

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
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lished 3 weeks successively in a newspaper published in the county whose court has jurisdiction. In addition thereto said court shall, except to such extent as the several instruments creating the trusts participating in such common trust fund provide otherwise, order personal notice upon all known beneficiaries of the participating trust estates who have a place of residence known to the accountant. Personal notice to known beneficiaries having a place of residence known to the accountant shall denote service by a written notice deposited in the mails addressed to each such known beneficiary at such known place of residence at least 14 days before the time of hearing, or by a written notice either in hand or left at such known place of residence 14 days at least before the time of hearing. The method of service and the form of such notice shall be as the court shall order. 'Place of residence known to the accountant' as used in this section shall include only places of residence actually known to the accountant, and shall not include residences which could be discovered upon investigation but which do not in the due course of business come to the actual knowledge of the accountant. The allowance of such an account shall be conclusive as to all matters shown therein upon all persons then or thereafter interested in the funds invested in said common trust funds."

Massachusetts. Section reads: "An account of the administration of each common trust fund shall be filed annually in the registry of probate in which the declaration of trust has been filed and application for its allowance shall be made in accordance with [M.G.L.A. c. 206 § 24]. The allowance of such an account shall be conclusive as to all matters shown therein upon all persons then or thereafter interested in the funds invested in said common trust fund."

Mississippi. Omits second paragraph.

Missouri. Omits this section.

Nebraska. Omits this section.

Nevada. Omits second paragraph.

New Hampshire. Specifies that application be presented to the probate court in the county in which the bank or trust company operating the trust fund is located if court approval of accounting is desired.

Oklahoma. The substance of sections 1 and 2 of the Official Text is contained in 60 Okl.St. Ann. § 162 in the Oklahoma Act.

See text of said section in variation note in section 1, supra.

Oregon. The substance of sections 1 and 2 of the Official Text are contained in ORS § 709.170 of the Oregon act. See text of said section in variation note in Section 1, supra.

South Dakota. Omits this section, but adds a section 55-6-3 which refers to the general provisions regarding administration of trust estates. For text of said section, see general statutory note, supra.

Texas. Omits this section.

Utah. The Utah provision corresponding to section 2 of the Uniform Act [U.C.A. 1953, 7-5-13(2)] reads as follows: "Unless ordered to do so by a court of competent jurisdiction a trust company operating common trust funds is not required to render a court accounting with regard to those funds; but it may, by application to the district court, secure approval of such an accounting on such conditions as the court may establish."

West Virginia. Section reads: "Unless ordered by a court of competent jurisdiction, the bank or trust company operating such common trust fund, as provided for in section six [§ 44-6-6] of this article, shall not be required to render an accounting with regard to such fund, before any commissioner of accounts, but it may, by application to the circuit court of the county in which is located the principal place of business of said bank or trust company, secure the approval of an accounting in such condition as the court may fix: Provided, however, that nothing herein shall be interpreted as relieving any fiduciary acquiring, holding or disposing of an interest in any common trust fund from making an accounting as required by law with respect of such interest."

Wisconsin. Section reads: "Unless ordered by a court of competent jurisdiction the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds; but it may, by application to the circuit court of the county in which it has its principal office, secure approval of such an accounting on such conditions as the court may establish. When an accounting of a common trust fund is presented to a court for approval, the court shall assign a time and place for hearing and order notice thereof by:

"(a) Publication of a class 3 notice, under ch. 986, in the county in which the bank or trust company or branch thereof operating the common trust fund is located; and

"(b) Mailing not less than 14 days prior to the date of the hearing a copy of the notice to all beneficiaries of the trusts participating in the common trust fund whose

names are known to the bank or trust company from the records kept by it in the regular course of business in the administration of said trusts, directed to them at the addresses shown by such records; and

"(c) Such further notice if any as the court may order."

Wyoming. Omits second paragraph.

Library References

Trusts ⇐289, 291, 326.
C.J.S. Trusts §§ 377 to 379, 413.

§ 3. Uniformity of Interpretation

This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Library References

Banks and Banking ⇐311.
Statutes ⇐226.
Trusts ⇐217.3(3).

C.J.S. Banks and Banking § 1045.
C.J.S. Statutes § 371 et seq.
C.J.S. Trusts § 326.

§ 4. Short Title

This Act may be cited as the Uniform Common Trust Fund Act.

Library References

Statutes ⇐64(2).
C.J.S. Statutes § 96 et seq.

§ 5. Severability

If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Library References

Statutes ⇐64(2).
C.J.S. Statutes § 96 et seq.

§ 6. Repeal

All acts or parts of acts which are inconsistent with the provisions of this Act are hereby repealed.

Library References

Banks and Banking ↯311.
Statutes ↯157.
Trusts ↯217.3(3).

C.J.S. Banks and Banking § 1045.
C.J.S. Statutes § 285.
C.J.S. Trusts § 326.

§ 7. Time of Taking Effect

This Act shall take effect () and shall apply to fiduciary relationships then in existence or thereafter established.

Library References

Statutes ↯250.
C.J.S. Statutes § 400.

rates for such furnishing or sale are subject to the jurisdiction of a public service or public utility commission or other similar body of the District of Columbia or of any State.

"(D) A corporation engaged in the furnishing or sale of telephones or a graph service, if the rates for such furnishing or sale meet the requirements of subparagraph (A).

"(E) A corporation engaged in the furnishing or sale of transportation as a common carrier by air, subject to the jurisdiction of the Civil Aviation Board.

"(F) A corporation engaged in the furnishing or sale of transportation by common carrier by water, subject to the jurisdiction of the Interstate Commerce Commission under part III of the Interstate Commerce Act, or subject to the jurisdiction of the Federal Maritime Board under the Intercoastal Shipping Act, 1933.

"(2) Limitation.—For purposes of subsection (h), the term 'regulated public utility' does not (except as provided in paragraph (3)) include a corporation described in paragraph (1) unless 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from sources described in paragraph (1). If the taxpayer establishes to the satisfaction of the Secretary or his delegate that—

"(A) its revenue from regulated rates described in paragraph (1)(A) or (D) and its revenue derived from unregulated rates are derived from its operation of a single interconnected and coordinated system or from the operation of more than one such system, and

"(B) the unregulated rates have been and are substantially as favorable to users and consumers as are the regulated rates, such revenue from such unregulated rates shall be considered, for purposes of this paragraph, as income derived from sources described in paragraph (1)(A) or (D).

"(3) Certain railroad corporations.—

"(A) Lessor corporation.—For purposes of subsection (b), the term 'regulated public utility' shall also include a railroad corporation subject to part I of the Interstate Commerce Act, if (i) substantially all of its railroad properties have been leased to another such railroad corporation or corporations by an agreement or agreements entered into prior to January 1, 1954, (ii) such lease is for a term of more than 20 years, and (iii) at least 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from such leases and from sources described in paragraph (1). For purposes of the preceding sentence, an agreement for lease of railroad properties entered into prior to January 1, 1954, shall be considered to be a lease including such term as the total number of years of such agreement may, unless sooner terminated, be renewed or continued under the terms of the agreement, and any such renewal or continuance under such agreement shall be considered part of the lease entered into prior to January 1, 1954.

"(B) Common parent corporation.—For purposes of subsection (b), the term 'regulated public utility' also includes a common parent corporation which is a common carrier by railroad subject to part I of the Interstate Commerce Act if at least 80 percent of its gross income (computed without regard to capital gains or losses) is derived directly or indirectly from sources described in paragraph (1). For purposes of the preceding sentence, dividends and interest, and income from leases described in subparagraph (A), received from a regulated public utility shall be considered as derived from sources described in paragraph (1) if the regulated public utility is a member of an affiliated group (as defined in section 1504) which includes the common parent corporation.

"(d) Special rule for application of foreign tax credit when overall limitation applies.

"[(1) and (2) meet as current (b)(1) and (2)]

"(3) Special rules.—

"(A) For purposes of paragraph (2), a corporation is a regulated public utility only if it is a regulated public utility within the meaning of subparagraph (A) (other than clauses (i) and (ii) thereof) or (D) of subsection (e)(1). For purposes of the preceding sentence, subsection (e)(2) shall be applied as if subsection (e)(1) were limited to subparagraphs (A)(i) and (D) thereof.

"(B) For purposes of paragraph (2), the foreign countries referred to in this subparagraph include only any country from which any public utility referred to in the first sentence of paragraph (2) derives the principal part of its income.

"(C) For purposes of paragraph (1)(A), the amount of tax which would be computed with respect to the parties of the consolidated taxable income attributable to any corporation or corporations shall be determined without regard to the limitation of 2 percent provided in subsection (a)."

In '90, P.L. 84-780 had added subsec. (d), for tax yrs. beginn. after '60.

Sec. 1504. Definitions.

(a) Affiliated group defined

For purposes of this subtitle—

(1) In general. The term "affiliated group" means—

(A) 1 or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation, but only if—

(B)(i) the common parent owns directly stock meeting the requirements of paragraph (2) in at least 1 of the other includible corporations, and

(ii) stock meeting the requirements of paragraph (2) in each of the includible corporations (except the common parent) is owned directly by 1 or more of the other includible corporations.

(2) 80-percent voting and value test. The ownership of stock of any corporation meets the requirements of this paragraph if it—

(A) possesses at least 80 percent of the total voting power of the stock of such corporation, and

(B) has a value equal to at least 80 percent of the total value of the stock of such corporation.

(3) 5 years must elapse before reconsolidation.

(A) In general. If—

(i) a corporation is included (or required to be included) in a consolidated return filed by an affiliated group for a taxable year which includes any period after December 31, 1984, and

(ii) such corporation ceases to be a member of such group in a taxable year beginning after December 31, 1984,

with respect to periods after such cessation, such corporation (and any successor of such corporation) may not be included in any consolidated return filed by the affiliated group (or by another affiliated group with the same common parent or a successor of such common parent) before the 61st month beginning after its first taxable year in which it ceased to be a member of such affiliated group.

(B) Secretary may waive application of subparagraph (A). The Secretary may waive the application of subparagraph (A) to any corporation for any period subject to such conditions as the Secretary may prescribe.

(4) Stock not to include certain preferred stock. For purposes of this subsection, the term "stock" does not include any stock which—

(A) is not entitled to vote,

(B) is limited and preferred as to dividends and does not participate in corporate growth to any significant extent,

(C) has redemption and liquidation rights which do not exceed the issue price of such stock (except for a reasonable redemption or liquidation premium), and

(D) is not convertible into another class of stock.

(5) Regulations. The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including (but not limited to) regulations—

(A) which treat warrants, obligations convertible into stock, and other similar interests as stock, and stock as not stock,

(B) which treat options to acquire or sell stock as having been exercised,

(C) which provide that the requirements of paragraph (2)(B) shall be treated as met if the affiliated group, in reliance on a good faith determination of value, treated such requirements as met.

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(D) which disregard an inadvertent ceasing to meet the requirements of paragraph (2)(B) by reason of changes in relative values of different classes of stock,

(E) which provide that transfers of stock within the group shall not be taken into account in determining whether a corporation ceases to be a member of an affiliated group, and

(F) which disregard changes in voting power to the extent such changes are disproportionate to related changes in value.

(b) Definition of "includible corporation."

As used in this chapter, the term "includible corporation" means any corporation except—

(1) Corporations exempt from taxation under section 501.

(2) Insurance companies subject to taxation under section 801.

(3) Foreign corporations.

(4) Corporations with respect to which an election under section 936 (relating to possession tax credit) is in effect for the taxable year.

(6) Regulated investment companies and real estate investment trusts subject to tax under subchapter M of chapter 1.

(7) A DISC (as defined in section 992(a)(1)).

(c) Includible insurance companies.

Notwithstanding the provisions of paragraph (2) of subsection (b)—

(1) Two or more domestic insurance companies each of which is subject to tax under section 801 shall be treated as includible corporations for purposes of applying subsection (a) to such insurance companies alone.

(2) (A) If an affiliated group (determined without regard to subsection (b)(2)) includes one or more domestic insurance companies taxed under section 801, the common parent of such group may elect (pursuant to regulations prescribed by the Secretary) to treat all such companies as includible corporations for purposes of applying subsection (a) except that no such company shall be so treated until it has been a member of the affiliated group for the 5 taxable years immediately preceding the taxable year for which the consolidated return is filed.

(B) If an election under this paragraph is in effect for a taxable year—

(i) section 243(b)(3) and the exception provided under 243(b)(2) with respect to subsections (b)(2) and (c) of this section;

(ii) section 542(b)(5), and

(iii) subsection (a)(4) and (b)(2)(D) of section 1563, and the reference to section 1563(b)(2)(D) contained in section 1563(b)(3)(C),

shall not be effective for such taxable year.

(d) Subsidiary formed to comply with foreign law.

In the case of a domestic corporation owning or controlling, directly or indirectly, 100 percent of the capital stock (exclusive of directors' qualifying shares) of a corporation organized under the laws of a contiguous foreign country and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, such foreign corporation may, at the option of the domestic corporation, be treated for the purpose of this subtitle as a domestic corporation.

(e) Includible tax-exempt organizations.

Despite the provisions of paragraph (1) of subsection

(b), two or more organizations exempt from taxation under section 501, one or more of which is described in section 501(c)(2) and the others of which derive income from such 501(c)(2) organizations, shall be considered as includible corporations for the purpose of the application of subsection (a) to such organizations alone.

(f) Special rule for certain amounts derived from a corporation previously treated as a DISC.

In determining the consolidated taxable income of an affiliated group for any taxable year beginning after December 31, 1984, a corporation which had been a DISC and which would otherwise be a member of such group shall not be treated as such a member with respect to—

(1) any distribution (or deemed distribution) of accumulated DISC income which was not treated as previously taxed income under section 805(b)(2)(A) of the Tax Reform Act of 1984, and

(2) any amount treated as received under section 805(b) (3) of such Act.

In '90, P.L. 101-508, Sec. 11814(b)(1), substituted "section 243(b)(3)" for "section 243(b)(6)" in clause (c)(2)(B) (i) . . . Sec. 11814(b)(2), substituted "243(b)(2)" for "section 243(b)(5)" in clause (c)(2)(B)(i), effective for tax yrs. begin. after 12/31/90 except as provided in Sec. 11814(c)(2) of this Act, which reads as follows:

"(2) Treatment of old elections. For purposes of section 243(b)(3) of the Internal Revenue Code of 1986 (as amended by subsection (a)), any reference to an election under such section shall be treated as including a reference to an election under section 243(b) of such Code (as in effect on the day before the date of the enactment of this Act)."

In '89, P.L. 101-239, Sec. 7815(d), amended Sec. 5021(e) of P.L. 100-647, [reproduced below] by substituting "no provision in any law enacted after the date of the enactment of this Act [11/10/88]" for "no provision in any law (whether enacted before, on, or after the date of enactment of this Act)" see below.

In '88, P.L. 100-647, Sec. 1018(d)(10)(A) amended para. (b)(7) . . . Sec. 1018(d)(10)(B) added new subsec. (f), effective for tax yrs. begin. after 12/31/84.

Prior to amendment para. (b)(7) read as follows:

"(7) A DISC (as defined in section 992(a)(1)), or any other corporation which has accumulated DISC income, which is derived after December 31, 1984."

—P.L. 100-647, Secs. 5021(a)-(e), (as amended by P.L. 101-239, Sec. 7815(b), see above) of this Act provide:

"SEC. 5021. REPEAL OF RULES PERMITTING LOSS TRANSFERS BY ALASKA NATIVE CORPORATIONS.

"(a) General rule. Nothing in section 60(b)(5) of the Tax Reform Act of 1984 (as amended by section 1804(e)(4) of the Tax Reform Act of 1984)—

"(1) shall allow any loss (or credit) of any corporation which arises after April 26, 1988, to be used to offset the income (or tax) of another corporation if such use would not be allowable without regard to such section 60(b)(5) as so amended, or

"(2) shall allow any loss (or credit) of any corporation which arises on or before such date to be used to offset disqualified income (or tax attributable to such income) of another corporation if such use would not be allowable without regard to such section 60(b)(5) as so amended.

"(b) Exception for existing contracts.—

"(1) In general. Subsection (a) shall not apply to any loss (or credit) of any corporation if—

"(A) such corporation was in existence on April 26, 1988, and

"(B) such loss (or credit) is used to offset income assigned (or attributable to property contributed) pursuant to a binding contract entered into before July 26, 1988.

