21.015. DEFENSE OF ULTRA VIRES. (a) An act of a domestic corporation  
16 or a transfer of real or personal property to or by a domestic corporation, otherwise lawful, is not  
17 invalid because the corporation was without capacity or power to do the act or to make or receive  
18 the transfer.

19 (b) Notwithstanding (a) of this section, lack of capacity or power may be asserted

20 (1) in an action by a member against the corporation to enjoin the doing of an  
21 act or the transfer of real or personal property by or to the corporation; if the unauthorized act  
22 or transfer sought to be enjoined is being, or is to be, performed or made under a contract to  
23 which the corporation is a party, the court may, if all of the parties to the contract are parties to  
24 the action, set aside and enjoin the performance of the contract, and in so doing may allow to  
25 the corporation or to the other parties to the contract compensation as may be equitable for the  
26 loss or damage sustained by any of the parties from the action of the court in setting aside and  
27 enjoining the performance of the contract, except that anticipated profits to be derived from the  
28 contract may not be awarded by the court as a loss or damage sustained;

29 (2) in an action by or in the right of the corporation to obtain a judgment in its  
30 favor against an incumbent or former officer or director of the corporation for loss or damage  
31 due to that individual's unauthorized act;

1 (3) in an action or special proceeding by the commissioner to annul or dissolve  
2 the corporation or to enjoin it from the performance of unauthorized acts.

3 (c) This section also applies to contracts and conveyances made by foreign corporations  
4 in this state and to conveyances by foreign corporations of real property situated in this state.

5 Sec. 10.21.020. LIMITATIONS UPON AUTHORITY OF CORPORATE AGENTS. (a)  
6 A limitation on the powers of the members, officers, or directors, or on the manner or exercise  
7 of their powers, contained in or implied by the articles, bylaws, or action of the board, or by  
8 AS 10.21.550 - 10.21.713 may not be asserted as between the corporation or a member and a  
9 third person, except in a proceeding

10 (1) by a member or the state to enjoin the doing or continuance of unauthorized  
11 business by the corporation, its officers, or its directors in cases where third parties have not  
12 acquired rights under AS 10.21.030;

13 (2) to dissolve the corporation; or

14 (3) by the corporation or by a member suing in a representative suit against the  
15 officers or directors of the corporation for violation of the member's, officer's, or director's duty.

16 (b) This section also applies to contracts, undertakings, and conveyances made by foreign  
17 corporations in this state and to conveyances by foreign corporations of real property situated in  
18 this state.

19 Sec. 10.21.030. CONTRACTS OR CONVEYANCES BINDING DOMESTIC AND  
20 FOREIGN CORPORATIONS. (a) A contract or conveyance made in the name of the  
21 corporation that is authorized or ratified by the board, or is done within the scope of the  
22 authority, actual or apparent, conferred by the board, or by delegates authorized under  
23 AS 10.21.110(1)(J), or within the agency powers of the officers executing it, except as the  
24 board's authority is limited by law, binds the corporation, and the corporation acquires rights  
25 under the contract, whether the contract is executed or wholly or in part executory.

26 (b) This section also applies to contracts and conveyances made by foreign corporations  
27 in this state and to conveyances by foreign corporations of real property situated in this state.

## 28 ARTICLE 2. NAME AND SERVICE OF PROCESS.

29 Sec. 10.21.050. CORPORATE NAME. (a) Unless a domestic corporation is expressly  
30 formed exclusively for charitable purposes a corporate name shall contain the word "corporation",  
31 "incorporated" or "limited", or an abbreviation of one of those words. The corporate name may

1 not contain a word or phrase that indicates or implies that the corporation is organized for a  
2 purpose other than the purpose contained in its articles. The corporate name may not be the  
3 same as, or undistinguishable on the records of the department from, the name of a domestic  
4 corporation existing under the laws of this state or a foreign corporation authorized to conduct  
5 affairs in this state, or a name that has been reserved or registered as provided in this title.

6 (b) A corporate name may not contain the word "city," "borough," or "village" or  
7 otherwise imply that the corporation is a municipality. The name of a city, borough, or village  
8 may be used in the corporate name.

9 (c) A person may not adopt a name that contains the word "corporation," "incorporated,"  
10 or "limited," or an abbreviation of one of these words, unless the person has been issued a  
11 certificate of incorporation, or, in the case of a foreign corporation, a certificate of authority, by  
12 the commissioner.

13 (d) The corporate name may not contain the following words or phrases or an  
14 abbreviation or derivative of them: acceptance, annuity, assurance, bank, bond, casualty,  
15 cooperative, endowment, fidelity, finance, fire fighter, guarantee, indemnity, insurance,  
16 investment, loan, mortgage, savings, police, trooper, surety, title, trust, underwriter.

17 Sec. 10.21.053. CORPORATE NAME; EXCEPTIONS. (a) The provisions of  
18 AS 10.21.050 and 10.21.768 do not

19 (1) prevent a corporation with which another corporation is merged, or that is  
20 formed by the consolidation of one or more other corporations from having the same name as  
21 one of the existing corporations if at the time the existing corporation was authorized or existing  
22 under a statute of this state;

23 (2) prevent a foreign corporation from being authorized under a name that is  
24 similar to the name of a corporation existing or authorized under a statute of this state, if the  
25 commissioner finds, upon proof by affidavit or otherwise, that

26 (A) a difference between the names exists in the terms or abbreviations  
27 indicating corporate character or otherwise;

28 (B) the applicant has conducted activities as a corporation under the name  
29 for not less than 10 consecutive years immediately prior to the date of its application;

30 (C) the activities to be conducted in this state are not the same as or  
31 similar to the business or activities conducted by the corporation with whose name it may

1 conflict;

2 (D) the public is not likely to be confused or deceived; and

3 (E) the applicant agrees in its application for authority to use with its  
4 corporate name, in this state, and to be placed immediately under or following the name,  
5 the words "a ...(name of jurisdiction of incorporation) corporation".

6 (b) In this section, except as otherwise provided, "corporation" includes both  
7 domestic and foreign corporations.

8 Sec. 10.21.055. RESERVATION OF CORPORATE NAME. The exclusive right to the  
9 use of a corporate name may be reserved by a

10 (1) person intending to organize a domestic corporation under this chapter;

11 (2) domestic corporation intending to change its name;

12 (3) foreign corporation intending to apply for a certificate of authority to conduct  
13 affairs in this state;

14 (4) foreign corporation authorized to conduct affairs in this state and intending  
15 to change its name;

16 (5) person intending to organize a foreign corporation and to have it apply for a  
17 certificate of authority to conduct affairs in this state.

18 Sec. 10.21.058. APPLICATION TO RESERVE CORPORATE NAME. Reservation of  
19 a corporate name is made by filing an application with the commissioner. If the commissioner  
20 finds that the name is available for corporate use, and not a reserved or registered business name  
21 as set out in AS 10.35, the commissioner shall reserve it for the exclusive use of the applicant  
22 for a period of 120 days.

23 Sec. 10.21.060. TRANSFER OF RESERVED NAME. The holder of a reserved  
24 corporate name may transfer the right to the exclusive use of the corporate name to another  
25 person by filing with the commissioner a notice of transfer signed by the holder and specifying  
26 the name and address of the transferee.

27 Sec. 10.21.063. FOREIGN CORPORATIONS: REGISTRATION OF CORPORATE  
28 NAME. A corporation organized and existing under the laws of any state may register its  
29 corporate name if the name is not the same as, or undistinguishable on the records of the  
30 department from, the name of a domestic corporation, the name of a foreign corporation  
31 authorized to conduct affairs in this state, or a corporate name reserved or registered under AS 10.35.

1           Sec. 10.21.065. USE OF SAME OR UNDISTINGUISHABLE NAME. Incorporation,  
2 obtaining a certificate of authority by a foreign corporation, or registration of a corporate name  
3 gives the exclusive right to the use of the name. The person who has incorporated, received a  
4 certificate of authority, or registered a corporate name under this chapter may enjoy the use of  
5 the same name or a name that is undistinguishable on the records of the department from the  
6 corporate name and has a cause of action for damages against a person who uses the same name  
7 or a name that is undistinguishable on the records of the department from the corporate name.

8           Sec. 10.21.068. PROCEDURE FOR REGISTRATION OF CORPORATE NAME.  
9 Registration of a corporate name is made by filing with the commissioner

10           (1) an application for registration executed by an officer of the corporation setting  
11 out the name of the corporation, the state under the laws of which it is incorporated, the date of  
12 incorporation, a statement that it is conducting affairs, and a brief statement of its corporate  
13 purposes; and

14           (2) a certificate from an official of the state where the corporation is organized  
15 who has custody of the records pertaining to corporations stating that the corporation is in good  
16 standing under the laws of that state or territory.

17           Sec. 10.21.070. FEE FOR AND DURATION OF REGISTERED NAME. (a) The fee  
18 for registration of a corporate name shall be established by the department by regulation.

19           (b) The registration is effective until the close of the calendar year in which the  
20 application for registration is filed unless terminated earlier by involuntary dissolution in  
21 accordance with AS 10.21.550 - 10.21.713.

22           Sec. 10.21.073. RENEWAL OF REGISTERED NAME. A foreign corporation that has  
23 registered its corporate name may renew the registration each year by (1) filing an application  
24 for renewal setting out the facts required in an original application for registration; (2) filing a  
25 certificate of good standing required for an original registration; and (3) paying a fee established  
26 by the department by regulation. An application for renewal shall be filed between October 1  
27 and December 31 in each year. The renewal extends the registration for the following calendar  
28 year.

29           Sec. 10.21.075. REGISTERED OFFICE AND REGISTERED AGENT. A domestic  
30 corporation shall continuously maintain in this state a registered agent and a registered office.  
31 The registered office may be the same as the principal office of the corporation. The registered

1 agent may be either an individual resident of this state whose business office is the same as the  
2 registered office, or a domestic or foreign corporation authorized to conduct affairs in this state  
3 whose principal office is the same as the registered office.

4 Sec. 10.21.080. FILING LIST OF REGISTERED CORPORATIONS WITH SUPERIOR  
5 COURT. The commissioner shall file a list of the name of each domestic and authorized foreign  
6 corporation, and the name and address of the registered agent of each domestic and authorized  
7 foreign corporation, with the superior court of each judicial district. The commissioner shall  
8 provide a weekly update of the list indicating additions, deletions, and changes by mechanical  
9 or electronic means that can be reduced to legible written copy. The commissioner shall make  
10 the list and weekly updates available to the public for a fee established by the department by  
11 regulation. The commissioner shall publish an updated compilation of the entire list at least once  
12 each year.

13 Sec. 10.21.083. CHANGE OF REGISTERED OFFICE; CHANGE OR RESIGNATION  
14 OF REGISTERED AGENT. (a) A corporation may change its registered office or its registered  
15 agent, or both, by filing with the commissioner a verified statement setting out

16 (1) the name of the corporation;

17 (2) the address of its registered office;

18 (3) the address of the proposed registered office if the address of its registered  
19 office is to be changed;

20 (4) the name of its registered agent;

21 (5) the name of its successor registered agent, if its registered agent is to be  
22 changed; and

23 (6) a statement that the change is authorized by resolution adopted by its board  
24 of directors.

25 (b) The commissioner shall file the verified statement if the statement complies with this  
26 chapter. The change becomes effective when the statement is filed.

27 (c) A registered agent may resign by filing a written notice, executed in duplicate, with  
28 the commissioner. The written notice of resignation shall set out the latest address of the  
29 principal office of the corporation and the names, addresses, and titles of the most recent officers  
30 of the corporation known to the agent. The commissioner shall immediately mail a copy of the  
31 notice to the corporation at its principal office. The resignation becomes effective 30 days after

1 the filing of the written notice, or upon the appointment of a new agent by the corporation,  
2 whichever is sooner.

3 Sec. 10.21.088. SERVICE OF PROCESS ON CORPORATION. (a) The registered agent  
4 of a domestic corporation is an agent upon whom process, notice, or demand required or  
5 permitted by law to be served upon the corporation may be served.

6 (b) if a domestic corporation fails to appoint or maintain a registered agent in the state,  
7 or its registered agent cannot, with reasonable diligence, be found at the registered office, the  
8 commissioner is an agent of the corporation upon whom the process, notice or demand may be  
9 served. A person may serve the commissioner under this subsection by

10 (1) serving on the commissioner or the director of the division of banking,  
11 securities and corporations in the department a copy of the process, notice, or demand, with any  
12 papers required by law to be delivered in connection with the service, and a fee established by  
13 the department by regulation;

14 (2) sending to the corporation being served, by registered mail, a notice that  
15 service has been made on the commissioner under this subsection and a copy of the process,  
16 notice or demand and accompanying papers; notice to the corporation shall be sent to

17 (A) the last registered office of the corporation as shown by the records  
18 on file in the office of the commissioner;

19 (B) an address, the use of which the person initiating the proceedings  
20 knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result  
21 in actual notice; and

22 (3) filing with the appropriate court or other body, as part of the return of service,  
23 the return receipt of mailing and an affidavit of the person initiating the proceedings that this  
24 section has been complied with.

25 (c) The department shall keep a record of processes, notices, and demands served upon  
26 the commissioner under this section.

27 (d) This section does not limit or affect the right to serve process, notice, or demand  
28 upon a corporation in any other manner permitted by law.

29 ARTICLE 3. FORMATION OF CORPORATIONS.

30 Sec. 10.21.100. INCORPORATORS. Three or more natural persons at least 18 years of  
31 age may act as incorporators of a domestic corporation by signing, verifying, and delivering in

1 duplicate to the commissioner articles of incorporation for the corporation.

2 Sec. 10.21.105. ARTICLES OF INCORPORATION. (a) The articles of incorporation  
3 must set out

4 (1) the name of the corporation;

5 (2) the purpose or purposes for which the corporation is organized, which may  
6 be stated to be, or to include, the conduct of any or all lawful affairs for which corporations may  
7 be incorporated under this chapter;

8 (3) the address of its initial registered office in this state, and the name of its  
9 initial registered agent at that address;

10 (4) the name and address of each incorporator;

11 (5) a statement either that:

12 (A) "This corporation is a nonprofit mutual benefit corporation, is not  
13 expressly formed for a public or charitable purpose, and will not, or is not reasonably  
14 expected to, derive in excess of 10 percent of its annual income from donations as defined  
15 in AS 10.21.990 and will have voting members."; or

16 (B) "This corporation is a nonprofit public benefit corporation formed for  
17 the following charitable or public purposes. . . .";

18 (6) the name and address of each alien affiliate (AS 10.21.990) or a statement that  
19 there are no alien affiliates.