"(2) \$40,000,000 limitation. The aggregate amount of losses (and the deduction equivalent of credits as determined in the same manner as under section 469(d)(5) of the 1986 Code) to which paragraph (1) applies with respect to any corporation shall not exceed \$40,000,000. For purposes of this paragraph, a Native Corporation and all other corporations all of the stock of which is owned directly by such corporation shall be treated as 1 corporation.

"(3) Special rule for corporations under title 11. In the case of a corporation which on April 26, 1988, was under the

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jurisdiction of a Federal district court under title 11 of the United States Code—

"(A) paragraph (1)(B) shall be applied by substituting the date 1 year after the date of the enactment of this Act for 'July 26, 1988'.

"(B) paragraph (1) shall not apply to any loss or credit which arises on or after the date 1 year after the date of the enactment of this Act, and

"(C) paragraph (2) shall be applied by substituting '\$39,000,000' for '\$40,000,000'.

"(c) *Special administrative rules.*—

"(1) Notice to native corporations of proposed tax adjustments. Notwithstanding section 6103 of the 1986 Code, the Secretary of the Treasury or his delegate shall notify a Native Corporation or its designated representative of any proposed adjustment—

"(A) of the tax liability of a taxpayer which has contracted with the Native Corporation (or other corporation all of the stock of which is owned directly by the Native Corporation) for the use of losses of such Native Corporation (or such other corporation), and

"(B) which is attributable to an asserted overstatement of losses by, or misassignment of income (or income attributable to property contributed) to, an affiliated group of which the Native Corporation (or such other corporation) is a member. Such notice shall only include information with respect to the transaction between the taxpayer and the Native Corporation.

"(2) Rights of Native Corporation.—

"(A) In General. If a Native Corporation receives a notice under paragraph (1), the Native Corporation shall have the right to—

"(i) submit to the Secretary of the Treasury or his delegate a written statement regarding the proposed adjustment, and

"(ii) meet with the Secretary of the Treasury or his delegate with respect to such proposed adjustment.

The Secretary of the Treasury or his delegate may discuss such proposed adjustment with the Native Corporation or its designated representative.

"(B) Extension of statute of limitations. Subparagraph (A) shall not apply if the Secretary of the Treasury or his delegate determines that an extension of the statute of limitation is necessary to permit the participation described in subparagraph (A) and the taxpayer and the Secretary or his delegate have not agreed to such extension.

"(3) Judicial proceedings. In the case of any proceeding in a Federal court or the United States Tax Court involving a proposed adjustment under paragraph (1), the Native Corporation, subject to the rules of such court, may file an amicus brief concerning such adjustment.

"(4) Failures. For purposes of the 1986 Code, any failure by the Secretary of the Treasury or his delegate to comply with the provisions of this subsection shall not affect the validity of the determination of the Internal Revenue Service of any adjustment of tax liability of any taxpayer described in paragraph (1).

"(d) *Disqualified income defined.* For purposes of subsection (a), the term 'disqualified income' means any income assigned (or attributable to property contributed) after April 26, 1988, by a person who is not a Native Corporation or a corporation all the stock of which is owned directly by a Native Corporation.

"(e) *Basic determination.* For purposes of determining beats for Federal tax purposes, no provision in any law enacted after the date of enactment of this Act (11/10/88) shall affect the date on which the transfer to the Native Corporation is made. The preceding sentence shall apply to all taxable years whether beginning before, on, or after such date of enactment."

In '86, P.L. 99-514, Sec. 1024(e)(15), substituted "section 801" for "section 801 or 821" in para. (b)(2) . . . Sec. 1024(e)(16), substituted "section 801" for "section 801 or 821" in subpara. (c)(2)(A), effective for tax yrs. begin. after 12/31/86.

—P.L. 99-514, Sec. 1804(e)(1), amended subpara. (a)(4)(C), effective for tax yrs. begin. after 12/31/84. Prior to amendment, subpara. (a)(4)(C) read as follows:

"(C) has redemption and liquidation rights which do not exceed the paid-in capital or par value represented by such stock (except for a reasonable redemption premium in excess of such paid-in capital or par value), and"

—P.L. 99-514, Sec. 1804(e)(2)-(5), amended Sec. 60(b)(2)-(5) of P.L. 98-369 [reproduced below], special rules and exceptions to the effective date for changes made by Sec. 60(a) of P.L. 98-369, by adding the last sentence to Sec. 60(b)(2), by amending Secs. 60(b)(3) and (5), by adding Secs. 60(b)(6)-(7), and by adding the last sentence to Sec. 60(b)(4), see below. Prior to amendment, Sec. 60(b)(3) and (5) of P.L. 98-369 read as follows:

"(3) Special rule not to apply to sell-downs after June 22, 1984.—If—

"(A) the requirements of subsection (b)(2) are satisfied with respect to a corporation,

"(B) more than a de minimis amount of the stock of such corporation is sold or exchanged (including in a redemption), or issued (other than in the ordinary course of business) after June 22, 1984, and

"(C) the requirements of the amendment made by subsection (a) are not satisfied after such sale, exchange, or issuance, then the amendments made by subsection (a) shall apply for purposes of determining whether such corporation continues to be a member of such group."

"(3) Native corporations.—The amendments made by subsection (a) shall not apply to any Native Corporation established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) during any taxable year beginning before 1992 or any part thereof in which such Corporation is subject to the provisions of section 7(b)(1) of such Act (43 U.S.C. 1606(h)(1)).

—P.L. 99-514, Sec. 1804(e)(10), amended para. (b)(7), effective for tax yrs. begin. after 12/31/87. Prior to amendment, para. (b)(7) read as follows:

"(7) A DISC or former DISC (as defined in section 992(a))"

—P.L. 99-514, Sec. 1899A(35), substituted "subsection (b)(2)) includes" for "subsection (b)(2) includes" in subpara. (c)(2)(A), effective 10/22/86.

In '84, P.L. 98-369, Sec. 60(a), amended subsec. (a), effective for tax yrs. begin. after 12/31/84. Secs. 60(b)(2)-(9) [as amended by Sec. 1804(e)(2)-(5) of P.L. 99-514, see above] of this Act provide the following special rules and exceptions:

"(2) Special rule for corporations, affiliated on June 22, 1984.

—In the case of a corporation which on June 22, 1984, is a member of an affiliated group which files a consolidated return for such corporation's taxable year which includes June 22, 1984, for purposes of determining whether such corporation continues to be a member of such group for taxable years beginning before January 1, 1988, the amendment made by subsection (a) shall not apply. The preceding sentence shall cease to apply as of the first day after June 22, 1984, on which such corporation does not qualify as a member of such group under section 1504(a) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act).

"(3) Special rule not to apply to certain sell-downs after June 22, 1984.—If—

"(A) the requirements of paragraph (2) are satisfied with respect to a corporation,

"(B) more than a de minimis amount of the stock of such corporation—

"(i) is sold or exchanged (including in a redemption), or

"(ii) is issued,

after June 22, 1984 (other than in the ordinary course of business), and

"(C) the requirements of the amendment made by subsection (a) are not satisfied after such sale, exchange, or issuance, then the amendment made by subsection (a) shall apply for purposes of determining whether such corporation continues to be a member of the group. The preceding sentence shall not apply to any transaction if such transaction does not reduce the percentage of the fair market value of the stock of the corporation referred to in the preceding sentence held by members of the group determined without regard to this paragraph.

"(4) Exception for certain sell-downs.—Subsection (b)(2) (and not subsection (b)(3)) will apply to a corporation if such corporation issues or sells stock after June 22, 1984, pursuant to a registration statement filed with the Securities and Exchange Commission on or before June 22, 1984, but only if the requirements of the amendment made by subsection (a) (substituting 'more than 50 percent' for 'at least 80 percent' in paragraph (2)(B) of section 1504(a) of the Internal Revenue Code of 1954) are satisfied immediately after such issuance or sale and at all times thereafter until the first day of the first taxable year beginning after December 31, 1987. For purposes of the preceding sentence, if there is a letter of intent between a corporation and a securities underwriter entered into on or before June 22, 1984, and the subsequent issuance or sale is effected pursuant to a registration statement filed with the Securities and Exchange Commission, such stock shall be treated as issued or sold pursuant to a registration statement filed with the Securities and Exchange Commission on or before June 22, 1984.

"(5) Native corporations.—

"(A) In the case of a Native Corporation established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or a corporation all of whose stock is owned directly by such a corporation, during any taxable year (beginning after the effective date of these amendments and before 1992), or any part thereof, in which the Native Corporation is subject to the provisions of section 7(b)(1) of such Act (43 U.S.C. 1606(h)(1))—

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"(i) the amendment made by subsection (a) shall not apply, and

"(ii) the requirements for affiliation under section 1504(a) of the Internal Revenue Code of 1986 before the amendment made by subsection (a) shall be applied solely according to the provisions expressly contained therein, without regard to estoppel arrangements, redemption rights, or similar provisions.

"(B) Except as provided in subparagraph (C), during the period described in subparagraph (A), no provision of the Internal Revenue Code of 1986 (including sections 269 and 482) or principle of law shall apply to deny the benefit or use of losses incurred or credits earned by a corporation described in subparagraph (A) to the affiliated group of which the Native Corporation is the common parent.

"(C) Losses incurred or credits earned by a corporation described in subparagraph (A) shall be subject to the general consolidated return regulations, including the provisions relating to separate return limitation years, and to sections 382 and 383 of the Internal Revenue Code of 1986.

"(D) Losses incurred and credits earned by a corporation which is affiliated with a corporation described in subparagraph (A) shall be treated as having been incurred or earned in a separate return limitation year, unless the corporation incurring the losses or earning the credits satisfies the affiliation requirements of section 1504(a) without application of subparagraph (A).

"(6) Treatment of certain corporations affiliated on June 22, 1984.—In the case of an affiliated group which—

"(A) has as its common parent a Minnesota corporation incorporated on April 23, 1940, and

"(B) has a member which is a New York corporation incorporated on November 13, 1969,

for purposes of determining whether such New York corporation continues to be a member of such group, paragraph (2) shall be applied by substituting for "January 1, 1984," the earlier of January 1, 1994, or the date on which the voting power of the preferred stock in such New York corporation terminates.

"(7) Election to have amendments apply for years beginning after 1983.—If the common parent of any group makes an election under this paragraph, notwithstanding any other provision of this subsection, the amendments made by subsection (a) shall apply to such group for taxable years beginning after December 31, 1983. Any such election, once made, shall be irrevocable.

"(8) Treatment of certain affiliated groups.—If—

"(A) a corporation (hereinafter in this paragraph referred to as the "parent") was incorporated in 1968 and filed consolidated returns as the parent of an affiliated group for each of its taxable years ending after 1969 and before 1985,

"(B) another corporation (hereinafter in this paragraph referred to as the "subsidiary") became a member of the parent's affiliated group in 1978 by reason of a recapitalization pursuant to which the parent increased its voting interest in the subsidiary from not less than 56 percent to not less than 85 percent, and

"(C) such subsidiary is engaged (or was on September 27, 1983, engaged) in manufacturing and distributing a broad line of business systems and related supplies for binding, laminating, shredding, graphics, and providing secure identification, then, for purposes of determining whether such subsidiary corporation is a member of the parent's affiliated group under section 1504(a) of the Internal Revenue Code of 1954 (as amended by subsection (a)), paragraph (2)(B) of such section 1504(a) shall be applied by substituting "55 percent" for "90 percent".

"(9) Treatment of certain corporations affiliated during 1971.—In the case of a group of corporations which filed a consolidated Federal income tax return for the taxable year beginning during 1971 and which—

"(A) included as a common parent on December 31, 1971, a Delaware corporation incorporated on August 26, 1969, and

"(B) included as a member thereof a Delaware corporation incorporated on November 8, 1971,

for taxable years beginning after December 31, 1970, and ending before January 1, 1984, the requirements for affiliation for each member of such group under section 1504(a) of the Internal Revenue Code of 1954 (before the amendment made by subsection (a)) shall be limited solely to the provisions expressly contained therein and by reference to stock issued under State law as common or preferred stock. During the period described in the preceding sentence, no provision of the Internal Revenue Code of 1986 (including sections 269 and 482) or principle of law, except the general consolidated return regulations (including the provisions relating to separate return limitation years) and sections 382 and 383 of such Code, shall apply to deny the benefit or use of losses incurred or credits earned by members of such group.

Prior to amendment, subsec. (a) read as follows:

"(a) Definition of 'affiliated group.'

"As used in this chapter, the term 'affiliated group' means one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if—

"(1) Stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class the nonvoting stock of each of the includible corporation (except the common parent corporation) is owned directly by one or more of the other includible corporations; and

"(2) The common parent corporation owns directly stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of at least one of the other includible corporations.

As used in this subsection, the term 'stock' does not include nonvoting stock which is limited and preferred as to dividends, employer securities (within the meaning for section 409A(1), while such securities are held under an ESOP or employee stock ownership plan, or qualifying employer securities (within the meaning of section 4975(e)(8)), while such securities are held under an employee stock ownership plan which meets the requirements of section 4975(e)(7).

—P.L. 98-369, Sec. 211(b)(20), substituted "section 801" for "section 802" in para. (b)(2), para. (c)(1), and subpara. (c)(2) (A), effective for tax yrs. begin. after 12/31/83.

In '80, P.L. 96-222, Sec. 101(a)(7)(B), corrected Sec. 141(g) of F.L. 95-600 (see below). Prior to corrections Sec. 141(g) of P.L. 95-600 read as follows:

"(g) Effective dates.

"(1) In general. The amendments made by this section (other than by subsection (f)(3)) shall apply with respect to qualified investment for taxable years beginning after December 31, 1978.

—P.L. 96-222, Sec. 101(a)(7)(L)(viii), substituted "tax credit employee stock ownership plan" for "an ESOP" in subsec. (a) . . . Sec. 101(a)(7)(L)(vi)(II), substituted "employee" for "leveraged employee" in subsec. (a), presumably intended by Congress to be effective for qualified investments in tax yrs. begin. after '78 [Sec. 101(b)(2)] although technically effective with respect to decedents dying after 4/1/80 [Sec. 101(b)(1)(D)].

In '78, P.L. 95-600, Sec. 141(f)(4), amended the last sentence of subsec. (a), for qualified investments in tax yrs. begin. after '78.

Para. (g)(2) of Sec 141 provides as follows:

"(2) Election to have amendments apply during 1978. At the election of the taxpayer, paragraph (1) shall be applied by substituting "December 31, 1977" for "December 31, 1978"; except that in the case of a plan in existence before December 31, 1978, any such election shall not affect the required allocation of employer securities attributable to qualified investment for taxable years beginning before January 1, 1979. An election under the preceding sentence shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe. Such an election, once made, shall be irrevocable. Prior to amendment, the last sentence in subsec. (a) read as follows:

"As used in this subsection, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends, employer securities within the meaning of section 301(d)(9)(A) of the Tax Reduction Act of 1975, or qualifying employer securities within the meaning of section 4975(e)(8) while such securities are held under an employee stock ownership plan which meets the requirements of section 301(d) of such Act or section 4975(e)(7), respectively."

In '76, P.L. 94-455, Sec. 803(b)(3), substituted "dividends, employer securities within the meaning of section 301(d)(9)(A) of the Tax Reduction Act of 1975, or qualifying employer securities within the meaning of section 4975(e)(8) while such securities are held under an employee stock ownership plan which meets the requirements of section 301(d) of such Act or section 4975(e)(7), respectively," for "dividends" at the end of subsec. (a), for tax yrs. begin. after '74.

—P.L. 94-455, Sec. 1031(g), amended para. (b)(4) for tax yrs. begin. after '75, except that "qualified possession source investment income" as defined in section 936(d)(2) of the Internal Revenue Code of 1954 shall include income from any source outside the United States if the taxpayer establishes to the satisfaction of the Secretary of the Treasury or his delegate that the income from such sources was earned before 10/1/76. Prior to amendment, para. (b)(4) read as follows:

"(4) Corporations entitled to the benefits of section 931, by reason of receiving a large percentage of their income from sources within possessions of the United States."