20 (b) It is not necessary to set out in the articles of incorporation the corporate powers  
21 enumerated in this chapter.

22 (c) A provision of the articles of incorporation that is inconsistent with a bylaw is  
23 controlling, notwithstanding the bylaw.

24 (d) A change in the number of directors made by amendment to the bylaws is controlling  
25 unless the articles of incorporation provide that a change in the number of directors may be made  
26 only by amendment to the articles.

27 Sec. 10.21.110. ARTICLES OF INCORPORATION: OPTIONAL PROVISIONS. The  
28 articles of incorporation may set out

29 (1) any of the following provisions, that are not effective unless expressly  
30 provided in the articles:

31 (A) a provision stating special qualifications of persons who may be

- 1 members;
- 2 (B) a provision limiting the duration of the corporation's existence to a  
3 specified date;
- 4 (C) a provision requiring, for any or all corporate actions except as  
5 provided in AS 10.21.375, 10.21.553, and 10.21.633, the vote of a larger proportion or  
6 of all of the members, or of a class, or the vote or quorum for taking action of a larger  
7 proportion or of all of the directors, than is otherwise required by this chapter;
- 8 (D) a provision fixing a quorum of members other than a majority of the  
9 members entitled to vote but in no event less than 10 percent of the members entitled  
10 to vote at a meeting;
- 11 (E) a provision limiting or restricting the affairs in which the corporation  
12 may engage or the powers that the corporation may exercise or both;
- 13 (F) a provision creating two or more classes of members, and specifying  
14 the rights, privileges, restrictions, and conditions attaching to each class;
- 15 (G) a provision allowing a member or a group or class of members to  
16 have more or less than one vote, or no vote, in any, or all, elections or other matters  
17 presented to the members for vote;
- 18 (H) a provision conferring upon members the right to determine the  
19 consideration for which memberships may be issued;
- 20 (I) a provision requiring the approval of the members (AS 10.21.990(7))  
21 or approval of a majority of all members (AS 10.21.990(4)) for any corporate action, even  
22 though not otherwise required by this chapter;
- 23 (J) a provision that confers or imposes the powers, duties, privileges, and  
24 liabilities of directors under AS 10.21.350 upon delegates;
- 25 (K) a provision that the notice regarding the annual report to members  
26 required by AS 10.21.310 may not include a postage prepaid form for use by the member  
27 in making a written request;
- 28 (L) a provision that there will be a charge for sending the annual report  
29 to a member making a request under AS 10.21.310;
- 30 (2) the names and addresses of the persons appointed to act as initial directors;
- 31 (3) any other provision, not in conflict with law, for the regulation of internal

1 affairs and for the conduct of the affairs of the corporation, including any provision that is  
2 required or permitted by this chapter to be stated in the bylaws.

3 Sec. 10.21.112. PROVISIONS CONSIDERED TO BE IN ARTICLES OF  
4 INCORPORATION BY OPERATION OF LAW. (a) The articles of incorporation of every  
5 nonprofit corporation that is a private foundation are considered to contain provisions prohibiting  
6 the corporation from

7 (1) engaging in an act of self-dealing that would give rise to liability for tax  
8 imposed by 26 U.S.C. 4941(a) (Internal Revenue Code);

9 (2) retaining excess business holdings that would give rise to liability for the tax  
10 imposed by 26 U.S.C. 4943(a) (Internal Revenue Code);

11 (3) making an investment that would jeopardize the carrying out of any of its  
12 exempt purposes, within the meaning of 26 U.S.C. 4944 (Internal Revenue Code), so as to give  
13 rise to liability for the tax imposed by 26 U.S.C. 4944(a) (Internal Revenue Code); and

14 (4) making taxable expenditures that would give rise to liability imposed by 26  
15 U.S.C. 4945(a) (Internal Revenue Code).

16 (b) The articles of incorporation of every nonprofit corporation that is a private  
17 foundation are considered to contain a provision requiring the corporation to distribute, for the  
18 purposes specified in its articles of incorporation, for each taxable year, amounts at least  
19 sufficient to avoid liability for the tax imposed by 26 U.S.C. 4942(a) (Internal Revenue Code).

20 (c) A nonprofit corporation may at any time amend its articles of incorporation or other  
21 instrument governing the corporation, by any amendment process open to it under this chapter,  
22 to provide that some or all provisions of (a) and (b) of this section do not apply to the  
23 corporation.

24 (d) In this section, a reference to a section of the Internal Revenue Code includes the  
25 section as later amended.

26 (e) In this section,

27 (1) "excess business holdings" has the meaning given in 26 U.S.C. 4943(c)  
28 (Internal Revenue Code);

29 (2) "private foundation" has the meaning given in 26 U.S.C. 509 (Internal  
30 Revenue Code);

31 (3) "self-dealing" has the meaning given in 26 U.S.C. 4941(d) (Internal Revenue

1 Code);

2 (4) "taxable expenditures" has the meaning given in 26 U.S.C. 4945(d) (Internal  
3 Revenue Code).

4 Sec. 10.21.115. FILING OF ARTICLES OF INCORPORATION. Duplicate originals  
5 of the articles of incorporation shall be delivered to the commissioner for processing under  
6 AS 10.21.905 and for issuance of a certificate of incorporation.

7 Sec. 10.21.117. DISCLOSURE OF CORPORATE PURPOSE. A person presenting  
8 articles of incorporation under AS 10.21.115 shall deliver, with the articles, a separate statement  
9 of the codes, from the identification codes established under AS 10.06.870, which most closely  
10 describe the activities in which the corporation will initially engage.

11 Sec. 10.21.120. EFFECT OF ISSUANCE OF CERTIFICATE OF INCORPORATION.  
12 The corporate existence begins upon the issuance of the certificate of incorporation. The  
13 certificate of incorporation is conclusive evidence that all conditions precedent required to be  
14 performed by the incorporators have been satisfied and that the corporation has been  
15 incorporated. Issuance of the certificate does not affect the right of the state to bring a  
16 proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of  
17 the corporation. The doctrines of de jure compliance, de facto corporations, and corporations by  
18 estoppel are abolished.

19 Sec. 10.21.125. ASSUMPTION OF PURPORTED POWERS OF NONEXISTENT  
20 CORPORATION: LIABILITY. Persons who assume to act as a corporation for which no  
21 certificate of incorporation has been issued under AS 10.21.120 are jointly and severally liable  
22 for debts and liabilities incurred or arising as a result of that action.

23 Sec. 10.21.130. ORGANIZATIONAL MEETING. After the issuance of a certificate of  
24 incorporation an organizational meeting of either the incorporators or the board of directors  
25 named in the articles of incorporation shall be held, either inside or outside the state, at the call  
26 of the majority of the incorporators or directors named in the articles of incorporation, for the  
27 purposes of adopting bylaws. Electing directors if none have been named in the articles, electing  
28 officers and transacting other business as may come before the meeting. Those calling the  
29 meeting shall give at least 20 days' notice of the meeting by mail to each incorporator or director  
30 named. The notice must state the time and place of the meeting.

31 Sec. 10.21.135. POWER OF INCORPORATORS BEFORE ELECTION OF

1 DIRECTORS. If initial directors are not named in the articles, the incorporator or incorporators  
2 may do whatever is necessary and proper to perfect the organization of the corporation until the  
3 directors are elected, including the adoption and amendment of bylaws of the corporation and the  
4 election of directors.

5 Sec. 10.21.140. BYLAWS: ADOPTION, AMENDMENT, OR REPEAL. Bylaws may  
6 be adopted, amended, or repealed either by approval of a majority of all members  
7 (AS 10.21.990(4)) or by approval of the board (AS 10.21.990(6)), except as provided in  
8 AS 10.21.145. In the case of mutual benefit corporations the articles may restrict or eliminate  
9 the power of the board to adopt, amend, or repeal bylaws.

10 Sec. 10.21.145. BYLAWS: NUMBER OF DIRECTORS AND OTHER CONTENT. (a)  
11 Unless a provision is contained in the articles the bylaws shall state the number of directors of  
12 the corporation or that the number of directors may not be less than a stated number or more than  
13 a stated number, with the exact number of the directors to be fixed, within the limits specified,  
14 by approval of the board or the members (AS 10.21.990(6) - (7)) in the manner provided in the  
15 bylaws. The stated maximum number of directors may not be greater than two times the stated  
16 minimum number minus one and the minimum number of directors may not be less than three.  
17 If the articles provide for the number of directors, the number of directors may only be changed  
18 by an amendment to the articles.

19 (b) In the case of a domestic corporation having members with voting rights, a bylaw  
20 specifying or changing a fixed number of directors or the maximum or minimum number of  
21 directors or changing from a fixed to a variable board or, vice versa may only be adopted by  
22 approval of a majority of all members (AS 10.21.990(4)).

23 (c) Notwithstanding (b) of this section, a bylaw or amendment of the articles reducing  
24 the fixed or minimum number of directors to a number less than five may not be adopted if the  
25 number of votes cast against its adoption at a meeting or the number of members not consenting  
26 in the case of action by written consent are more than 1/6th of the members entitled to vote.

27 (d) Unless a provision is contained in the articles, the bylaws of a domestic corporation  
28 with 5,000 or more members shall set a date for the close of the nominations for the board as  
29 provided in AS 10.21.245.

30 (e) The bylaws may contain any provision, not in conflict with law or the articles, for  
31 the regulation of the internal affairs and for the conduct of the affairs of the corporation,

- 1 including but not limited to
- 2 (1) a provision referred to in AS 10.21.110(2) and 10.21.110(3);
- 3 (2) the time, place, and manner of calling, conducting, and giving notice of
- 4 meetings of members, directors, and committees;
- 5 (3) the manner of execution, revocation, and use of proxies;
- 6 (4) the qualifications, duties, and compensation of directors; the time of their
- 7 annual election; and the requirements of a quorum for directors and committee meetings;
- 8 (5) the appointment and authority of committees of the board;
- 9 (6) the appointment, duties, compensation, and tenure of officers;
- 10 (7) the mode of determination of membership in the corporation; and
- 11 (8) the making of annual reports and financial statements to the members.

12 **Sec. 10.21.150. BYLAWS TO BE KEPT AT OFFICE; INSPECTION BY MEMBERS.**

13 Each corporation shall keep at its principal executive office in this state or, if its principal

14 executive office is not in this state, at its principal office in this state, the original or a copy of

15 its bylaws with amendments to date, which shall be open to inspection by the members at all

16 reasonable times during office hours. If the principal executive office of the corporation is

17 outside this state and the corporation has no principal office in this state, it shall, upon a written

18 request of a member, furnish to that member a copy of the bylaws with amendments to date.

19 **ARTICLE 4. CORPORATE FINANCE.**

20 **Sec. 10.21.155. DUES, ASSESSMENTS, OR FEES AUTHORIZED.** (a) A domestic

21 corporation may levy dues, assessments, or fees on its members as provided in its articles or

22 bylaws. A member, upon learning of the levy, may avoid liability for dues, assessments, or fees

23 by promptly resigning from membership, unless the member is, by contract or otherwise, liable

24 for the payment of the dues, assessment, or fee. A provision of the articles or bylaws authorizing

25 dues, assessments, or fees does not alone create liability of a member for the payment of the

26 dues, assessment, or fee.

27 (b) Dues, assessments, or fees levied as provided in this section shall be uniform for all

28 members except that a corporation having two or more classes of members need only levy dues,

29 assessments, or fees that are uniform as to all members of each class.

30 **Sec. 10.21.160. BONDS; LIMITATIONS ON ISSUANCE.** (a) A domestic corporation

31 may not issue bonds except for money or other property, tangible or intangible, or labor or

1 services actually received by or performed for the corporation or for its benefit.

2 (b) The holder of bonds issued or to be issued by the corporation may inspect the  
3 corporate books and records.

4 Sec. 10.21.165. LIMITATION ON ACCESS TO NONDEBT CAPITAL. A domestic  
5 corporation may not issue stock or capital certificates, or enter into similar agreements that  
6 provide the corporation with access to capital without a fixed obligation to repay the source.

7 Sec. 10.21.170. INCOME FROM CORPORATE ACTIVITIES. (a) If the lawful  
8 activities of a domestic corporation involve the charging of fees or prices for its services or  
9 products the corporation has the right to receive this income and, in so doing, may make an  
10 incidental profit.

11 (b) All incidental profits described in (a) of this section shall be applied to the  
12 maintenance, expansion, or operation of the lawful activities of the corporation, and may not be  
13 divided or distributed in any manner among the members, directors, or officers of the corporation.

14 Sec. 10.21.175. RESTRICTION ON ACCUMULATION OF SURPLUS CURRENT  
15 ASSETS. (a) Notwithstanding another provision of this chapter or of law, a domestic  
16 corporation may not accumulate from any source current assets in excess of its current liabilities  
17 and a reasonable reserve for planning.

18 (b) Current assets are presumed to be in excess of the amount permitted under (a) of this  
19 section if they exceed 50 percent of the larger of either the corporate expenditures in the  
20 preceding year or the average corporate expenditures for the five immediately preceding years.

21 (c) Notwithstanding a provision of this chapter to the contrary, a domestic corporation  
22 may exceed the limits established in this section for the accumulation of surplus current assets  
23 if the corporation is specifically authorized to do so under federal law.

24 (d) A violation of this section is ultra vires corporate activity with the consequences  
25 provided under AS 10.21.015(b).

26 (e) In this section,

27 (1) "current assets" means cash, inventory, and receivables from any source, and  
28 includes the yield on investment in assets or obligations unrelated to the purpose of the  
29 corporation stated in the articles;

30 (2) "current liabilities" means

31 (A) in the case of a public benefit corporation (AS 10.21.990) those

1 recurrent and anticipated expenses in furtherance of the purpose or purposes stated in the  
2 corporate articles;

3 (B) in the case of a mutual benefit corporation (AS 10.21.990) those  
4 recurrent and anticipated expenses in furtherance of the purpose or purposes stated in the  
5 corporate articles or by board resolution.

6 Sec. 10.21.180. DISTRIBUTION TO MEMBERS PROHIBITED. (a) A domestic  
7 corporation may not make a distribution to members (AS 10.21.990).

8 (b) If allowed by its articles or bylaws, a mutual benefit corporation may provide services  
9 or goods to members for no charge or at a charge that the board determines is appropriate.

10 (c) In this section, "distribution to members" means the distribution by a corporation to  
11 its members of gains, profits, dividends, or anything sufficient to constitute consideration for a  
12 contract by the corporation to its members.

13 Sec. 10.21.185. DONATED ASSETS HELD IN CHARITABLE TRUST. (a) A donation  
14 (AS 10.21.990) received by a domestic corporation shall be held in charitable trust.