—P.L. 94-455, Sec. 1031(d)(7), deleted para. (b)(5), for tax yrs. begin. after '77. Prior to amendment, para. (b)(5) read as follows:

"(5) Corporations organized under the China Trade Act, 1922.

begin, after '80, Sec. 1507(c)(2) of the Act provided the following transitional rule:

"(2) Transition rules with respect to carryovers or carrybacks relating to pre-election taxable years and nontermination of group —

"(A) Limitations on carryovers or carrybacks for groups electing under section 1504(c)(2).—If an affiliated group elects to file a consolidated return pursuant to section 1504(c)(2) of the Internal Revenue Code of 1954, a carryover of a loss or credit from a taxable year ending before January 1, 1981, and losses or credits which may be carried back to taxable years ending before such date, shall be taken into account as if this section had not been enacted.

"(B) Nontermination of affiliated group.—The mere election to file a consolidated return pursuant to such section 1504(c)(2) shall not cause the termination of an affiliated group filing consolidated returns."

Prior to amendment, subsec. (c) read as follows:

"(c) Includible insurance companies.

"Despite the provisions of paragraph (2) of subsection (b), two or more domestic insurance companies each of which is subject to taxation under the same section of this subtitle shall be considered as includible corporations for the purpose of the application of subsection (a) to such insurance companies alone."

In '71, P.L. 92-172, Sec. 502(c), 12/10/71, added para. (b)(7).

In '69, P.L. 91-172, Sec. 121(a)(4), added subsec. (c), for tax yrs. begin. after 12/31/69.

In '66, P.L. 89-369, deleted subsec. (b)(7), effective 1/1/69.

Prior to repeal the subsec. read: (7) Unincorporated business enterprises subject to tax as corporations under section 1361.

In '60, P.L. 86-779 inserted "and real estate investment trusts" following "Regulated investment companies" in subsec. (b)(6), for tax yrs. begin. after '60.

In '59, P.L. 86-69 eliminated reference to section 811 in subsec. (b)(7) for tax yrs. begin. after '57 . . . deleted subsec. (b)(8), which excepted an electing small business corporation from the term "includible corporation", effective 9/24/59.

In '58, P.L. 85-866 added subsec. (b)(8) for tax yrs. begin. after '58.

In '54, P.L. 429 inserted reference to section 811 in subsec. (b) (2) for tax yrs. begin. after '54.

ec. 1505. Cross references.

- (1) For suspension of running of statute of limitations when notice in respect of a deficiency is mailed to one corporation, see section 6503(a)(1).
- (2) For allocation of income and deductions of related trades or businesses, see section 432.

Subchapter B.—Related Rules

ut

- I. In general.
- II. Certain controlled corporations.

PART I—IN GENERAL

c.

51. Disallowance of the benefits of the graduated corporate rates and accumulated earnings credit.
52. Earnings and profits.

In '78, P.L. 95-600, Sec. 301(b)(1)(B) amended item 1551. Prior to amendment item 1551 read as follows:

"1551. Disallowance of surtax exemption and accumulated earnings credit."

In '64, P.L. 88-272 inserted the table of parts, and the heading to Part I.

1551. Disallowance of the benefits of the graduated corporate rates and accumulated earnings credit.

In general.

f—

- 1) any corporation transfers, on or after January 1, 1951, and on or before June 12, 1963, all or part of its

property (other than money) to a transferee corporation,

(2) any corporation transfers, directly or indirectly, after June 12, 1963, all or part of its property (other than money) to a transferee corporation, or

(3) five or fewer individuals who are in control of a corporation transfer, directly or indirectly, after June 12, 1963, property (other than money) to a transferee corporation,

and the transferee corporation was created for the purpose of acquiring such property or was not actively engaged in business at the time of such acquisition, and if after such transfer the transferor or transferors are in control of such transferee corporation during any part of the taxable year of such transferee corporation, then for such taxable year of such transferee corporation the Secretary may (except as may be otherwise determined under subsection (c)) disallow the benefits of the rates contained in section 11(b) which are lower than the highest rate specified in such section, or the accumulated earnings credit provided in paragraph (2) or (3) of section 535(c), unless such transferee corporation shall establish by the clear preponderance of the evidence that the securing of such benefits or credit was not a major purpose of such transfer.

(b) Control.

For purposes of subsection (a), the term "control" means—

(1) With respect to a transferee corporation described in subsection (a)(1) or (2), the ownership by the transferor corporation, its shareholders, or both, of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock; or

(2) With respect to each corporation described in subsection (a)(3), the ownership by the five or fewer individuals described in such subsection of stock possessing—

(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation, and

(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such individual only to the extent such stock ownership is identical with respect to each such corporation.

For purposes of this subsection, section 1563(e) shall apply in determining the ownership of stock.

(c) Authority of the Secretary under this section.

The provisions of section 269(c), and the authority of the Secretary under such section, shall, to the extent not inconsistent with the provisions of this section, be applicable to this section.

In '84, P.L. 98-514, Sec. 1199A(16), substituted "296(c)" for "296(b)" in subsec. (a), effective 10/22/84.

In '81, P.L. 97-34, Sec. 232(a), deleted "\$150,000" before "accumulated earnings credit" in subsec. (a), for tax yrs. begin. after 12/31/81.

In '78, P.L. 95-600, Sec. 301(b)(1)(A), substituted "disallow the benefits of the rates contained in section 11(b) which are lower than the highest rate specified in such section" for "disallow the surtax exemption (as defined in section 11(d))" in subsec. (a) . . . substituted "such benefits or" for "such exemption or" in subsec. (a) . . . Sec. 301(b)(1)(B) amended the heading of Code Sec. 1551, for tax yrs. begin. after 12/31/78.

provisions of that section, revoke the fiduciary powers granted to the bank.

[47 FR 27832, June 25, 1982]

§ 9.18 Collective investment.

(a) Where not in contravention of local law, funds held by a national bank as fiduciary may be invested collectively:

(1) In a common trust fund maintained by the bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as trustee, executor, administrator, guardian or custodian under a uniform gifts to minors act.

(2) In a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or other trusts which are exempt from Federal income taxation under the Internal Revenue Code.

(b) Collective investments of funds or other property by national banks under paragraph (a) of this section (referred to in this paragraph as "collective investment funds") shall be administered as follows:

(1) Each collective investment fund shall be established and maintained in accordance with a written plan (referred to herein as the Plan) which shall be approved by a resolution of the bank's board of directors and filed with the Comptroller of the Currency. The Plan shall contain appropriate provisions not inconsistent with the rules and regulations of the Comptroller of the Currency as to the manner in which the fund is to be operated, including provisions relating to the investment powers and a general statement of the investment policy of the bank with respect to the fund; the allocation of income, profits and losses; the terms and conditions governing the admission or withdrawal of participations in the fund; the auditing of accounts of the bank with respect to the fund; the basis and method of valuing assets in the fund, setting forth specific criteria for each type of asset; the minimum frequency for valuation of assets of the fund; the period following each such valuation date during which the valuation may be made (which period in usual circumstances should not exceed 10 business days);

the basis upon which the fund may be terminated; and such other matters as may be necessary to define clearly the rights of participants in the fund. Except as otherwise provided in paragraph (b)(15) of this section, fund assets shall be valued at market value unless such value is not readily ascertainable, in which case a fair value determined in good faith by the fund trustees may be used. A copy of the Plan shall be available at the principal office of the bank for inspection during all banking hours, and upon request a copy of the Plan shall be furnished to any person.

(2) Property held by a bank in its capacity as trustee of retirement, pension, profit sharing, stock bonus, or other trusts which are exempt from Federal income taxation under any provisions of the Internal Revenue Code may be invested in collective investment funds established under the provisions of paragraph (1) or (2) of paragraph (a) of this section, subject to the provisions herein contained pertaining to such funds, and may qualify for tax exemption pursuant to section 584 of the Internal Revenue Code. Assets of retirement, pension, profit sharing, stock bonus, or other trusts which are exempt from Federal income taxation by reason of being described in section 401 of the Code may be invested in collective investment funds established under the provisions of paragraph (2) of paragraph (a) of this section if the fund qualifies for tax exemption under Revenue Ruling 56-267, and following rulings.

(3) All participants in the collective investment fund shall be on the basis of a proportionate interest in all of the assets. In order to determine whether the investment of funds received or held by a bank as fiduciary in a participation in a collective investment fund is proper, the bank may consider the collective investment fund as a whole and shall not, for example, be prohibited from making such investment because any particular asset is nonincome producing.

(4) Not less frequently than once during each period of 3 months, a bank administering a collective investment fund shall determine the value of the assets in the fund as of the date

set for the valuation of assets. No participation shall be admitted to or withdrawn from the fund except (i) on the basis of such valuation and (ii) as of such valuation date. No participation shall be admitted to or withdrawn from the fund unless a written request for or notice of intention of taking such action shall have been entered on or before the valuation date in the fiduciary records of the bank and approved in such manner as the board of directors shall prescribe. No requests or notices may be cancelled or countermanded after the valuation date. If a fund described in paragraph (a)(2) of this section is to be invested in real estate or other assets which are not readily marketable, the bank may require a prior notice period, not to exceed 1 year, for withdrawals.

(5)(i) A bank administering a collective investment fund shall at least once during each period of 12 months cause an adequate audit to be made of the collective investment fund by auditors responsible only to the board of directors of the bank. In the event such audit is performed by independent public accountants, the reasonable expenses of such audit may be charged to the collective investment fund.

(ii) A bank administering a collective investment fund shall at least once during each period of 12 months prepare a financial report of the fund. This report, based upon the above audit, shall contain a list of investments in the fund showing the cost and current market value of each investment; a statement for the period since the previous report showing purchases, with cost; sales, with profit or loss and any other investment changes; income and disbursements; and an appropriate notation as to any investments in default.

(iii) The financial report may include a description of the fund's value on previous dates, as well as its income and disbursements during previous accounting periods. No predictions or representations as to future results may be made. In addition, as to funds described in paragraph (a)(1) of this section, neither the report nor any other publication of the bank shall make reference to the performance of

funds other than those administered by the bank.

(iv) A copy of the financial report shall be furnished, or notice shall be given that a copy of such report is available and will be furnished without charge upon request, to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. A copy of such financial report may be furnished to prospective customers. The cost of printing and distribution of these reports shall be borne by the bank. In addition, a copy of the report shall be furnished upon request to any person for a reasonable charge. The fact of the availability of the report for any fund described in paragraph (a)(1) of this section may be given publicity solely in connection with the promotion of the fiduciary services of the bank.

(v) Except as herein provided, the bank shall not advertise or publicize its collective investment fund(s) described in paragraph (a)(1) of this section.

(6) When participations are withdrawn from a collective investment fund, distributions may be made in cash or ratably in kind, or partly in cash and partly in kind: *Provided*, That all distributions as of any one valuation date shall be made on the same basis.

(7) If for any reason an investment is withdrawn in kind from a collective investment fund for the benefit of all participants in the fund at the time of such withdrawal and such investment is not distributed ratably in kind, it shall be segregated and administered or realized upon for the benefit ratably of all participants in the collective investment fund at the time of withdrawal.

(8)(i) No bank shall have any interest in a collective investment fund other than in its fiduciary capacity. Except for temporary net cash overdrafts or as otherwise specifically provided herein, it may not lend money to a fund, sell property to, or purchase property from a fund. No assets of a collective investment fund may be invested in stock or obligations, including time or savings deposits, of the bank or any of its affiliates: *Provided*,

That such deposits may be made of funds awaiting investment or distribution. Subject to all other provisions of this part, funds held by a bank as fiduciary for its own employees may be invested in a collective investment fund. A bank may not make any loan on the security of a participation in a fund. If because of a creditor relationship or otherwise the bank acquires an interest in a participation in a fund, the participation shall be withdrawn on the first date on which such withdrawal can be effected. However, in no case shall an unsecured advance until the time of the next valuation date to an account holding a participation be deemed to constitute the acquisition of an interest by the bank.

(ii) Any bank administering a collective investment fund may purchase for its own account from such fund any defaulted fixed income investment held by such fund, if in the judgment of the board of directors the cost of segregation of such investment would be greater than the difference between its market value and its principal amount plus interest and penalty charges due. If the bank elects to so purchase such investment, it must do so at its market value or at the sum of cost, accrued unpaid interest, and penalty charges, whichever is greater.

(9) Except in the case of collective investment funds described in paragraph (a)(2) of this section:

(i) No funds or other property shall be invested in a participation in a collective investment fund if as a result of such investment the participant would have an interest aggregating in excess of 10 percent of the then market value of the fund: *Provided*, That in applying this limitation if two or more accounts are created by the same person or persons and as much as one-half of the income or principal of each account is payable or applicable to the use of the same person or persons, such accounts shall be considered as one;

(ii) No investment for a collective investment fund shall be made in stocks, bonds, or other obligations of any one person, firm, or corporation if as a result of such investment the total amount invested in stocks, bonds, or other obligations issued, or guaranteed

by such person, firm or corporation would aggregate in excess of 10 percent of the then market value of the fund: *Provided*, That this limitation shall not apply to investments in direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest;

(iii) A bank administering a collective investment fund shall maintain, in cash and readily marketable investments, such percentage of the assets of the fund as is necessary to provide adequately for the liquidity needs of the fund and to prevent inequities among fund participants.

(10) The reasonable expenses incurred in servicing mortgages held by a collective investment fund may be charged against the income account of the fund and paid to servicing agents, including the bank administering the fund.

(11)(i) A bank may (but shall not be required to) transfer up to 5 percent of the net income derived by a collective investment fund from mortgages held by such fund during any regular accounting period to a reserve account: *Provided*, That no such transfers shall be made which would cause the amount in such account to exceed 1 percent of the outstanding principal amount of all mortgages held in the fund. The amount of such reserve account, if established, shall be deducted from the assets of the fund in determining the fair market value of the fund for the purposes of admissions and withdrawals.

(ii) At the end of each accounting period, all interest payments which are due but unpaid with respect to mortgages in the fund shall be charged against such reserve account to the extent available and credited to income distributed to participants. In the event of subsequent recovery of such interest payments by the fund, the reserve account shall be credited with the amount so recovered.

(12) A national bank administering a collective investment fund shall have the exclusive management thereof. The bank may charge a fee for the management of the collective investment fund: *Provided*, That the fractional part of such fee proportionate

to the interest of each participant shall not, when added to any other compensations charged by a bank to a participant, exceed the total amount of compensations which would have been charged to said participant if no assets of said participant had been invested in participations in the fund. The bank shall absorb the costs of establishing or reorganizing a collective investment fund.

(13) No bank administering a collective investment fund shall issue any certificate or other document evidencing a direct or indirect interest in such fund in any form.

(14) No mistake made in good faith and in the exercise of due care in connection with the administration of a collective investment fund shall be deemed to be a violation of this part if promptly after the discovery of the mistake the bank takes whatever action may be practicable in the circumstances to remedy the mistake.

(15) Short-term investment funds established under paragraph (a) of this section may be operated on a cost, rather than market value, basis for purposes of admissions and withdrawals, if the plan of operation satisfies the following conditions:

(i) Investments must be limited to bonds, notes or other evidences of indebtedness which are payable on demand (including variable amount notes) or which have a maturity date not exceeding 91 days from the date of purchase. However, 20 percent of the value of the fund may be invested in longer term obligations;

(ii) The difference between the cost and anticipated principal receipt on maturity must be accrued on a straight-line basis;

(iii) Assets of the fund must be held until maturity under usual circumstances; and

(iv) After effecting admissions and withdrawals, not less than 20 percent of the value of the remaining assets of the fund must be composed of cash, demand obligations and assets that will mature on the fund's next business day.

(c) In addition to the investments permitted under paragraph (a) of this section, funds or other property received or held by a national bank as fi-

duciary may be invested collectively, to the extent not prohibited by local law, as follows:

(1) In shares of a mutual trust investment company, organized and operated pursuant to a statute that specifically authorizes the organization of such companies exclusively for the investment of funds held by corporate fiduciaries, commonly referred to as a "bank fiduciary fund."

(2)(i) In a single real estate loan, a direct obligation of the United States, or an obligation fully guaranteed by the United States, or in a single fixed amount security, obligation or other property, either real, personal or mixed, of a single issuer; or

(ii) On a short-term basis in a variable amount note of a borrower of prime credit: *Provided*, That such note shall be maintained by the bank on its premises and may be utilized by it only for investment of moneys held in its trust department accounts: *Provided further*, That the bank owns no participation in the loans or obligations authorized under paragraph (c)(2) (i) or (ii) of this section, and has no interest in any investment therein except in its capacity as fiduciary.