15 (b) In the absence of a written agreement between a donor and a public benefit  
16 corporation defining the terms of the charitable trust,

17 (1) acceptance of an unsolicited donation by the corporation implies as a term of  
18 the trust that the donation will be applied to the public or charitable purposes stated in the articles  
19 of the corporation at the time of the donation or as amended in conformity with AS 10.21.453(b)  
20 and will not be used for another purpose;

21 (2) acceptance of a solicited donation by the corporation implies as a term of the  
22 trust that the donation will be applied to the purpose or purposes stated in the solicitation and  
23 will not be used for another purpose.

24 (c) In the absence of a written agreement between a donor and a mutual benefit  
25 corporation defining the terms of the charitable trust,

26 (1) acceptance of an unsolicited donation by the corporation implies as a term of  
27 the trust that the donation will be used for the purposes stated in the articles of the corporation  
28 at the time of the donation or as amended in conformity with AS 10.21.453(b) and will not be  
29 used for another purpose;

30 (2) acceptance of a solicited donation by the corporation implies as a term of the  
31 trust that the donation will be used for the purpose stated in the solicitation and will not be used

1 for another purpose.

2 (d) A donation received by a foreign corporation from a source in this state shall be held  
3 in charitable trust. In the absence of a written agreement between a donor and a foreign  
4 corporation defining the terms of the charitable trust, acceptance of a donation by the corporation  
5 implies as a term of the trust that the donation will be used for the purposes stated in the  
6 solicitation and in the articles of the corporation at the time of solicitation and will not be used  
7 for another purpose.

8 Sec. 10.21.190. ACTION TO REMEDY BREACH OF CHARITABLE TRUST. (a)  
9 Notwithstanding AS 10.21.015, the following may bring an action to enjoin, correct, obtain  
10 damages for, or otherwise remedy a breach of a charitable trust established under AS 10.21.185:

11 (1) the corporation or a member in the name of the corporation as provided in this  
12 chapter;

13 (2) an officer of the corporation;

14 (3) a director of the corporation;

15 (4) a donor or a person with a reversionary, contractual, or other property interest  
16 in the assets subject to the charitable trust; or

17 (5) the commissioner, or a person designated by the commissioner.

18 (b) The plaintiff shall give notice to the commissioner of an action under (a) of this  
19 section and the commissioner may intervene in that action.

20 (c) A plaintiff under this section who succeeds on the merits is entitled to reasonable  
21 attorney fees and costs of litigation including costs incurred in discovery.

22 (d) The rights and remedies prescribed by this section are cumulative and in addition to  
23 other rights or remedies available to a donor against a donee corporation or officer, director, or  
24 member of a donee corporation.

25 Sec. 10.21.193. DISPOSITION OF ASSETS IN REGULAR COURSE OF ACTIVITIES;  
26 MORTGAGE OR PLEDGE OF ASSETS. (a) The sale, lease, exchange, or other disposition  
27 of all, or substantially all, of the property and assets of a domestic corporation in the usual and  
28 regular course of its activities, and the mortgage or pledge of property and assets, whether or not  
29 in the usual and regular course of its activities, may be made on terms and conditions and for  
30 consideration as approved by a majority of the entire board (AS 10.21.990(5)) and approved by  
31 the members (AS 10.21.990(7)).

1 (b) This section and the other provisions of this chapter do not authorize a sale, lease,  
2 exchange, or disposition prohibited by another law, including the law of trusts, charitable trusts,  
3 and contracts, or prohibited by the articles or bylaws.

4 Sec. 10.21.195. DISPOSITION OF ALL OR SUBSTANTIALLY ALL ASSETS NOT  
5 IN REGULAR COURSE OF ACTIVITIES. (a) A sale, lease, exchange or other disposition of  
6 all, or substantially all, of the assets of a domestic corporation other than in the regular course  
7 of its activities may be made in the following manner:

8 (1) if there are members entitled to vote on the disposition, the board shall adopt  
9 a resolution recommending the sale, lease, exchange or other disposition; the resolution shall state  
10 the terms and conditions of the proposed transaction, including the consideration to be received  
11 by the corporation, the eventual disposition to be made of the consideration, and a statement  
12 indicating whether the dissolution of the corporation is or is not contemplated; the resolution shall  
13 be submitted to a vote at an annual or special meeting of members entitled to vote on the  
14 resolution; written notice of the meeting shall be given to each member and bond holder, whether  
15 or not entitled to vote, not less than 20 days before the meeting in the manner provided in this  
16 chapter for the giving of notice of meetings of members; the notice must state that the purpose,  
17 or one of the purposes of the meeting, is to consider a proposed sale, lease, exchange, or other  
18 disposition of the assets of the corporation, and in the case of a mutual benefit corporation, the  
19 notice must include a copy of AS 10.21.530 and 10.21.533 concerning the rights of a dissenting  
20 member;

21 (2) a mutual benefit corporation shall take a vote of the members at a meeting  
22 properly noticed under this section on a sale, lease, exchange, or other disposition recommended  
23 by the board; the transaction is approved if the recommendation of the board receives the  
24 affirmative vote of at least two-thirds of all the members entitled to vote on the recommendation,  
25 unless a class of members is entitled to vote as a class, in which case the transaction is approved  
26 if it receives the affirmative vote of at least two-thirds of all members of that class and of the  
27 total number of members entitled to vote; members may alter the terms of a proposed sale, lease,  
28 exchange or other disposition and may authorize the board to modify the terms and conditions  
29 by a vote sufficient to approve the transaction; a sale, lease, exchange, or other disposition, as  
30 modified by the members, is approved when those terms have been adopted by a majority of the  
31 board;

1 (3) a public benefit corporation or a foreign corporation shall take a vote of the  
2 members at a meeting properly noticed under this section, on the recommended sale, lease,  
3 exchange, or other disposition recommended by the board; the transaction is approved if the  
4 recommendation of the board receives the approval of the members (AS 10.21.990(7)), unless  
5 a class of members is entitled to vote as a class, in which case the transaction is approved if it  
6 is approved by both the members of the class and the members of the corporation; the members  
7 may alter the terms of a proposed sale, lease, exchange, or other disposition and may authorize  
8 the board to modify the terms and conditions by a vote sufficient to approve the transaction; a  
9 sale, lease, exchange, or other disposition, as modified by the members, is approved when those  
10 terms have been adopted by a majority of the board;

11 (4) if there are no members entitled to vote on a disposition of corporate assets,  
12 under this section, a sale, lease, exchange, or other disposition may be authorized by the vote of  
13 at least two-thirds of the entire board (AS 10.21.990); notwithstanding this paragraph, if there  
14 are 21 or more directors, the vote of a majority of the entire board is sufficient to authorize a  
15 disposition of corporate assets.

16 (b) If a corporation is, or would be if formed under this chapter, a public benefit  
17 corporation, a sale, lease, exchange, or other disposition shall be approved by the commissioner  
18 as provided in AS 10.21.198. If the corporation is or would be if formed under this chapter, a  
19 mutual benefit corporation, and it holds assets in charitable trust, it shall give written notice to  
20 the commissioner not less than 30 days before a sale, lease, exchange, or other disposition under  
21 this section unless the commissioner has given the corporation a written waiver of this notice  
22 requirement as to the particular transaction.

23 (c) After authorization and, when required, approval of the commissioner, the board in  
24 its discretion may abandon a sale, lease, exchange, or other disposition of assets subject to the  
25 rights of third parties under any contract, without further action or approval.