(3) In a common trust fund maintained by the bank for the collective investment of cash balances received or held by a bank in its capacity as trustee, executor, administrator, or guardian, which the bank considers to be individually too small to be invested separately to advantage. The total investment for such fund must not exceed \$100,000; the number of participating accounts is limited to 100, and no participating account may have an interest in the fund in excess of \$10,000: *Provided*, That in applying these limitations if two or more accounts are created by the same person or persons and as much as one-half of the income or principal of each account is presently payable or applicable to the use of the same person or persons, such account shall be considered as one: *And provided*, That no fund shall be established or operated under this paragraph for the purpose of avoiding the provisions of paragraph (b) of this section.

(4) In any investment specifically authorized by court order, or authorized

by the instrument creating the fiduciary relationship, in the case of trusts created by a corporation, its subsidiaries and affiliates or by several individual settlors who are closely related: *Provided*, That such investment is not made under this subparagraph for the purpose of avoiding the provisions of paragraph (b) of this section.

(5) In such other manner as shall be approved in writing by the Comptroller of the Currency.

(The information collection requirements contained in paragraph (b)(1) were approved by the Office of Management and Budget under control number 1557-0141. The information collection requirements contained in paragraph (b)(5) were approved under control number 1557-0140)

[37 FR 24161, Nov. 15, 1972, as amended at 40 FR 18771, Apr. 30, 1975; 40 FR 20812, May 12, 1975; 41 FR 28879, June 29, 1976; 41 FR 47038, Nov. 1, 1976; 47 FR 27832, June 25, 1982; 45 FR 11824, Mar. 28, 1984]

§ 9.19 Forms.

All forms referred to in this part and all such forms as amended from time to time shall be a part of this part.

§ 9.20 Registration of national bank transfer agents.

(a) An application for registration, pursuant to section 17A(c) of the Securities Exchange Act of 1934, as amended (the "Act"), of a transfer agent for which the Comptroller is the appropriate regulatory agency, as defined in section 3(a)(34)(B) of the Act, shall be filed with the Comptroller on Form TA-1, in accordance with the instructions contained therein and shall become effective on the thirtieth day following the date on which the application is filed, unless the Comptroller takes affirmative action to accelerate, deny or postpone such registration in accordance with the provisions of section 17A(c) of the Act.

(b) The filing of any amendment to an application for registration as a transfer agent pursuant to paragraph (a) of this section, which registration has not become effective, shall postpone the effective date of the registration until the thirtieth day following the date on which the amendment is filed, unless the Comptroller takes affirmative action to accelerate, deny or postpone the registration in accord-

ance with the provisions of section 17A(c) of the Act.

(c) Within sixty calendar days following the date on which any information reported on Form TA-1 becomes inaccurate, misleading or incomplete, the registrant shall file an amendment on Form TA-1 correcting the inaccurate, misleading or incomplete information.

(d) Every registration and amendment filed pursuant to this section shall constitute a "report" or "application" within the meaning of sections 17, 17A(c) and 32(a) of the Act.

(Secs. 3(a)(34)(B), 17, 17A, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)(B), 78j, 78q-1, 78w))

[40 FR 50252, Oct. 29, 1975, as amended at 47 FR 57256, Dec. 23, 1982]

§ 9.21 Applications for stays of disciplinary sanctions or summary suspensions imposed by a registered clearing agency.

If any registered clearing agency imposes any final disciplinary sanction pursuant to section 17(b)(3)(G) of the Securities Exchange Act of 1934, or summarily suspends or limits or prohibits access pursuant to section 17A(b)(5)(C) of the Act, any person aggrieved thereby for which the Comptroller of the Currency is the appropriate regulatory agency may file with the Comptroller of the Currency, by telegram or otherwise, a request for a stay of imposition of such action. Such request shall be in writing and shall include a statement as to why such stay should be granted.

(Secs. 17A, 19 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1, 78s and 78w))

[42 FR 26969, May 26, 1977]

§ 9.22 Applications for review of final disciplinary sanctions, denials of participation, or prohibitions or limitations of access to services imposed by registered clearing agencies.

(a) Proceedings on an application to the Comptroller of the Currency under section 19(d)(2) of the Securities Exchange Act of 1934 for review of any final disciplinary sanction, denial or conditioning of participation, or prohibition or limitation with re-

HB

477

(7)
Date Referred: February 13, 1992

FURTHER REFERRALS

Resources
Finance

Date of Committee Action: 2/20/92

The LABOR AND COMMERCE Committee considered:

HB 477

HOUSE BILL NO. 477

AK. SALMON MARKETING & DEVELOPMENT FUND

"An Act establishing the Alaska Salmon Marketing and Development Fund Corporation, relating to a fisheries business tax credit for donations to the Alaska salmon marketing and development fund, and relating to the salmon marketing and development tax; and providing for an effective date."

RECOMMENDATIONS: the same title
be replaced with _____ a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

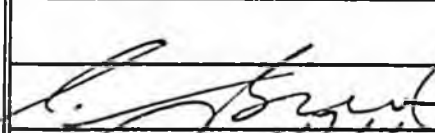
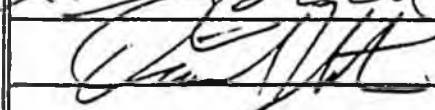
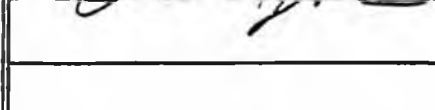
APPROVES PREVIOUS: (Dept/Date)

fiscal impact Revenue ; Commerce

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		Advised by Taylor		X	
		Comm. H. H.		✓	
	✓	revenue at panel			✓


CHAIRMAN'S SIGNATURE

FISCAL NOTE

BILL NO. CS for HB 477

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: 2/17/92
Title: An Act establishing the Alaska Salmon Marketing & Development Fund Corporation
Sponsor: House Labor & Commerce
Requestor: _____

Department Affected: Commerce & Econ. Dev.
BRU: Economic Development
Component: _____
COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93*	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	34.4	144.4	151.6	159.2	167.1	175.5
TRAVEL	10.0	40.0	40.0	40.0	40.0	40.0
CONTRACTUAL	5,940.6	5,800.6	5,802.4	9,794.8	9,786.9	4,278.5
SUPPLIES	5.0	5.0	5.0	5.0	5.0	5.0
EQUIPMENT	10.0	10.0	1.0	1.0	1.0	1.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	6,000.0	6,000.0	6,000.0	10,000.0	10,000.0	4,500.0
CAPITAL						
REVENUE FUND RESOURCE:	*****	*****	*****	*****	*****	*****

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER **						
FUND SOURCE:	6,000.0	6,000.0	6,000.0	10,000.0	10,000.0	4,500.0
TOTAL						

POSITIONS:

FULL-TIME	3.0	3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

Estimate of current year Impact: _____

ANALYSIS (Attach a separate page if necessary.)

* FY 93 would be a short year for staff, as tax revenues would not be available until April 93.

** Fund proceeds would be \$6-12 million from donations offset by tax credits FY 93-FY 97, and tax proceeds of \$4-4.5 million from FY 9 on. Expenditures are shown for low end only. (SEE ATTACHMENT)

Prepared By: Paul Peyton, Development Specialist Phone: 465-2017
Division: Economic Development *Plm* Date: 2/18/92
Approved by Commissioner: Glenn A. Olds *Glenn A. Olds*
Agency: Department of Commerce & Economic Development Date: 2-18-92

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

Page _____ of _____

Fiscal Note Analysis HB 477

Revenues

The first year tax credits are available to offset donations to the Fund is tax year 1992. Taxes are due March 31, and it is expected that most corporations won't make the donations until that time. Therefore, funds won't be available until the end of that fiscal year.

Funds available are expected to range from \$6-12 million. Fisheries business tax revenues from salmon usually fall in the range of \$12-20 million. At a minimum, corporations are expected to donate half of their tax bill for salmon. Companies focusing primarily on crab and groundfish operations might not bother to make the donation. Integrated operations could donate more than half their salmon tax liability.

The analysis is based on the lower end of the income projections. The table below shows the potential allocations for both the low and the high end income possibilities. Note that there is some overlap between funding sources, leading to a fairly significant two year peak in available funding in FY96-97. Starting in FY 98 there is a significant decrease.

	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
Allocations - minimum						
Sales Promotion	2,376.3	2,320.3	2,321.0	3,917.9	3,914.7	1,711.4
Product Development	1,188.1	1,160.1	1,160.5	1,959.0	1,957.4	855.7
Direct Sales Assistance	594.1	580.1	580.2	979.5	978.7	427.9
Discretionary	1,782.2	1,740.2	1,740.7	2,938.4	2,936.1	1,283.6
Total granting funds	5,940.6	5,800.6	5,802.4	9,794.8	9,786.9	4,278.5
Allocations - maximum						
Sales Promotion	4,776.3	4,720.3	4,721.0	6,317.9	6,314.7	4,111.4
Product Development	2,388.1	2,360.1	2,360.5	3,159.0	3,157.4	2,055.7
Direct Sales Assistance	1,194.1	1,180.1	1,180.2	1,579.5	1,578.7	1,027.9
Discretionary	3,582.2	3,540.2	3,540.7	4,738.4	4,736.1	3,083.6
Total granting funds	11,940.6	11,800.6	11,802.4	15,794.8	15,786.9	10,278.5

Expenditures

The analysis assumes that staff would be hired for the last three months of FY 93, as income may not be available until April. Three positions are projected, a Range 20 fisheries development specialist housed in the Division of Economic Development, a range 18 grants administrator, and a clerk.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 477

Revision Date: February 18, 1992
Title: An Act establishing the Alaska
Salmon Marketing and Development Fund
Sponsor: Labor and Commerce Committee
Requestor: _____

Department Affected: Department of Revenue
BRU: Revenue Operations
Component: Income and Excise Audit
COMPONENT SERIAL NO. | 1 | 1 | 3 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0.0	0.0	37.5	74.9	74.9	74.9
TRAVEL	0.0	0.0	7.5	15.0	15.0	15.0
CONTRACTUAL	0.0	0.0	3.0	6.0	6.0	6.0
SUPPLIES	0.0	0.0	1.0	2.0	2.0	2.0
EQUIPMENT	0.0	0.0	10.0	0.0	0.0	0.0
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	59.0	97.9	97.9	97.9
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE	(6M - 12M)	(6M - 12M)	(5.9M - 11.9M)	(2M - 8M)	(2M - 8M)	4.5M

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	59.0	97.9	97.9	97.9
FEDERAL FUNDS						
OTHER FUND SOURCE						
TOTAL	0.0	0.0	59.0	97.9	97.9	97.9

POSITIONS:

FULL-TIME	0.0	0.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0.0

ANALYSIS: Attach a separate page if necessary.

SEE ATTACHED

Prepared By: Paul E. Dick Phone: (907) 465-2320
Division: Income and Excise Audit Date: February 18, 1992
Approved by Commissioner: Darrel J. Rexwinkel
Agency: Department of Revenue Date: 2/18/92

HB 477 Bill Analysis
 Prepared by Income and Excise Audit
 February 18, 1992

This bill impacts the Department of Revenue by amending Alaska statutes to:

- 1) provide for a fisheries tax credit program for fisheries businesses which make donations to a salmon marketing and development fund established under this bill, and
- 2) establish a new salmon marketing and development tax.

The tax credit program under this bill entitles fisheries businesses to a credit of not more than 50% of their fisheries tax liabilities during tax years 1992 through 1996 for donations made to a salmon marketing and development fund established under section 1. In no case would taxpayers be allowed to claim more than 50% of their total tax liability if they are also claiming other credits under the fisheries tax statutes (AS 43.75). The tax credit program under this bill requires that the department prepare and approve applications for the donations.

The salmon marketing and development tax provided under this bill imposes a 1% tax on commercial fishermen when they transfer or sell salmon to a buyer, or transport it out of the state. Buyers will collect the tax from the fishermen at the time of sale and remit taxes to the department on a monthly basis. Fishermen transporting salmon outside of Alaska would be required to report and remit taxes directly to the department on a monthly basis. All taxpayers would be required to file an annual report to the department for the previous year's activity. Note that this tax would not become effective until January 1, 1995 under Section 8 of this bill.

This bill will decrease general fund revenues in fiscal years 1993 through 1996 by \$6 to \$12 million due to the credits claimed as a result of donations made by fisheries businesses to the salmon marketing and development fund.

The salmon marketing and development tax takes effect January 1, 1995 and from this point through fiscal year 1997, taxes collected will offset the tax credits as follows. Note that the amount of taxes for fiscal year 1995 represents activity for the months of January through May, 1995 (May returns are due June 30, 1995.)

<u>Fiscal Year</u>	<u>Salmon Market Taxes</u>	<u>Fish Tax Credits</u>	<u>Net Decrease</u>
1995	100.0	(6,000.0 - 12,000.0)	(5,900.0 - 11,900.0)
1996	4,000.0	(6,000.0 - 12,000.0)	(2,000.0 - 8,000.0)
1997	4,000.0	(6,000.0 - 12,000.0)	(2,000.0 - 8,000.0)

Effective fiscal year 1998, the fisheries tax credit program will no longer be applicable since the last tax year in which credits may be claimed is 1996 under section 4 of this bill. General fund revenues from the salmon marketing and development tax are estimated to be \$4.5 million for fiscal year 1998.

HB 477 ANALYSIS
Prepared by Income and Excise Audit
February 18, 1992

The tax imposed under this bill would not become effective until
January 1, 1995.

PERSONAL SERVICES **

Tax Examiner, Juneau, Range 12	\$40.4	
Accounting Clerk, Juneau, Range 9	\$34.5	
TOTAL:		\$74.9

TRAVEL

10 Audit Trips	\$10.0	
5 Compliance Trips	\$5.0	
TOTAL:		\$15.0

CONTRACTUAL

Advertising	\$3.0	
Printing	\$2.0	
Mailing	\$1.0	
TOTAL:		\$6.0

SUPPLIES

Office and Computer Supplies	\$2.0	
TOTAL:		<u>\$2.0</u>
FISCAL NOTE TOTAL:		<u>\$97.9</u>

EQUIPMENT *

Two Computers, Two Printers, Two calculators, Modular Furniture	\$10.0	
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* FY95 Only

** FY95 represents 6 month funding level

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811



M E M O R A N D U M

February 18, 1992

TO: House Labor and Commerce Committee Members
FR: David Finkelstein, Chairman *DF*
RE: H.B. 477 "Alaska Salmon Marketing and Development Fund"

As a result of information gathered in the process of hearing HB 358 and HB 414, I realized additional legislation would be required to find a way to pay for about \$10 million in marketing and development work for each of the next five years, while fostering cooperation between salmon industry factions, and without creating a huge new state bureaucracy. I believe HB 477 meets these difficult requirements.

HB 477 authorizes fish processors to take fisheries business (or "raw fish") tax credits for voluntary contributions to a new public corporation created within Commerce: the Alaska Salmon Marketing and Development Fund. With one representative from each major industry sector, this fund's board would then solicit and fund grant proposals from other public and private groups to accomplish the necessary work. After three years, the fishermen would pick up their share of the funding burden through a 1% salmon marketing tax.

HB 477, similar to a tax credit program that ended last year, should raise about \$10 million this coming season, a figure comparable with the appropriation requested by ASMI and exceeding the expected revenues from an immediate 1% tax on fishermen. This level of funding gives reasonable hope for successful competition in tough domestic markets and also allows for badly needed investment in new products.

HB 477 also encourages cooperation between fish processors and harvesters by creating a balanced board and requiring a 4/5ths majority for board votes. This avoids divisive tinkering with existing entities like ASMI, without ducking the need to give all industry factions a satisfactory say in planning for marketing.

Finally, HB 477 uses existing expertise to accomplish its goals. ASMI, AFDF, the Kodiak Fisheries Institute, the University of Alaska Marine Advisory Program, and other public and private experts would do the necessary marketing and development work -- not new government employees in a new agency. As a further check on bureaucracy, all board functions and staff would be paid for from the new fund, with a 5% cap on administrative costs.

SECTIONAL ANALYSIS

CSHB 477 (L&C)
("Alaska Salmon Marketing and Development Fund")

SECTION 1:

Sec. 16.51.210. Creates the Alaska Salmon Marketing and Development Fund, a public corporation within the Department of Commerce and Economic Development.