26 (d) The provisions of this section apply to a foreign corporation to the extent that it

27 (1) holds assets in charitable trust under AS 10.21.185; or

28 (2) holds an interest in real property situated in this state.

29 Sec. 10.21.198. PETITION FOR APPROVAL BY COMMISSIONER. (a) A domestic  
30 or foreign corporation required by law to obtain the approval of the commissioner to sell, lease,  
31 exchange, or otherwise dispose of all or substantially all of its assets, shall submit a verified

1 petition to the commissioner that must set out

2 (1) the name of the corporation and the law under which it was incorporated;

3 (2) the names of the directors and principal officers of the corporation and their  
4 places of residence;

5 (3) the activities of the corporation;

6 (4) a description, of the assets to be sold, leased, exchanged, or otherwise  
7 disposed of, which may be contained in a schedule attached to the petition; a statement of the  
8 face value of those assets; and the amount of the corporation's debts and liabilities, including the  
9 manner by which they are secured;

10 (5) the consideration to be received by the corporation and the proposed  
11 disposition of that consideration, together with a statement that the dissolution of the corporation  
12 is or is not contemplated;

13 (6) a concise statement of the reasons why the purposes of the corporation, or the  
14 interests of its members will be promoted by the sale, lease, exchange, or other section  
15 disposition of the assets of the corporation;

16 (7) a statement that the sale, lease, exchange or disposition of corporate assets,  
17 has been recommended or authorized by vote of the directors at a meeting duly called and held,  
18 as shown in a schedule annexed to the petition setting out a copy of the resolution granting the  
19 authority, including the results of the vote on the resolution;

20 (8) if the consent of the members of the corporation is required by law a  
21 statement that the consent is given, as shown in a schedule attached to the petition setting out  
22 a copy of the consent, adopted at a meeting of members duly called and held, with a statement  
23 of the vote on the consent; and

24 (9) a request for approval to sell, lease, exchange, or otherwise dispose of all or  
25 substantially all, of the assets of the corporation as set out in the petition.

26 (b) The commissioner may, in the exercise of discretion, order that the notice of the  
27 petition be given personally or by mail to any person interested in the petition, as member,  
28 officer, or creditor of the corporation. The notice shall state that written consent or objections  
29 to the petition will be received by the commissioner until a specified date that may not be less  
30 than 30 days from the date of the notice. An interested person, whether or not formally notified,  
31 may file written comments or objections to the petition. Comments shall be considered by the

1 commissioner if they are filed within the time permitted under the notice, or if notice has not  
2 been given by the commissioner, within 30 days from the presentation of the petition to the com-  
3 missioner.

4 (c) If the corporation is insolvent (AS 10.21.990) or if its assets are insufficient to  
5 liquidate its debts and liabilities in full, the approval of the commissioner shall not be given  
6 unless all the creditors of the corporation have been served, personally or by mail, with a notice  
7 of the proposed distribution, and have been given the period for comment or objection permitted  
8 under (b) of this section.

9 (d) If the commissioner determines that the purposes of the corporation or the interests  
10 of the members will be reasonably served, the commissioner may authorize the sale, lease,  
11 exchange, or other disposition of all or substantially all of the assets of the corporation, as  
12 described in the petition, for the consideration and on the terms the commissioner prescribes.  
13 The commissioner's order shall direct the disposition of the consideration to be received by the  
14 corporation.

15 (e) A party aggrieved by an order of the commissioner under (d) of this section may  
16 appeal the order to the superior court. Judicial review of an order issued under (d) of this section  
17 is limited to the issue of whether or not the order is an abuse of discretion.

#### 18 ARTICLE 5. MEMBERS.

19 Sec. 10.21.200. MEMBERS; ADMISSION OF MEMBERS; CORPORATIONS  
20 WITHOUT MEMBERS. (a) A domestic corporation may admit persons to membership as  
21 provided in its articles or bylaws, or may provide in its articles or bylaws that it will not have  
22 members (AS 10.21.990). In the absence of a provision in its articles or bylaws providing for  
23 members, a domestic corporation may not have members.

24 (b) In the case of a domestic corporation having no members

25 (1) an action that would otherwise require approval by a majority of all members  
26 (AS 10.21.990(4)) or approval by the members (AS 10.21.990(7)) requires only approval of the  
27 board (AS 10.21.990(6)), notwithstanding a provision of the articles, bylaws, or this chapter;

28 (2) rights that would otherwise vest in the members vest in the directors.

29 (c) In this chapter, a domestic corporation having no members includes a domestic  
30 corporation in which the directors are the only members.

31 Sec. 10.21.203. MEMBERSHIP: CONSIDERATION. (a) Subject to the articles or

1 bylaws, a membership may be issued by a domestic corporation for no consideration or for a  
2 consideration as determined by the board.

3 (b) Except as provided in (d) of this section and subject to AS 10.21.165, a membership  
4 issued as provided in this section is a fully paid membership and is not liable for any further call,  
5 and the member is not liable for further payment for the membership.

6 (c) In the absence of fraud in the transaction, the judgment of the directors as to the  
7 value of the consideration for a membership is conclusive.

8 (d) A domestic corporation may issue all or part of its memberships as partly paid and  
9 subject to call for the remainder of the consideration to be paid for the membership.

10 Sec. 10.21.205. MULTIPLE AND FRACTIONAL MEMBERSHIP: HOMEOWNERS'  
11 ASSOCIATIONS. (a) Except as provided in this section a person may not hold a fractional  
12 membership or more than one membership.

13 (b) Two or more persons may have an indivisible interest in a single membership if  
14 authorized by the articles or bylaws subject to AS 10.21.278.

15 (c) A person may hold membership in more than one class if the articles or bylaws  
16 provide for classes of membership and permit a person to be a member of more than one class.

17 (d) In the case of membership in a homeowners' association, the articles or bylaws may  
18 permit a person who owns an interest or who has a right of exclusive occupancy in more than  
19 one lot, parcel, area, apartment, or unit to hold a separate membership in the homeowners'  
20 association for each lot, parcel, area, apartment, or unit.

21 Sec. 10.21.208. MUTUAL BENEFIT CORPORATIONS; MEMBERSHIP  
22 CERTIFICATES; IDENTITY CARDS; TRANSFER AND CANCELLATION. (a) Except as  
23 provided in AS 10.21.203(d), a mutual benefit corporation may issue membership certificates and  
24 identity cards or similar devices to members that serve to identify members qualifying to use  
25 facilities or services of the corporation.

26 (b) A membership certificate issued by a mutual benefit corporation must state on the  
27 certificate

28 (1) that the corporation is a nonprofit mutual benefit corporation that may not  
29 make distributions to its members except upon dissolution, or, if the articles provide, that it may  
30 not make a distribution to its members;

31 (2) that restrictions on the transferability of membership, if any, are on file with

1 the secretary of the corporation and are open for inspection by a member on the same basis as  
2 the records of the corporation; and

3 (3) if applicable, that the membership has been issued as partly paid and is subject  
4 to call for the remainder of the consideration.

5 (c) If a membership certificate of a mutual benefit corporation is transferable only with  
6 consent of the corporation, or if there are no membership certificates, then notwithstanding (b)(2)  
7 of this section the corporation may, or if there are no membership certificates the corporation  
8 shall, give notice to a transferee, within a reasonable time after the corporation is first notified  
9 of the proposed transfer and before the membership is transferred on the books and records of  
10 the corporation, of the information that would otherwise be provided under (b)(2) of this section.