Sec. 16.51.220. Requires that the board of trustees of the fund shall be comprised of one representative of DCED, plus four members appointed by the Governor, one each representing the harvesters, processors, hatcheries, and the marketing/retailers.

Sec. 16.51.230 Allows the board of trustees to act only on the affirmative vote of four of the five trustees.

Sec. 16.51.240 Gives the trustees powers similar to those of other public corporations. Limits annual administrative costs to 5% of annual disbursements.

Sec. 16.51.250 Sets forth the duties of the board: to coordinate and fund proposals by other entities to market and develop existing and new Alaska salmon products. 70% of fund expenditures are legislatively directed to identified categories, with the remainder to be allocated by the trustees as needed.

Sec. 16.51.260 Establishes the fund itself, containing the contributions made by processors for the purpose of obtaining tax credits, as well as any other money secured by or appropriated to the fund.

Sec. 16.51.295 Defines the terms used by the new section.

SECTION 2:

Adds employees of the fund to the exempt service (trustees are not compensated).

SECTION 3:

Adds employees and trustees of the fund to the Public Officers and Employees code.

SECTION 4:

Sec. 43.75.037. Authorizes a processor to take a tax credit equal to up to 50% of tax liability (other half goes to

municipalities) for donations made to the fund. Allows credits up to full value of contributions, a one-for-one tax credit. Sunsets tax credit after five years.

SECTION 5:

Sec. 43.75.032. Adds reference to this tax credit to section allocating other half of fish tax revenues to municipal governments.

SECTION 6:

Sec. 43.76.110. Adds new 1% salmon marketing tax (taking effect in three years) to harvesters' existing taxes. Tax is only levied on salmon.

Sec. 43.76.120. Describes procedures for collection and deposits of tax in general fund, but with proviso that the proceeds may be added to the new salmon marketing and development fund by the legislature.

Sec. 43.76.130 Defines new terms in section.

SECTION 7:

Sets terms of board of trustees at four years, with staggered terms for first board.

SECTION 8:

Makes the new marketing tax effective only after three years.

SECTION 9:

Makes the remainder of act effective on July 1, 1992.

7-LS2007D ✓
Utermohle
2/17/92

CS FOR HOUSE BILL NO. 477 (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 LABOR & COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the Alaska Salmon Marketing and Development Fund Corporation,
2 relating to a fisheries business tax credit for donations to the Alaska salmon marketing
3 and development fund, and relating to the salmon marketing and development tax; and
4 providing for an effective date."

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

6 * Section 1. AS 16.51 is amended by adding new sections to read:

7 **ARTICLE 2. ALASKA SALMON MARKETING AND DEVELOPMENT FUND.**

8 **Sec. 16.51.210. ALASKA SALMON MARKETING AND DEVELOPMENT FUND**
9 **CORPORATION ESTABLISHED.** The Alaska Salmon Marketing and Development Fund
10 Corporation is established as a public corporation and instrumentality of the state in the
11 Department of Commerce and Economic Development, with a legal existence independent of and
12 separate from the state. Exercise by the corporation of the powers conferred by AS 16.51.210 -
13 16.51.295 is an essential governmental function of the state.

14 **Sec. 16.51.220. BOARD OF TRUSTEES.** (a) The governing body of the corporation

1 is a board of trustees. The board consists of the commissioner of commerce and economic
2 development, or the commissioner's designee, and four trustees appointed by the governor. The
3 appointed trustees shall consist of a commercial salmon fisherman, a salmon processor, a person
4 who has experience in the operation and management of private nonprofit salmon hatcheries, and
5 a person who has experience in salmon product development or salmon marketing.

6 (b) The trustees appointed by the governor serve at the pleasure of the governor for
7 staggered four-year terms, or until a successor is appointed, and may be reappointed. An
8 appointment to fill a vacancy is for the remainder of the unexpired term. A vacancy on the board
9 shall be filled in the same manner as the original appointment.

10 (c) The board shall annually elect a chair and other necessary officers from among the
11 trustees.

12 (d) Appointed trustees receive no salary, but are entitled to per diem and travel expenses
13 authorized by law for other state boards and commissions under AS 39.20.180.

14 Sec. 16.51.230. MEETINGS AND QUORUM. (a) The board shall meet at least once
15 a year. A meeting of the board shall occur at the call of the chair, or upon the written request
16 of two trustees.

17 (b) Four trustees constitute a quorum for the transaction of business and the exercise of
18 the powers and duties of the board.

19 (c) The board may not take action except by the affirmative vote of at least four trustees.

20 Sec. 16.51.240. POWERS OF BOARD. (a) In carrying out the powers of the
21 corporation, the board may

22 (1) adopt, alter, and use a corporate seal;

23 (2) prescribe, adopt, amend, and repeal bylaws;

24 (3) sue and be sued in the name of the corporation;

25 (4) enter into agreements necessary to the exercise of its powers and functions;

26 (5) cooperate and coordinate with a public or private board, organization, or
27 agency engaged in work or activities similar to the work or activities of the corporation;

28 (6) receive contributions of money from persons;

29 (7) establish offices in the state and otherwise incur expenses incidental to the
30 performance of its duties;

31 (8) appear on behalf of the corporation before boards, commissions, departments,

1 or other agencies of municipal, state, or federal government;

2 (9) acquire, hold, lease, sell, or otherwise dispose of property, but such property
3 is limited to that which is necessary to the administrative functioning of the corporation;

4 (10) establish and maintain one or more bank accounts for the transaction of the
5 corporation's business;

6 (11) prepare market research and product development plans for the promotion
7 of salmon and salmon by-products harvested in the state and processed for sale.

8 (b) The board may select and employ staff as necessary. Employees of the corporation
9 are in the exempt service under AS 39.25.

10 (c) The operations of the board under AS 16.51.210 - 16.51.295 shall be funded from
11 the fund; however, the board may not expend in a fiscal year an amount for administrative
12 expenses of the corporation that exceeds more than five percent of the annual disbursements from
13 the fund for that fiscal year.

14 Sec. 16.51.250. DUTIES OF BOARD. (a) The board shall

15 (1) fund proposals for, and coordinate, programs of education, research,
16 advertising, or sales promotion designed to increase consumption of Alaska salmon;

17 (2) solicit public and private funds to promote, market, and develop salmon
18 products;

19 (3) allocate money in the fund for salmon marketing and development projects
20 in the following proportions:

21 (A) at least 40 percent for expansion of domestic markets for existing
22 salmon products;

23 (B) at least 20 percent for development and marketing of new salmon
24 products;

25 (C) at least 10 percent for promotion of, and technical assistance for,
26 direct marketing and product development by commercial fishermen; and

27 (D) other amounts, as the board may find appropriate, to implement
28 AS 16.51.210 - 16.51.295;

29 (4) promote all species of salmon and their by-products that are harvested in the
30 state and processed for sale; and

31 (5) submit an annual report to the governor and the legislature describing the

1 activities of the corporation.

2 (b) The operating budget of the corporation shall be prepared and submitted in
3 accordance with the Executive Budget Act (AS 37.07).

4 Sec. 16.51.260. ALASKA SALMON MARKETING AND DEVELOPMENT FUND.
5 The Alaska salmon marketing and development fund is created in the corporation. The fund
6 consists of grants and donations to the fund and appropriations to the fund by the legislature.
7 The corporation may use the money in the fund to implement the purposes of AS 16.51.210 -
8 16.51.295.

9 Sec. 16.51.295. DEFINITIONS. In AS 16.51.210 - 16.51.295,

10 (i) "board" means the board of trustees of the corporation;

11 (2) "corporation" means the Alaska Salmon Marketing and Development Fund
12 Corporation;

13 (3) "fund" means the Alaska salmon marketing and development fund.

14 * Sec. 2. AS 39.25.110 is amended by adding a new paragraph to read:

15 (30) employees of the Alaska Salmon Marketing and Development Fund
16 Corporation.

17 * Sec. 3. AS 39.50.200(b) is amended by adding a new paragraph to read:

18 (54) Alaska Salmon Marketing and Development Fund Corporation
19 (AS 16.51.210).

20 * Sec. 4. AS 43.75 is amended by adding a new section to read:

21 Sec. 43.75.037. TAX CREDIT FOR SALMON MARKETING AND DEVELOPMENT
22 FUND DONATIONS. (a) A fisheries business is entitled to a credit of not more than 50 percent
23 of the business tax liability under AS 43.75.015 for donations made during tax years 1992, 1993,
24 1994, 1995, or 1996 to the Alaska salmon marketing and development fund established under
25 AS 16.51.260. A tax credit under this section may not be approved for more than 100 percent
26 of the donation.

27 (b) Notwithstanding (a) of this section, a fisheries business may receive a tax credit under
28 this section only to the extent that the total tax credit received under this section and any other
29 provision of this chapter does not exceed 50 percent of the tax liability of the fisheries business
30 for the tax year.

31 (c) The department may not approve a tax credit under this section if the fisheries

1 business claiming the credit is in arrears in the payment of a state tax; for purposes of this
2 subsection, a taxpayer is not in arrears if the payment is under administrative or judicial appeal.

3 (d) The department shall prepare an application form for a tax credit under this section.

4 (e) The department shall approve or disapprove an application for a tax credit under this
5 section not later than 60 days after receiving the application.

6 * Sec. 5. AS 43.75.130(b) is amended to read:

7 (b) For purposes of this section, tax revenue collected under AS 43.75.015 from a person
8 entitled to a credit under AS 43.75.032 or 43.75.037 shall be calculated as if the person's tax had
9 been collected without applying the credit.

10 * Sec. 6. AS 43.76 is amended by adding new sections to read:

11 ARTICLE 2. SALMON MARKETING AND DEVELOPMENT TAX.

12 Sec. 43.76.110. SALMON MARKETING AND DEVELOPMENT TAX. A person
13 holding a limited entry permit or interim-use permit under AS 16.43 shall pay a salmon
14 marketing and development tax at the rate of one percent of the value of salmon that the person
15 removes from the state or transfers to a buyer in the state. The buyer shall collect the salmon
16 marketing and development tax at the time the salmon is acquired by the buyer.

17 Sec. 43.76.120. COLLECTION AND DISPOSITION OF PROCEEDS OF TAX. (a) A
18 buyer who acquires salmon that is subject to a salmon marketing and development tax imposed
19 by AS 43.76.110 shall collect the salmon marketing and development tax at the time of purchase
20 and shall remit the total salmon marketing and development tax collected during each month to
21 the department by the last day of the next month.

22 (b) A buyer who collects the salmon marketing and development tax shall

23 (1) maintain records of the value of salmon purchased in the state; and

24 (2) report to the department by March 1 of each year the total value of the salmon
25 that the buyer has acquired during the preceding year.

26 (c) The owner of salmon removed from the state is liable for payment of the salmon
27 marketing and development tax imposed by AS 43.76.110 if, at the time the salmon is removed
28 from the state, the tax payable on the salmon has not been collected by a buyer. If the owner
29 of the salmon is liable for payment of the salmon marketing and development tax under this
30 subsection, the owner shall comply with the requirement of (a) and (b) of this section to remit
31 the tax to the department, to maintain records, and to report to the department.

1 (d) The salmon marketing and development tax collected under this section shall be
2 deposited in the general fund. The legislature may make appropriations based on this revenue
3 to the Alaska salmon marketing and development fund established under AS 16.51.260 for the
4 purpose of supporting the salmon marketing and development program of the Alaska Salmon
5 Marketing and Development Fund Corporation.

6 Sec. 43.76.130. DEFINITIONS. In AS 43.76.110 - 43.76.130,

7 (1) "buyer" means a person who acquires possession of salmon from the person
8 who caught the salmon regardless of whether there is an actual sale of the salmon, but does not
9 include a person engaged solely in interstate transportation of goods for hire

10 (2) "value" has the meaning given in AS 43.75.290.

11 * Sec. 7. INITIAL TERMS OF THE APPOINTED TRUSTEES OF THE ALASKA SALMON
12 MARKETING AND DEVELOPMENT FUND CORPORATION. Notwithstanding AS 16.51.220, added
13 by sec. 1 of this Act, and AS 39.05.055, the governor shall appoint the first appointed trustees of the
14 board of trustees of the Alaska Salmon Marketing and Development Fund Corporation to the following
15 initial terms: one trustee to a term of one year; one trustee to a term of two years; one trustee to a term
16 of three years; and one trustee to a term of four years.

17 * Sec. 8. Section 6 of this Act shall take effect January 1, 1995.

18 * Sec. 9. Except for sec. 6 of this Act, this Act takes effect July 1, 1992.

HB

480

Alaska State Legislature

Co-Chair
Health, Education and
Social Services Committee

Resources Committee

Legislative Budget and Audit

Special Committee
on Oil and Gas

During Session:
State Capitol
P.O. Box V
Juneau, Alaska 99811
(907) 465-2186

During Interim:
P.O. Box 87-1746
Wasilla, Alaska 99687
(907) 373-2518


Representative Patrick J. Carney

March 27, 1992

*Let's schedule
soon -
early next week*

MEMORANDUM

TO: Representative David Finkelstein
Chairman, House Labor and Commerce Committee

FROM: Representative Pat Carney 

RE: House Bill 480, Bonding for Hearing Aid Dealers

I would like to request that HB 480 be scheduled for a hearing in the House Labor and Commerce Committee.

I introduced HB 480 at the request of a constituent who is a hearing aid dealer. Under current statute, each employee of a hearing aid dealer is required to file a \$5,000 surety bond as a condition of licensure. This individual bond does not provide any additional protection to a consumer, since the dealer is responsible for any negligence or breach of contract by his or her employees. HB 480 would amend AS 08.55.030(a) to allow a hearing aid dealer the option of filing a \$10,000 company bond to cover all the dealer's employees.

The Division of Occupational Licensing supports this legislation.

Thank you for your consideration of this request.



Alaska State Legislature

Co-Chair
Health, Education and
Social Services Committee

Resources Committee

Legislative Budget and Audit

Special Committee
on Oil and Gas

Representative Patrick J. Carney

During Session:
State Capitol
P.O. Box V
Juneau, Alaska 99811
(907) 465-2186

During Interim:
P.O. Box 87-1746
Wasilla, Alaska 99687
(907) 373-2518

HOUSE BILL 480

An Act relating to the bonding of hearing aid dealers

Under current statute, an employee of a hearing aid dealer is required to file a \$5,000 surety bond as a condition of licensure. This requirement can be cumbersome and costly for dealers with more than one or two employees.

House Bill 480 would amend AS 08.55.030(a) to allow the dealer the option of filing a company bond in the amount of \$10,000 to cover all the dealer's employees. Employees of the hearing aid dealer would not be required to file an individual bond.

The bill adds a section providing that the dealer would be held liable in the event of negligence by an employee.

The Department of Commerce and Economic Development supports this legislation.

Sponsor Statement

7-LS1987G ✓
Bannister
4/8/92

CS FOR HOUSE BILL NO. 480 (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): REPRESENTATIVE CARNEY

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the security that must be provided by or for hearing aid dealers."

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

3 * Section 1. AS 08.55.030(a) is amended to read:

4 (a) Except as otherwise provided in this section, an [AN] applicant for a license under
5 AS 08.55.010 shall at the time of applying for the license file with the department a surety bond
6 in the amount of \$5,000 running to the state and conditioned on the applicant's promise to pay
7 all

- 8 (1) taxes and contributions due the state and political subdivisions of the state;
- 9 (2) amounts that may be adjudged against the applicant by reason of negligently
10 or improperly dealing in hearing aids or breaching a contract when dealing in hearing aids.

11 * Sec. 2. AS 08.55.030(b) is amended to read:

12 (b) In lieu of the surety bond, the applicant may file with the department a cash deposit,
13 a certificate of deposit payable to the state, or a [OTHER] negotiable security acceptable to
14 the department, if the deposit, certificate of deposit, or security is in the amount specified for

1 the bond.

2 * Sec. 3. AS 08.55.030(c) is repealed and reenacted to read:

3 (c) The surety shall be maintained in effect while each of the hearing aid dealers for
4 whom the surety is filed is licensed and for three years after each of the dealers ceases to be
5 licensed. During this period, one form of surety may be substituted for another as long as a
6 surety in the required amount is maintained at all times during the period. An action may not
7 be commenced on or against the surety with regard to a particular hearing aid dealer later than
8 three years after the dealer ceases to be licensed under this chapter. In this subsection, "surety"
9 means the bond, cash deposit, certificate of deposit, or negotiable security required by this
10 section.

11 * Sec. 4. AS 08.55.030 is amended by adding new subsections to read:

12 (d) An applicant for a license under this section who is an employee of a hearing aid
13 dealer, acts as a hearing aid dealer in the employment, and does not act as a hearing aid dealer
14 outside the employment, is not required to file the bond required by (a) of this section if the
15 employer files with the department a surety bond in the amount of \$10,000 that covers the
16 employees of the hearing aid dealer, runs to the state, and is conditioned on the employer's
17 promise to pay all

18 (1) taxes and contributions due the state and political subdivisions of the state;
19 (2) amounts that may be adjudged against the employer or the employees by
20 reason of the employees negligently or improperly dealing in hearing aids or breaching a contract
21 when dealing in hearing aids.

22 (e) The bond under (d) of this section may be used to satisfy the bonding requirement
23 for the employer under (a) of this section if the bond is also conditioned on the employer's
24 promise to pay all amounts that may be adjudged against the employer by reason of the employer
25 negligently or improperly dealing in hearing aids or breaching a contract when dealing in hearing
26 aids.

HOUSE COMMITTEE REPORT

7)

Date Referred: February 18, 1992

FURTHER REFERRALS:

Labor & Commerce

Date of Committee Action: 3/26/92

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 480

HOUSE BILL NO. 480

BONDING FOR HEARING AID DEALERS

"An Act relating to the bonding of hearing aid dealers."

RECOMMENDATIONS:

be replaced with CS HB 480 (HES) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)


fiscal impact _____

fiscal note(s) _____

zero fiscal note Commerce

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Deonja Lind	✓				
Mary Miller	✓				
Betty Davis	✓				
J. E. Bonasera	✓				
Chris Davis	✓				
Kathy Ann Carney	✓				


 CO-CHAIRMAN'S SIGNATURE

HB 480: An Act relating to the bonding of hearing aid dealers.

HB 480 would remove the requirement for individual employees of a hearing aid dealer to be bonded. It would also increase the amount of bonding for the dealer to increase from \$5,000 to \$10,000 if the dealer has employees.

The department supports these changes. It also would recommend the following amendments:

AS 08.55.030(a)(2) . . . amounts that may be adjudged against the applicant or his or her employees

AS 08.55.150(a) Unless a person is licensed or is the employee of a licensee under this Chapter or AS 08.11, the person may not . . .

We would recommend exempting employees from licensure entirely. If the employer is made responsible as outlined above, there would likely be a greater screening process during the hiring phase. This would eliminate multiple licensing files per business.

We would suggest some wording that the bond be maintained in the amount of \$10,000 so that the amount is not exhausted by claims during the license period.



Glenn A. Olds, Commissioner

Date: 3.24.92

GAO/AB/sh1692D
032092a

Commerce Position

H B

4 8 8

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811



TO: House Labor and Commerce Committee Members
FROM: David Finkelstein *DF*
DATE: February 7, 1992
SUBJECT: Committee legislation

The House Labor and Commerce Committee has been asked to introduce the two attached pieces of legislation.

The Department of Labor would like the committee to introduce legislation which updates Alaska's boiler inspection and elevator safety codes. The bill adopts the 1991 edition of the inspection standards manual for boilers and pressure vessels and the most current (1990) elevator safety standards. The legislation also deletes the current requirement that boilers and pressure vessels be inspected during installation, substituting the requirement that the Department be contacted when a boiler or pressure vessel is installed. This change will allow the Department to efficiently schedule inspections around the state.

The other bill is one requested by the Alaska Land Title Association. The bill eliminates possible ambiguities in the existing nonjudicial deed of trust foreclosure statutes, by establishing clear procedures for the exercise of a power of sale affecting real property.

The land title legislation is supported by the Alaska State Realtors Association, the Alaska State Homebuilders Association, the Alaska Mortgage Bankers Association, and the Alaska Land Title Association. These groups would like the bill introduced so they can present their case to the Legislature and the Administration.

Please let me know if you have any objections to introducing this legislation.

Code Update: You asked why the bill couldn't adopt the "most recent code" and avoid the need for new legislation every several years. Such language causes legal concern because the legislature would be delegating its power to write laws to another body.

Land Title: Rod Mourant (Senate L & C) and Mitch Gravo were fixing problems in the old draft. This is now ready for introduction. ~~After we send out a memo to the committee~~
~~and no one responds then it can be introduced~~

TO: House Labor and Commerce Committee Members
FROM: David Finkelstein
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SUBJECT: Committee legislation

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~~The other bill is one requested by~~
The Alaska Land Title Association has ~~requested the~~ introduction of a bill concerning land title issues. The bill eliminates possible ambiguities in the existing nonjudicial deed of trust foreclosure statutes, by establishing clear procedures for the exercise of a power of sale affecting real property.

~~and~~ The land title legislation is supported by the Alaska State Realtors Association, ~~and~~ Alaska State Homebuilders Association, ~~and~~ the Alaska Mortgage Bankers Association, ~~as~~ well as the Alaska Land Title Association. These groups would like the the bill introduced so they can present their case to the Legislature and the Administration.

Please let me know if you have any objections to introducing this legislation.

7-LS1717A
Bannister ✓
1/8/92

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the nonjudicial foreclosure of interests in real property, to the
2 maturity dates of instruments creating real property liens, and to recording address changes
3 for persons having recorded interests in real property; and providing for an effective
4 date."

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

6 * Section 1. PURPOSE. The purpose of this Act is to clarify and eliminate possible ambiguities in
7 the existing nonjudicial deed of trust foreclosure statutes by enacting comprehensive legislation to
8 establish the procedure by which a power of sale affecting real property in the state is exercised.
9 Nonjudicial foreclosure statutes, functioning as an alternative to judicial foreclosure, must carefully
10 balance the conflicting interests of the beneficiaries, trustors, and trustees. Beneficiaries desire well-
11 defined nonjudicial remedies in the case of default. Trustors desire protection against inequitable
12 forfeiture of property rights. Trustees desire a clear statement of their responsibilities and obligations.

13 * Sec. 2. AS 34.20.070 is repealed and reenacted to read:

14 Sec. 34.20.070. POWER OF SALE. (a) If a deed of trust authorizes the real property

1 that is the subject of the deed of trust to be sold when the trustor defaults on the terms of the
2 deed of trust, the trustee may sell the property without securing a judgment of foreclosure from
3 a court. Except as otherwise specifically provided under (b) of this section or under
4 AS 34.20.100, the beneficiary may also pursue other judicial and nonjudicial remedies.

5 (b) If a beneficiary obtains a judgment on an obligation secured by a deed of trust
6 without first obtaining a judicial decree of foreclosure, the trustee's power of sale terminates, but
7 the judgment holder may execute under AS 09.35.

8 * Sec. 3. AS 34.20 is amended by adding new sections to read:

9 Sec. 34.20.071. DUTIES OF TRUSTEE. (a) When exercising the power of sale under
10 a deed of trust, a trustee owes a fiduciary duty to the beneficiary and the trustor of the deed of
11 trust. The trustee does not owe a fiduciary duty to other persons.

12 (b) If a dispute over the power of sale arises between the beneficiary and the trustor, the
13 trustee is not required to seek judicial resolution of the dispute.

14 Sec. 34.20.072. TRUSTEE FEE. The trustee may charge a fee for exercising the power
15 of sale.

16 Sec. 34.20.073. BENEFICIARY'S REQUEST FOR SALE. (a) If a monetary or
17 nonmonetary default has occurred in the terms of a deed of trust, the beneficiary may request the
18 trustee to exercise the power of sale. When making the request, the beneficiary shall provide the
19 trustee with an affidavit and declaration of default that contains

20 (1) a statement that a default has occurred and a description of the nature and date
21 of the default;

22 (2) the book number, page numbers, and date of recordation for the deed of trust
23 in each recording district in which the deed of trust is recorded;

24 (3) the legal description of the property to be foreclosed, including the street or
25 route address of the property if given in the deed of trust;

26 (4) the total amount owing to the beneficiary, specifying the amount of principal,
27 interest, and late fees due on a specific date, the interest rate, and the rate and manner in which
28 late fees accrue;

29 (5) the name, address, and telephone number of the beneficiary;

30 (6) the name and last known address of the trustor; in this paragraph, "last known
31 address" means the address on the deed of trust, the last changed address communicated as an

1 address change to the beneficiary in writing, or the address in a notice of change of address
2 recorded under AS 40.17.110(b), whichever is the most recent;

3 (7) an instruction to the trustee to sell the property and to apply the proceeds to
4 the debt secured by the deed of trust; and

5 (8) a statement whether a right to cure the default exists under AS 34.20.095.

6 (b) If there is more than one current beneficiary, all current beneficiaries must execute
7 the affidavit and declaration of default.

8 Sec. 34.20.075. NOTICE OF DEFAULT AND SALE. Upon request by the beneficiary
9 under AS 34.20.073, the trustee shall record a notice of default and sale in all recording districts
10 in which the real property that is encumbered by the deed of trust is located. The notice of
11 default and sale may not be recorded before the 30th day that follows the default.

12 Sec. 34.20.077. CONTENTS OF NOTICE OF DEFAULT AND SALE. A notice of
13 default and sale must state

14 (1) the names of the parties to the deed of trust;

15 (2) the book number, page numbers, and date of recordation for the deed of trust
16 in each recording district where the deed of trust is recorded;

17 (3) the legal description of the property to be foreclosed, as given in the deed of
18 trust and, if the legal description has changed, the current legal description;

19 (4) the street or route address of the property if given in the deed of trust;

20 (5) the total amount owing to the beneficiary, specifying the amount of principal,
21 interest, and late fees due on a specific date, the interest rate, and the rate and manner in which
22 late fees accrue;

23 (6) the date, time, and place set by the trustee for the sale;

24 (7) the name, address, and telephone number of the trustee or the trustee's
25 attorney;

26 (8) a statement that a default has occurred and a description of the nature and date
27 of the default; and

28 (9) a statement of whether a right to cure the default exists under AS 34.20.095.

29 Sec. 34.20.079. DELIVERY OF NOTICE OF DEFAULT AND SALE. (a) Within 15
30 days following the recording of the notice of default and sale, the trustee shall deliver a copy of
31 the notice to the last known address of each of the following persons whose interests are of

1 record before the notice of default and sale is recorded:

2 (1) the trustor and the current successor in interest to the trustor;

3 (2) a person in possession of the property;

4 (3) a person, or the current assignee of the person, who has a lien or interest that
5 was recorded after the deed of trust was recorded; and

6 (4) a judgment creditor, or the attorney of record or the judgment creditor as
7 stated in the judgment.

8 (b) If the state records a lien against the property after the deed of trust is recorded and
9 before the notice of default and sale is recorded, the trustee shall deliver a copy of the state lien
10 and the notice of default and sale to the office of the attorney general and to the commissioner
11 of the state department identified in the lien, if a department is identified in the lien.

12 (c) The trustee shall search for the address of a person entitled to receive notice under
13 (a)(1) and (3) - (4) of this section in the records of the recording district in which the property
14 is located by reviewing the document creating the interest in the property, a modification of the
15 document, documents that affect the property, and a notice of change of address that is recorded
16 under AS 40.17.110(b) before the notice of default and sale is recorded. The trustee is not
17 required to search records and documents other than those identified in this section.

18 (d) The trustee is not required to deliver the notice of default and sale to a person unless
19 the person is identified under (a) or (b) of this section.

20 (e) Delivery of the notices required by this section shall be by personal service or by
21 certified mail, return receipt requested.

22 * Sec. 4. AS 34.20.080 is repealed and reenacted to read:

23 Sec. 34.20.080. TIME AND MANNER OF SALE. (a) A sale may not occur before the
24 91st day that follows the recording of the notice of default and sale.

25 (b) The sale shall be

26 (1) made by public auction;

27 (2) held at the main front door of the building in which the superior court is
28 located in the judicial district where the majority of the property is located; if there is more than
29 one location in the judicial district for the superior court, the sale shall be held at the location
30 that is nearest to the property being sold; and

31 (3) held between 9:00 o'clock in the morning and 4:00 o'clock in the evening on

1 a working day.

2 (c) Notice of the sale shall be given to the public by posting the notice of default and
3 sale at the superior court building where the sale is to be held, the post office nearest to the
4 superior court building where the sale is to be held, and at another public place. In this
5 subsection, "public place" means a governmental or commercial building or other structure, if the
6 general public

7 (A) can enter the building or structure without having to give a specific
8 purpose for being in the building or structure;

9 (B) passes through the building or structure on a regular basis.

10 (d) Notice of the sale shall also be given to the public by publishing the notice of default
11 and sale in a newspaper of general circulation in the judicial district in which the sale is to take
12 place. The notice shall be published once a week for four weeks, and the last notice may not
13 appear later than the seventh day before the originally scheduled sale date.

14 (e) If the real property to be sold under a deed of trust consists of separate parcels of
15 property, the trustee shall sell the parcels both in bulk and as separate parcels in a manner
16 established by the trustee that is reasonably designed to obtain the highest bids and subject to the
17 trustee's selection of the bids that would result in the highest total bid for the sale. Unless the
18 deed of trust requires the beneficiary to bid, the beneficiary is not required to bid at either sale.
19 If the beneficiary chooses to bid on the separate parcels, the beneficiary may apportion its bid
20 in the manner it chooses.

21 (f) An attorney for the trustee may conduct the sale. The trustee or the trustee's attorney
22 may not bid, except to make an offset bid for the beneficiary.

23 (g) A bidder other than the beneficiary may not bid by offset bid. If the beneficiary
24 desires to bid an amount higher than the offset bid, the additional amount shall be paid to the
25 trustee under (h) of this section.

26 (h) The successful bidder shall pay the amount of the bid to the trustee or the trustee's
27 attorney in cash, by a cashier's check, or by a postal money order when the trustee or the
28 trustee's attorney declares the successful bid.

29 * Sec. 5. AS 34.20 is amended by adding new sections to read:

30 Sec. 34.20.085. DUTIES OF TRUSTEE AFTER SALE. (a) Within 20 working days
31 following the sale, the trustee shall execute and deliver to the successful bidder a trustee's deed

1 that provides

2 (1) the name and address of the grantee;

3 (2) an affirmation that the trustee has complied with AS 34.20.070 - 34.20.135
4 and with the terms of the deed of trust in the conduct and notice of the sale;

5 (3) the book number, page numbers, and date of recordation for the notice of
6 default and sale in each recording district where the notice of default and sale is recorded;

7 (4) the actual consideration for the conveyance, including the amount of an offset
8 bid;

9 (5) the time and place of the sale;

10 (6) the book number, page numbers, and date of recordation for the deed of trust
11 in each recording district where the deed of trust is recorded; and

12 (7) the legal description of the property being conveyed.

13 (b) Within 20 working days following the sale, the trustee shall also record a trustee's
14 statement of sale in each recording district in which the notice of default and sale is recorded.

15 The trustee's statement of sale must state

16 (1) the legal description of the property;

17 (2) the book number, page numbers, and date of recordation for the deed of trust
18 in each recording district where the deed of trust is recorded.

19 (c) The trustee shall attach to the trustee's statement of sale

20 (1) an affidavit of posting that states the date and place where each notice of
21 default and sale was posted under AS 34.20.080(c);

22 (2) an affidavit of publication that names the newspaper in which the notice of
23 default and sale was published under AS 34.20.080(d) and the dates of publication; and

24 (3) an affidavit of service that states the date of delivery, the method of delivery,
25 and the names and addresses of all persons to whom a copy of the notice of default and sale was
26 delivered under AS 34.20.079 and 34.20.087(c).

27 Sec. 34.20.087. POSTPONEMENT. (a) The trustee may postpone the sale by
28 announcing the postponement on the date and at the time and place where the sale was originally
29 scheduled.

30 (b) The trustee may postpone the sale more than one time, but each postponement may
31 not be for more than 30 days.

1 (c) Before a sale may occur on a date that is more than 180 days after the date of the
2 originally scheduled sale, the trustee shall post and publish an amended notice of default and sale
3 that satisfies the requirements of AS 34.20.080(c) - (d). The amended notice of default and sale
4 must provide the same information that was contained in the original notice of default and sale,
5 except that the sale date and time shall be changed to reflect the date and time to which the sale
6 has been postponed.