11 (d) If the articles or bylaws of a mutual benefit corporation are amended so that a  
12 statement required by (b) of this section is no longer accurate, then the board shall cancel the  
13 outstanding certificates and issue new certificates conforming to the article or bylaw amendments.

14 (e) If new membership certificates are issued under (d) of this section, the board shall  
15 order holders of outstanding certificates to surrender and exchange them for new certificates  
16 within a reasonable time fixed by the board. The board may further provide that the holder of  
17 a certificate that the board has ordered to be surrendered is not entitled to exercise a right of  
18 membership until the certificate is surrendered and exchanged. The rights of a member may be  
19 suspended only after notice of the order is given to the holder of the certificate and only until  
20 the certificate is exchanged. The duty to surrender an outstanding certificate may also be  
21 enforced by civil action.

22 Sec. 10.21.210. ISSUANCE OF NEW MEMBERSHIP CERTIFICATE FOR LOST,  
23 STOLEN, OR DESTROYED CERTIFICATE. (a) A mutual benefit corporation may issue a  
24 new membership certificate in place of a certificate that is lost, stolen, or destroyed. The  
25 corporation may require the owner of the lost, stolen, or destroyed certificate or the owner's legal  
26 representative to give the corporation a bond or other adequate security sufficient to indemnify  
27 the corporation against a claim that may be made against the corporation because of the loss,  
28 theft, or destruction of a certificate or the issuance of a new certificate.

29 (b) If a mutual benefit corporation refuses to issue a new membership certificate in place  
30 of a certificate alleged to have been lost, stolen, or destroyed, the owner of the lost, stolen, or  
31 destroyed certificate may bring an action in the superior court for an order requiring the

1 corporation to issue a new certificate.

2 Sec. 10.21.213. PERSONS ADMITTED TO MEMBERSHIP; EXCEPTION OF  
3 SUBSIDIARIES. (a) Except as provided in (b) of this section, or in its articles or bylaws, a  
4 corporation may admit any person to membership.

5 (b) A corporation may not admit a subsidiary (AS 10.21.990) of the corporation to  
6 membership.

7 Sec. 10.21.215. TRANSFER OF MEMBERSHIPS: MUTUAL BENEFIT  
8 CORPORATIONS. (a) In the case of a mutual benefit corporation, unless the articles or bylaws  
9 provide otherwise and subject to AS 10.21.268

10 (1) a member may not transfer a membership or right arising from the  
11 membership; and

12 (2) all rights as a member of the corporation cease upon the member's death or  
13 dissolution of the corporation.

14 (b) Notwithstanding (a)(2) of this section, the articles or bylaws may provide for, or may  
15 authorize the board to provide for, the transfer of memberships, or of memberships within a class  
16 or classes, with or without restriction or limitation, including transfer upon the death, dissolution,  
17 merger, or reorganization of a member.

18 (c) If transfer rights have been provided, a restriction of those rights is not binding with  
19 respect to memberships issued prior to the adoption of the restriction, unless the holders of those  
20 memberships voted in favor of the restriction.

21 Sec. 10.21.218. TRANSFER OF MEMBERSHIPS: PUBLIC BENEFIT  
22 CORPORATIONS. Subject to AS 10.21.265, in the case of a public benefit corporation

23 (1) a member may not transfer a membership or any right arising from the  
24 membership; and

25 (2) all rights as a member of the corporation cease upon the member's death or  
26 dissolution of the corporation.

27 Sec. 10.21.220. EQUALITY OF MEMBERSHIPS. Except as provided by the articles  
28 or bylaws, all memberships have the same rights, privileges, preferences, restrictions, and  
29 conditions.

30 Sec. 10.21.225. BENEFITTING, SERVING, AND ASSISTING NONMEMBERS. A  
31 domestic corporation may benefit, serve, or assist for consideration, if any, as determined by the

1 board or as provided by the articles or bylaws, a person who is not a member as that term is  
2 defined for this chapter.

3 Sec. 10.21.228. RESIGNATION OR EXPIRATION OF MEMBERSHIP. (a) A member  
4 may resign from membership at any time. The articles or bylaws may require reasonable notice  
5 before a resignation is effective.

6 (b) Notwithstanding (a) of this section, a resigning member is liable for charges incurred,  
7 services or benefits actually rendered and unpaid, dues, assessments, or fees.

8 (c) A membership issued for a period of time expires when the period of time has  
9 elapsed unless the membership is renewed.

10 Sec. 10.21.230. EXPULSION, SUSPENSION, OR TERMINATION. (a) A member may  
11 not be expelled or suspended, and a membership may not be terminated or suspended, except as  
12 provided in this section. An expulsion, termination, or suspension not in accord with this section  
13 is void and without effect.

14 (b) An expulsion, suspension, or termination shall be done in good faith and in a fair and  
15 reasonable manner. A procedure not conforming to (c) of this section may be fair and reasonable  
16 when the full circumstances of the suspension, termination, or expulsion are considered. The  
17 burden of proof of the reasonableness of a procedure not conforming to (c) of this section is on  
18 the corporation.

19 (c) A suspension, termination, or expulsion procedure is fair and reasonable if

20 (1) the provisions of the procedure have been set out in the articles or bylaws, or  
21 copies of the provisions are sent upon request to a member as required by the articles or bylaws;

22 (2) the procedure provides for the giving of 30 days' notice to the member before  
23 the expulsion, suspension, or termination, and notice of the reasons for the expulsion, suspension,  
24 or termination; and

25 (3) the procedure provides an opportunity for the member to respond, orally or  
26 in writing, not less than 10 days before the effective date of the expulsion, suspension, or  
27 termination before a person or body authorized to decide that the proposed expulsion,  
28 termination, or suspension not take place.

29 (d) Notice required under this section may be given by any method reasonably calculated  
30 to provide actual notice. Notice given by mail shall be given by first-class or registered mail sent  
31 to the last address of the member shown on the corporation's records.

1 (e) An action challenging an expulsion, suspension, or termination of membership,  
2 including a claim alleging defective notice, must be commenced within one year after the date  
3 of the expulsion, suspension, or termination. In the event the action is successful the court may  
4 order the relief, including reinstatement, that it finds equitable under the circumstances. A vote  
5 of the members entitled to vote or of the board may not be set aside because a person was at the  
6 time of the vote wrongfully excluded by virtue of the challenged expulsion, suspension, or  
7 termination, unless the court finds that the wrongful expulsion, suspension, or termination was  
8 in bad faith and for the purpose, and with the effect, of wrongfully excluding the member from  
9 the vote or from the meeting at which the vote took place, in order to affect the outcome of the  
10 vote.

11 (f) This section governs only the procedures for expulsion, suspension, or termination of  
12 a member and not the substantive grounds. An expulsion, suspension, or termination based on  
13 substantive grounds that violate contractual or other rights of a member or are otherwise unlawful  
14 is not made valid by compliance with this section.

15 Sec. 10.21.233. MEETINGS OF MEMBERS. (a) Meetings of members shall be held  
16 at a place inside or outside this state as provided by the bylaws. If the bylaws make no  
17 provision, meetings shall be held at the registered office of the corporation.

18 (b) Regular meetings of members of a public benefit corporation shall be held on a date,  
19 at a time, and with the frequency provided by the bylaws, but not less often than once every third  
20 year. If the bylaws make no provision, annual meetings shall be held. Directors shall be elected  
21 at a regular meeting of the members unless they are chosen in some other manner authorized by  
22 law. Any other proper business may be transacted at a regular meeting.