7 (d) If the sale does not take place before the first anniversary of the originally scheduled
8 sale date, the trustee shall terminate the sale and record a termination of sale under
9 AS 34.20.097(a).

10 * Sec. 6. AS 34.20.090 is repealed and reenacted to read:

11 Sec. 34.20.090. RIGHTS OF PURCHASER; RESIDENTIAL TENANTS. The purchaser
12 at a sale is entitled to the immediate possession of the property as against a party whose interest
13 in the property was foreclosed by the sale. The purchaser at the sale may enforce the right to
14 possession by bringing an action under AS 09.45.070 - 09.45.160. The landlord-tenant provisions
15 of AS 34.03 do not limit the purchaser's right to take possession unless the purchaser expressly
16 enters into a residential landlord-tenant relationship that is subject to AS 34.03 with an occupant
17 of the property.

18 * Sec. 7. AS 34.20 is amended by adding new sections to read:

19 Sec. 34.20.091. EFFECT OF TRUSTEE'S DEED. (a) The trustee's deed conveys to
20 the purchaser all right, title, and interest in the property conveyed that the trustor had in the
21 property at the time of the execution of the deed of trust and all right, title, and interest in the
22 property conveyed that the trustor acquired before the sale.

23 (b) The trustee's deed is prima facie evidence of compliance with AS 34.20.070 -
24 34.20.135 and with the terms of the deed of trust if

25 (1) the beneficiary is the successful bidder at the sale; and

26 (2) the deed substantially complies with the requirements of AS 34.20.085 and
27 contains the affirmation required by AS 34.20.085(a)(2).

28 (c) The affirmation contained in the trustee's deed creates in favor of a person who is
29 a bona fide purchaser or encumbrancer for value an irrebuttable presumption of compliance with
30 AS 34.20.070 - 34.20.135 and the terms of the deed of trust if the person

31 (1) purchases or encumbers the property at or after the sale; and

1 (2) does not have actual knowledge before the sale that the sale did not comply
2 with AS 34.20.070 - 34.20.135.

3 (d) The trustee's deed constitutes a quitclaim deed and does not provide implied
4 warranties.

5 Sec. 34.20.093. FINALITY OF SALE. (a) A sale that complies with AS 34.20.070 -
6 34.20.135 is final when the trustee accepts a final bid at the sale and receives payment.

7 (b) A person may not redeem the property after the sale.

8 Sec. 34.20.095. CURING A DEFAULT. (a) Unless a right to cure is prohibited under
9 (b) of this section, a default may be cured by any person at any time before a sale is final under
10 AS 34.20.093. To cure, a person shall

11 (1) pay the sum in default, excluding any principal whose payment was
12 accelerated due to the default, together with the attorney fees and costs actually incurred by the
13 trustee due to the default; and

14 (2) satisfy nonmonetary defaults.

15 (b) If a notice of default and sale has been recorded two or more times previously for
16 the same deed of trust and the default has been cured each time, the trustee shall, at the request
17 of the beneficiary, refuse a tender of the cure and continue the sale.

18 Sec. 34.20.097. TERMINATION OF SALE. (a) If a trustee terminates a sale for any
19 reason, the trustee shall record a termination of sale that states the reason for the termination.

20 (b) A beneficiary may request the termination of a sale in order to bring an action for
21 a judicial foreclosure or for other reasons. To request the termination, the beneficiary shall give
22 to the trustee before the sale a written statement of the beneficiary's election to terminate the
23 foreclosure before the sale.

24 Sec. 34.20.099. DISTRIBUTION OF PROCEEDS. (a) Proceeds of a sale shall first be
25 applied in the following order to

26 (1) the costs and fees actually incurred by the trustee in connection with the
27 foreclosure;

28 (2) the satisfaction of the amounts due to the beneficiary under the foreclosed
29 deed of trust; and

30 (3) the satisfaction of liens filed under AS 23.20.250.

31 (b) If proceeds remain after applying the sale proceeds under (a) of this section, the

1 trustee shall notify the persons who hold subordinate recorded interests in the property that were
2 foreclosed by the sale of the trustee's intent to make a distribution under this subsection. The
3 interests shall be satisfied in the order of priority that appears of record based on the sequence
4 of recordation, except for a subordination that appears of record. The trustee shall send the notice
5 by first class mail to the addresses determined for the subordinate interest holders under
6 AS 34.20.079. The trustee shall make the proposed distribution if a subordinate interest holder
7 does not object in writing within a fixed, reasonable period of time established in the notice. If
8 the trustee receives an objection during the time period, and if the objector and the other
9 subordinate interest holders agree on another plan of distribution that complies with
10 AS 34.20.070 - 34.20.135 and is satisfactory to the trustee, the trustee shall make the proposed
11 distribution. If the trustee receives an objection to the proposed distribution during the time
12 period, and if the objector and the other subordinate interest holders do not agree on a plan of
13 distribution that complies with AS 34.20.070 - 34.20.135 and is satisfactory to the trustee, the
14 trustee shall interplead the remaining proceeds in an action in the superior court in the judicial
15 district in which the majority of the foreclosed property is located.

16 (c) The trustee shall distribute to the trustor any proceeds that remain after the sale
17 proceeds have been distributed under (a) - (b) of this section.

18 (d) The trustee shall require and may rely upon sworn evidence from a party described
19 in (a) or (b) of this section to determine an amount due.

20 (e) A party who is entitled to payment under (b) of this section may not recover damages
21 against the trustee if the trustee has complied with this section.

22 * Sec. 8. AS 34.20 is amended by adding new sections to read:

23 Sec. 34.20.105. POST-SALE ACTION FOR DAMAGES TO PROPERTY. Regardless
24 of the amount of the offset bid, if the purchaser at a deed of trust sale is the beneficiary of the
25 deed of trust foreclosed, the purchaser may bring an action for damages against a person,
26 including the trustor, who wilfully or intentionally harms the property beyond ordinary wear and
27 tear, unless the purchaser had actual knowledge of the harm before the sale became final under
28 AS 34.20.093.

29 Sec. 34.20.107. FORECLOSURE AGAINST COLLATERAL OTHER THAN REAL
30 PROPERTY. A beneficiary under a deed of trust who holds a security interest in personal
31 property to secure the same obligation that is secured by the deed of trust, may foreclose the

1 security interest on the personal property as well as foreclosing the deed of trust, if

2 (1) the foreclosure on the personal property satisfies AS 45.09;

3 (2) the deed of trust and the personal property security agreements do not prohibit
4 more than one sale; and

5 (3) the proceeds of the sale that occurs first do not satisfy the debt for which the
6 sale is conducted.

7 * Sec. 9. AS 34.20.120 is amended by adding a new subsection to read:

8 (e) A trustee may withdraw as trustee under a deed of trust. If the trustee withdraws,
9 the beneficiary shall select a substitute trustee.

10 * Sec. 10. AS 34.20 is amended by adding new sections to read:

11 Sec. 34.20.125. JUDICIAL REVIEW OF SALES. (a) If an action to review a proposed
12 sale is filed in court and served on the trustee before the sale takes place, the court shall strictly
13 construe AS 34.20.070 - 34.20.135 and grant the relief that is necessary to ensure compliance
14 with AS 34.20.070 - 34.20.135.

15 (b) If an action to review a sale is filed and served on the trustee after the sale is final
16 under AS 34.20.093, the court shall grant appropriate relief if the court determines that substantial
17 irregularities occurred in the sale and the irregularities caused probable loss or injury to the
18 person filing the action.

19 (c) Notwithstanding (b) of this section, the court may not set aside a sale if the property
20 was sold or has been subsequently conveyed to or encumbered by a bona fide purchaser or
21 encumbrancer for value who did not have actual knowledge of the irregularities when the bona
22 fide purchaser or encumbrancer acquired the interest in the property.

23 Sec. 34.20.127. COMPUTATION OF TIME. If the last day of a time period in AS 34.20.070 -
24 34.10.135 falls on a Saturday, Sunday, or state legal holiday, the last day of the time period is
25 the next working day.

26 * Sec. 11. AS 34.20.135 is repealed and reenacted to read:

27 Sec. 34.20.135. DEFINITIONS. In AS 34.20.070 - 34.20.135, unless the context requires
28 otherwise,

29 (1) "beneficiary" means the person for whose benefit a security interest is created
30 by a deed of trust;

31 (2) "day" means a calendar day;

1 (3) "deed of trust" means an agreement that conveys real property to a trustee as
2 security for the payment of a debt;

3 (4) "last known address" means the most recent of the following:

4 (A) for the trustee, the address listed for the trustee on the notice of
5 default and sale;

6 (B) for persons other than and the trustee, the address of record for the
7 person on the document creating the interest of the person in the real property;

8 (C) the address indicated by a notice of change of address recorded under
9 AS 40.17.110(b);

10 (5) "offset bid" means a bid that is by the beneficiary for an amount up to or
11 equal to the sums owed to the beneficiary under the deed of trust, excluding a sum for damages
12 to the property, and that is credited to the beneficiary as a bid without the payment of cash;

13 (6) "of record" means recorded in a recording district where the real property
14 encumbered by the deed of trust is located;

15 (7) "power of sale" means the authorization under a deed of trust to sell the real
16 property that is the subject of the deed of trust if the trustor defaults on the terms of the deed of
17 trust;

18 (8) "property" or "real property" means the real property that is the subject of a
19 deed of trust, and includes an interest in real property;

20 (9) "sale" means a sale of real property by foreclosure of a deed of trust under
21 AS 34.20.070 - 34.20.135;

22 (10) "trustee" means the person in whose name the title to real property is held
23 in a deed of trust;

24 (11) "trustor" means the person who transfers real property to a trustee for a
25 beneficiary under a deed of trust;

26 (12) "working day" means a day other than a Saturday, Sunday, or state legal
27 holiday.

28 * Sec. 12. AS 34.20.150(a) is amended to read:

29 (a) The date of maturity of an instrument creating a lien upon real property is considered
30 to be 35 [10] years from the date of the instrument, unless

31 (1) the period of the instrument is disclosed by the terms of the instrument; or

1 (2) another instrument extending the period of the first instrument or a
2 memorandum of payment of the first instrument is recorded.

3 * Sec. 13. AS 40.17.110(b) is amended by adding a new paragraph to read:

4 (60) a notice of change of address for a person who has a real property interest
5 recorded under this chapter.

6 * Sec. 14. TRANSITIONAL PROVISIONS. (a) This Act applies to a nonjudicial foreclosure sale
7 under a deed of trust unless a notice of default under former AS 34.20.070 is recorded for the deed of
8 trust before the effective date of this Act and the default identified in the notice is not cured before the
9 effective date of this Act..

10 (b) When counting under AS 34.20.095(b), enacted by sec. 7 of this Act, the number of previous
11 cures made under a deed of trust, the cures made under former AS 34.20.070(b) may be used to reach
12 the number required by AS 34.20.095(b) to refuse the tender of a cure.

13 * Sec. 15. This Act takes effect immediately under AS 01.10.070(c).

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the safety requirements for boilers, unfired pressure vessels, and
2 elevators; and providing for an effective date."

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

4 * Section 1. AS 18.60.200 is amended by adding a new subsection to read:

5 (b) A person who installs a boiler or unfired pressure vessel shall notify the Department
6 of Labor of the installation, using a form provided by the department.

7 * Sec. 2. AS 18.60.315 is amended to read:

8 Sec. 18.60.315. INSPECTION STANDARDS. The 1991 [1989] edition of the National
9 Board Inspection Code Manual for Boiler and Pressure Vessel Inspectors constitutes the
10 minimum boiler and pressure vessel inspection standard of the state for boilers and pressure
11 vessels after they have received their initial inspection certificates from the Department of Labor.
12 The Department of Labor may adopt regulations for the maximum practical implementation of
13 the manual and may grant an exception from a specific provision of the manual when the
14 department determines that the implementation of the provision would be impractical.

1 * Sec. 3. AS 18.60.340(a) is amended to read:

2 (a) If, upon inspection, a boiler or an unfired pressure vessel complies with the
3 regulations of the Department of Labor, the owner or user shall pay to the department a
4 certificate fee to be established by regulation by the commissioner of labor. The Department of
5 Labor shall issue to the owner or user an inspection certificate showing the date of inspection
6 and specifying the maximum pressure under which the boiler or unfired pressure vessel may be
7 operated. The [CERTIFICATES SHALL BE POSTED UNDER GLASS IN THE ROOM
8 CONTAINING THE BOILER OR UNFIRED PRESSURE VESSEL INSPECTED. IF THE
9 BOILER OR UNFIRED PRESSURE VESSEL IS NOT LOCATED INSIDE THE BUILDING,
10 THE] certificate shall be posted in a location convenient to the boiler or unfired pressure vessel
11 [, OR IN THE CASE OF A PORTABLE BOILER OR UNFIRED PRESSURE VESSEL THE
12 CERTIFICATE SHALL BE KEPT IN A METAL CONTAINER FASTENED TO THE BOILER
13 OR VESSEL OR IN A TOOL BOX ACCOMPANYING THE BOILER OR UNFIRED
14 PRESSURE VESSEL].

15 * Sec. 4. AS 18.60.800(a) is amended to read:

16 (a) Except as provided in this subsection, the 1990 [1987] edition of the American
17 National Standards Institute Safety Code for Elevators and Escalators (ANSI/ASME A17.1)
18 published by the American Society of Mechanical Engineers is adopted as the minimum elevator
19 safety code in the state. Section 1001.1, Inspection and Test Periods, and Part XXII, Shipboard
20 Elevators, of the American National Standards Institute Safety Code for Elevators and Escalators,
21 are [IS] not adopted as a part of the minimum elevator safety code in the state.

22 * Sec. 5. AS 18.60.330(b) is repealed.

23 * Sec. 6. This Act takes effect July 1, 1992.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

January 8, 1992

SUBJECT: Deed of trust foreclosures (Work Order No. 17-LS1717A)

TO: Representative David Finkelstein
Attn: Tiffany

FROM: Theresa L. Bannister *TB*
Legislative Counsel

This memo accompanies the bill that you requested relating to deed of trust foreclosures. The draft was based on the material submitted with the work order. However, the drafting required considerable interpretation and reorganization of the materials. Therefore, the draft may not have totally captured your intent. Please examine the draft carefully and advise me of any changes that you would like. The following comments are also provided for the draft.

1. General transitional provision. As the draft now stands (see bill sec. 14), the provisions apply to deed of trust nonjudicial foreclosure sales unless the notice of default is recorded before the effective date of the Act. Since the draft will affect many deeds of trust that are outstanding when the Act goes into effect, the question arises whether the provision would violate the constitutional provision against the impairment of contracts. Although in Hagberg v. Alaska National Bank, 585 P.2d 559 (Alaska 1978), the Alaska Supreme Court approved the retroactive application of certain amendments to the deed of trust foreclosure provisions and its rationale seemed to support retroactive application of any changes, this draft is a major revision of these statutes. This factor may or may not affect the court's position on the matter. To avoid any risk of this problem, you may wish to consider making the new provisions only applicable to deeds of trust entered into on or after the effective date of the Act. Finally, this provision was taken from the commentary you provided, but was not included in the draft provided to us. If you did not intend this provision to be included, please still consider including my suggested provision, so that the application of the bill is clear.

2. Retroactive "last known address" provision. The draft does not include the "last known address" provision relating to sales that occurred before November 7, 1976, because I cannot determine what the purpose of the section is. Perhaps the person

Representative David Finkelstein

January 8, 1992

Page 2

who prepared the draft material that accompanied the work order request could clarify what the Alta Legislative Committee had in mind.

3. Trustor's "last known address" for mailing of notice of default and sale. The draft interprets your AS 34.20.135(a)(2)(D) definition of "last known address" to refer to the trustor (see sec. 34.20.073(a)(6)), not to the beneficiary.

4. Reference to "trustor and owner". The materials occasionally referred to "trustor and owner" or to "owner of record" (your sec. 34.20.077(a)(2)). The draft replaces "trustor and owner" with "trustor". The draft deletes the requirement under your sec. 34.20.077(a)(2) of mailing to the "current owner of record" because the "current owner of record" is the trustee who is mailing the notice. Does this reflect your intent or was "owner" included in order to cover other persons?