23 (c) A regular meeting of the members of a mutual benefit corporation shall be held  
24 annually. In a year in which directors are elected, the election shall be held at the regular  
25 meeting of the members unless they are chosen in some other manner authorized by law. Any  
26 other proper business may be transacted at the regular meeting.

27 (d) If a domestic corporation with members fails to hold a regular meeting for a period  
28 of 60 days after the date designated for the meeting, or, if no date has been designated, for a  
29 period of 15 months after the formation of the corporation or after its last regular meeting as  
30 required by (b) or (c) of this section, or if the corporation fails to hold a written ballot for a  
31 period of 60 days after the date designated for the written ballot, the superior court may

1 summarily order the meeting to be held or the ballot to be conducted upon the application of a  
2 member or the commissioner after notice to the corporation giving it an opportunity to respond.

3 (c) Special meetings of the members may be called by the board, the chair of the board,  
4 the president, 10 percent of the members, or by other persons authorized in the articles or bylaws.

5 Sec. 10.21.235. DETERMINATION OF RECORD DATE. (a) The bylaws may provide  
6 or, in the absence of a provision, the board may fix in advance, a date as the record date for the  
7 purpose of determining the members entitled to notice of a meeting of members. The record date  
8 may not be more than 60 or less than 10 days before the date of the meeting. If a record date  
9 is not fixed, a member at the close of business on the business day preceding the day on which  
10 notice is given or, if notice is waived, at the close of business on the business day preceding the  
11 day on which the meeting is held, is entitled to notice of a meeting of members. A determination  
12 of members entitled to notice of a meeting of members applies to an adjournment of the meeting  
13 unless the board fixes a new record date for the adjourned meeting.

14 (b) The bylaws may provide or, in the absence of a provision, the board may fix in  
15 advance, a date as the record date for the purpose of determining the members entitled to vote  
16 at a meeting of members. The record date may not be more than 60 days before the date of the  
17 meeting. If a record date is not fixed, a member on the day of the meeting who is eligible to  
18 vote is entitled to vote at the meeting of members. If a record date is not fixed in the case of  
19 an adjourned meeting, a member on the day of adjournment is eligible to vote at the resumption  
20 of that meeting.

21 (c) The bylaws may provide or, in the absence of a provision, the board may fix in  
22 advance, a date as the record date for the purpose of determining the members entitled to cast  
23 written consents under AS 10.21.283. The record date may not be more than 60 days before the  
24 day on which the first written ballot is mailed or solicited. If a record date is not fixed, a  
25 member on the day the first written ballot is mailed or solicited who is otherwise eligible to vote  
26 may cast a written ballot.

27 (d) The bylaws may provide or, in the absence of a provision, the board may fix in  
28 advance, a date as the record date for the purpose of determining the members entitled to exercise  
29 a right. The record date may not be more than 60 days before that action. If a record date is  
30 not fixed, members at the close of business on the day on which the board adopts a resolution  
31 relating to that right, are entitled to exercise that right.

1           Sec. 10.21.238. NOTICE OF MEMBERS' MEETINGS; PERMISSIBLE AGENDA. (a)

2           Whenever members are required or permitted to take any action at a meeting, a written notice  
3           of the meeting shall be delivered not less than 20 nor more than 50 days before the date of the  
4           meeting, either personally or by mail, by or at the direction of the president, the secretary or the  
5           officer or persons calling for the meeting, to each member entitled to vote at the meeting. If  
6           mailed, the notice is considered delivered when deposited with postage prepaid in the United  
7           States mail addressed to the member at the member's address as it appears on the membership  
8           records of the corporation.

9           (b) The notice required by (a) of this section must state the place, date, and time of the  
10          meeting and

11           (1) in the case of a special meeting, the purpose for which the meeting is called,  
12          and no other business may be transacted, or

13           (2) in the case of the regular meeting, those matters that the board, at the time  
14          notice is given, intends to present for action by the members, but, except as provided in  
15          AS 10.21.263(b), any proper matter may be presented at the meeting for member action.

16          Sec. 10.21.240. NOMINATION AND ELECTION PROCEDURES FOR THE BOARD.

17          (a) Nomination and election procedures that are reasonable, given the nature, size, and operations  
18          of the corporation, shall be available to the members for the nomination and election of those  
19          directors elected by the members. The procedures shall be set out in the articles or bylaws.

20          (b) The procedures must include

21           (1) a reasonable means of nominating a person for election as a director;

22           (2) a reasonable opportunity for a nominee to communicate to the members the  
23          nominee's qualifications and the reasons for the nominee's candidacy;

24           (3) a reasonable opportunity for nominees to solicit votes; and

25           (4) a reasonable opportunity for members to choose among the nominees.

26          Sec. 10.21.243. NOMINATION PROCEDURES: CORPORATIONS WITH 500 OR  
27          MORE MEMBERS. Except for directors who are designated or selected under AS 10.21.355(d)  
28          or directors elected on a chapter or regional basis under AS 10.21.275, and except as provided  
29          in AS 10.21.245, a person who is qualified to be elected to the board of directors of a domestic  
30          corporation with 500 or more members may be nominated

31           (1) by a method authorized under AS 10.21.240;

1 (2) by petition delivered to an officer of the corporation signed, within 11 months  
2 preceding the next time directors will be elected, by members representing the following number  
3 of votes:

4 (A) for domestic corporations with fewer than 5,000 members, 20 percent  
5 of the voting power;

6 (B) for domestic corporations with 5,000 members or more, 1/20th of one  
7 percent of the voting power, but not less than 100;

8 (3) notwithstanding (2) of this section, in domestic corporations engaged primarily  
9 in the business of retail merchandising of consumer goods, having 100,000 or more members,  
10 by petition delivered to an officer of the corporation, signed, within 11 months preceding the next  
11 time directors will be elected, by a reasonable number of members, consistent with AS 10.21.240;

12 (4) if there is a meeting to elect directors, and subject to AS 10.21.245, by a  
13 member present at the meeting in person or by proxies if proxies are permitted.

14 Sec. 10.21.245. ELECTION OF DIRECTORS: CORPORATIONS WITH 5,000 OR  
15 MORE MEMBERS. (a) The provisions of this section apply to the election of directors by  
16 members of a domestic corporation with 5,000 or more members except for an election  
17 authorized by AS 10.21.273 or 10.21.275.

18 (b) The corporation's articles or bylaws shall set a date for the close of nominations for  
19 the board. The date may not be less than 50 or more than 120 days before the day directors are  
20 to be elected. Notwithstanding AS 10.21.243(4), nominations for the board may not be made after  
21 the date set for the close of nominations.

22 (c) If more people are nominated for the board than can be elected, the election shall take  
23 place by means of procedures that allow nominees a reasonable opportunity to solicit votes and  
24 members a reasonable opportunity to choose among nominees.

25 (d) If, after the close of nominations, the number of people nominated for the board is  
26 not more than the number of directors to be elected, the corporation may declare those nominated  
27 and qualified to be elected to have been elected.

28 Sec. 10.21.248. EQUAL ACCESS TO CORPORATE PUBLICATIONS: VOTE  
29 SOLICITATION IN CORPORATE PUBLICATIONS. A domestic corporation with 500 or more  
30 members that publishes material soliciting votes for a nominee for election to the board in a  
31 publication owned or controlled by the corporation, shall make available to each of the other