5. Reference to "law". In sec. 34.20.085(a)(2), "complied with AS 34.20.070 - 34.20.135" has been substituted for "complied with law".

6. Notice of address change. In sec. 40.17.110(b), the provision authorizing a person to record a notice of change of address applies generally to persons with recorded real property interests. In the materials provided to us, it was not clear whether this provision was to apply generally or to be limited to deed of trust situations (the provision was written generally but the placement was in the deed of trust provisions). Since the rationale for the provision may apply to all real property recorded documents and since it may be difficult and time-consuming for a recorder to determine whether the interest affects a deed of trust, the bill makes it a general provision that applies to all recorded real property interests.

7. Payment of certain liens. AS 34.20.099(a) does not provide for the payment of state and federal tax liens and other liens that may receive priority without being prior in time. How do you wish to fit them into the order of payment?

8. Transfer of later-acquired interest. With regard to the trustee's transfer of any property interest acquired by the trustor after the execution of the deed of trust, would sec. 34.20.091(a) result in the beneficiary receiving the additional interest in the property even if the trustor has subsequently given a third party a deed of trust on the property that includes the additional interest? E.g., A gives a deed of trust to X covering A's one-half interest in property; A acquires the remaining one-half interest; A gives a subsequent deed of trust interest in the property to Y, including the newly acquired interest; A defaults on the first deed of trust; does X get the entire property with Y's interest cut off? Would this be the result? Do you want this to be the result? I am not sure about the result in this case. Perhaps the person who prepared the draft material that accompanied your work order request could answer this question.

Representative David Finkelstein

January 8, 1992

Page 3

If I may be of further assistance, please advise.

TLB:mi:pl

91-227.mai

Enclosure

CLIFFORD J. GROH, SR.
KENNETH P. EGGERS, P. C.
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OF COUNSEL
MITCHELL D. GRAVO, P. C.

LAW OFFICES OF
GROH, EGGERS & PRICE
2550 DENALI STREET, 17TH FLOOR
ANCHORAGE, ALASKA 99503-2796

TELEPHONE
(907) 272-6474
TELECOPIER
(907) 272-4517

MEMORANDUM

TO: Representative David Finkelstien
FROM: Mitchell D. Gravo *dated*
RE: Alaska Land Title Association Legislation
DATE: January 27, 1992

Per our recent conversations, the following is recommended text for a memo to committee members regarding the land title legislation the committee will sponsor as committee legislation.

Enclosed is a copy of legislation and its section by section analysis that the Alaska Land Title Association has requested be introduced for consideration this session.

The legislation is a comprehensive rewrite of the current statutes concerning land title issues. The "Purpose" section describes the bill as "comprehensive legislation to establish the procedure by which a power of sale affecting real property in Alaska shall be exercised."

The Alaska Land Title Association recognizes that it will be difficult to pass legislation with such a major scope during the second session of this Legislature. However, it does want to have the legislation introduced so that it can begin the process of educating the legislature and the administration on the issues contained in the legislation.

The legislation is supported by the Alaska State Realtors Association, the Alaska State Homebuilders Association, and the Alaska Mortgage Bankers Association. Resolutions of support from those organizations will be forthcoming once the legislation has been introduced.

586-1036

LAW OFFICES OF
GROH, EGGERS & PRICE
2550 DENALI STREET, 17TH FLOOR
ANCHORAGE, ALASKA 99503-2796

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TELECOPIER
(907) 272-4517

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introduced - 1/28/92

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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ANCHORAGE, ALASKA 99503-2796

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Use this for committee cover

w/ consumer ideas

Example of cases where answers seemed?

fun ok

Credit reporting since

Common
no deadline

Utilization reviews (consumer oriented - what did other states do?)
happening all over - try to make sure

- D) call Nancy Kornwell (ion)
- E) Nat'l Acad-y State Health Policy
- B) Group w/in Public Citizen (Nadiv)

Informal advisory opinion - Terry,
is it clear to person that more
must be disclosed to HOC - April 15?

58 -1036

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HB

489

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 18, 1992

FURTHER REFERRALS:

Finance

Date of Committee Action: 2/25

The LABOR AND COMMERCE Committee considered:

HB 489

HOUSE BILL NO. 489

BOILER, PRESSURE VESSEL & ELEVATOR SAFETY

"An Act relating to the safety requirements for boilers, unfired pressure vessels, and elevators; and providing for an effective date."

RECOMMENDATIONS:

be replaced with _____ | the same title

| a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note Labor

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		<i>John M. ...</i>		<input checked="" type="checkbox"/>	
		<i>Kevin ...</i>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>				

[Signature]
CHAIRMAN'S SIGNATURE

01
Smith
 No. SFISA
 HASTINGS, MN
 LOS ANGELES, CHICAGO, LOGAN, OH
 HOUSTON, TX, LOCUST GROVE, GA
 U.S.A.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO : HB 489

Revision Date: _____
 Title: "An Act relating to the safety requirements for boilers, unfired pressure vessels..."
 Sponsor: House Labor & Commerce
 Requestor: House Labor & Commerce

Department Affected: Labor
 BRU: Labor Standards & Safety
 Component: Mechanical Inspection
 COMPONENT SERIAL NO. 346

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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						
----------------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
-----------------------------	--	--	--	--	--	--

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: *Randy Carr* Randy Carr, Acting Director Phone : 264-2452
 Division: Labor Standards & Safety Date : 2/20/92
 Approved by Commissioner: *John Abshire* John Abshire, Acting Commissioner
 Agency: Department of Labor Date: 2/20/92

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

BILL NO: House Bill No. 489

DATE: February 21, 1992

TITLE: "An Act relating to the safety requirements for boilers, unfired pressure vessels, and elevators; and providing for an effective date."

CONTACT: Arbe Williams
465-2700

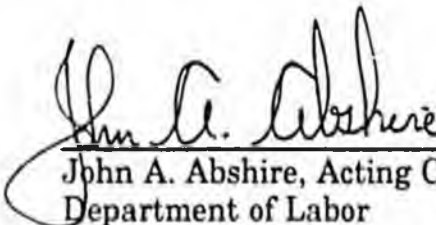
House Bill No. 489, "An Act relating to the safety requirements for boilers, unfired pressure vessels, and elevators; and providing for an effective date." enables better management of inspection schedules for boilers and unfired pressure vessels and implements the most current set of nationally adopted standards for boilers and pressure vessels and for elevators and escalators.

The bill amends the law to require that the Department of Labor is notified of the installation of a boiler or unfired pressure vessel and repeals the requirement that the State inspect boilers and unfired pressure vessels during installation. Currently, there is no assurance that the Department is informed of the installation. In addition, there is a current backlog of approximately 5,000 inspections. These amendments would insure that the Department of Labor is provided with information concerning the installation of boilers or unfired pressure vessels and allow the Department to schedule inspections more efficiently.

House Bill No. 489 also amends AS 18.60.315 to adopt the most current edition of the manual that sets the inspection standard for the State for boiler and pressure vessels and amends AS 18.60.800(a) to adopt the most current edition of the safety code for elevators and escalators. The amendment excludes a new section of the code which provides for the inspection of elevators on offshore drilling rigs and on ships; these inspections are within the jurisdiction of the U.S. Coast Guard.

The bill also removes some specific inspection certificate posting requirements in order to address practical problems that arise in attempting to meet those requirements for a certificate that covers more than one boiler or pressure vessel.

The Department of Labor supports this legislation.



John A. Abshire, Acting Commissioner
Department of Labor

POSITION PAPER/Department of Labor

House Bill No. 489, "An Act relating to the safety requirements for boilers, unfired pressure vessels, and elevators; and providing for an effective date." enables better management of inspection schedules for boilers and unfired pressure vessels and implements the most current set of nationally adopted standards for boilers and pressure vessels and for elevators and escalators.

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Don Catler 1/30/92

Current Boiler Inspections

State inspectors - 5 State inspectors

Insurance Companies - 100 or more insurance inspectors
(business might start servicing insurance industry)

Owner/users (oil industry) 18 owner/
Alaska, Arco, BP

Idea came from Alaska state wide inspector meeting a few years ago

~~Qualifications of present~~

Don is working on draft regs.

① National Bd exam - employee must pass

② Large company is only one w/ economies of scale

42⁰⁰ State 30 inspect / 2⁰⁰ certificate (would still go to state)

③ Only in urban areas would businesses start up
State only charges 42⁰⁰

Currently Disobey requirement that are inspected at install
every school every 2 years

See 18.63.20

Elevator / Boiler

Cindy Spamyers, Business agent 463-41949
ASEA

Bill Kelder, lobbyist will get in touch w/ me

~~Bill~~

Call Don Cather
~~then~~ Abe W.

STATE OF ALASKA

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

P. O. BOX 21149
JUNEAU, ALASKA 99802-1149
PHONE: (907) 465-2700

FAX: (907) 465-2784

February 21, 1992

The Honorable David Finkelstein, Chair
Labor and Commerce Committee
Alaska State House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Representative Finkelstein:

The Department of Labor supports House Bill No. 489, "An Act relating to the safety requirements for boilers, unfired pressure vessels, and elevators; and providing for an effective date." This bill enables better management of inspection schedules for boilers and unfired pressure vessels and implements the most current set of nationally adopted standards for boilers and pressure vessels and for elevators and escalators.

Section 1 adds the requirement that the Department of Labor is notified of the installation of a boiler or unfired pressure vessel. Currently, the law requires inspection of each boiler and unfired pressure vessel during installation. However, there is no assurance that the Department is informed of the installation. In addition, there is a current backlog of approximately 5,000 inspections. This amendment would insure that the Department of Labor is provided with information concerning the installation of boilers or unfired pressure vessels and allow the Department to schedule inspections more efficiently.

Section 2 amends AS 18.60.315 to adopt the most current edition of the manual that sets the inspection standard for the State for boiler and pressure vessels.

Section 3 removes some specific inspection certificate posting requirements in order to address practical problems that arise in attempting to meet those requirements for a certificate that covers more than one boiler or pressure vessel.

Section 4 amends AS 18.60.800(a) to adopt the most current edition of the safety code for elevators and escalators. The amendment excludes a new section of the code which provides for the inspection of elevators on offshore drilling rigs and on ships; these inspections are within the jurisdiction of the U.S. Coast Guard.

Section 5 repeals the requirement that the State inspect boilers and unfired pressure vessels during installation. The current requirement is impractical because the Department of Labor has no requirement for notification of an installation. By repealing

Honorable David Finkelstein

February 21, 1992

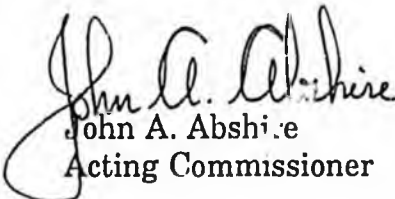
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this section and enacting Section 1, new installations can be tracked and inspections scheduled in an efficient manner.

Section 6 provides for an effective date of July 1, 1992.

Randy Carr, Acting Director of the Department's Division of Labor Standards and Safety, will attend the hearing on House Bill 489 to express the Department's support of the bill and to respond to questions the committee may have. Thank you for your interest in this legislation.

Sincerely,


John A. Abshire
Acting Commissioner

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STATE OF ALASKA

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

P.O. BOX 21149
JUNEAU, ALASKA 99802-1149
PHONE: (907) 465-2700

FAX: (907) 465-2784

January 21, 1992

The Honorable David Finkelstein
Chair, House Labor & Commerce Committee
Alaska House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Representative Finkelstein:

Enclosed is draft legislation relating to mechanical safety requirements for boiler and unfired pressure vessels, and elevators. We are hoping that the House Labor and Commerce Committee would consider introducing the legislation this session.

The legislation would adopt the 1991 edition of the inspection standards manual for boilers and pressure vessels and the most current (1990) elevator safety standards. Two other changes would be made to the current statutes which would allow for more efficient inspections.

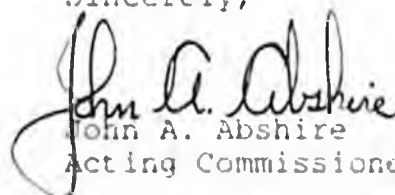
The legislation would delete the current requirement that boilers and pressure vessels be inspected during installation, substituting the requirement that the Department be contacted when a boiler or pressure vessel is installed. This change would insure that the Department is notified of boiler/pressure vessels installations and allow the Department to efficiently schedule inspections by consolidating inspections in the various geographic areas of the state.

The legislation would also provide for a new category of special inspectors to be commissioned by the Department. This change would assist in reducing the Department's inspection backlog and provide for more timely inspections.

The Department does not anticipate a fiscal impact from this legislation.

Thank you for consideration of our request.

Sincerely,


John A. Abshire
Acting Commissioner

Enclosure

Boiler Inspection

The Honorable Randy Phillips
State Capitol
Juneau, Alaska 99801-1182

1-21-92

Dear Mr. Phillips:

This letter is to express a qualified personal opinion regarding proposed changes to AS 18.60.240(Governors), regarding the issuance of special inspectors commissions by the Department of Labor. This proposal is poorly motivated and poorly planned, for the following reasons:

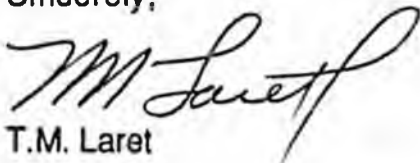
1. AS 18.60.315, just adopted in 1990. (NB-23 contains inspector guidelines for Owner-User Inspectors and Insurance Inspectors)
2. Statutes AS 18.60.250, AS 18.60.260, and AS 18.60.300 were not amended to reflect the changes.
3. The Chief Inspector's statement, to an ad hoc committee from the Alaska Boiler Inspectors Association that met with him to address this topic, that this amendment was intended to comply with the Governors desire to place government functions in the private sector is without merit. Please note that the insurance companies and owner-user companies that are called out in AS 18.60.240 **ARE** private sector, and in fact do approximately half of the inspections currently performed in the state.

This amendment would allow the issuance of **STATE** commissions to unsupervised individuals working for unsupervised companies. AS 18.60.240 already provides for companies that operate vessels to obtain commissions for their inspectors. That idea is fraught with public and worker safety hazards, because the Department cannot provide the oversight necessary for such programs, but the provisions exist. The Chief Inspector has courted this dangerous concept in the past.(Golden Valley Electric and Sitka Pulp Mill)

I urge caution and review of this legislation before any action. Question the motives of the individuals involved with this package, and question where it benefits the public. **It does not!!!!** It will benefit only a few select companies and provide a "meat market" of dubiously qualified individual's performing state certification inspections, and create additional confusion as to the scope of the "special" commission. It would further burden the staff of Mechanical Inspection when they must handle the reports of poorly trained or oriented inspectors. There is also the liability to the State for these **uncontrolled "special"** inspectors.

This amendment carries a strong scent of **Special Interest Legislation.**

Sincerely,



T.M. Laret

SS SB 247 - Plumbing and Boiler Standards

Currently the 1979 Edition of the Uniform Plumbing Code is the minimum plumbing code for the State of Alaska; while many municipalities have adopted more recent editions of the Code. The resulting conflict which now exists among state and local building code officials will be resolved with the passage of SS SB 247.

In addition to the adoption of the 1991 Edition of the Uniform Plumbing Code as the plumbing standard of the state, this legislation upgrades the boiler code to allow automatic utility hot water heaters to be used for combined potable water and space heating. The safety specification established by the Department of Labor that must be met are outlined in SS SB 247.

SS SB 257 has the support of the Department of Labor, Alaska Municipal League, City and Borough of Juneau, International Conference of Building Officials, and Plumbers and Steamfitters Union.

ADDITIONAL INFORMATION

1. Evidently when the State of Alaska adopted the State of Oregon's boiler code, the technology to allow automatic utility hot water heaters to be used for both potable water and space had not advanced for residential use and therefore the boiler code was not changed to allow for this technology.

2. The significant changes in the 1991 Code as compared to the 1979 Code are as follows: (According to Dwight Perkins)

The use of ABS plastic pipe will be expanded for drainage, waste and vents. (Currently, it is allowed only on residential constructions not more than two stories in height.)

The use of ABS and PVC will be allowed for any type of occupancy up to three floors above grade.

The use of CPVC water piping will be allowed for hot and cold water distribution inside a building.

SPECIAL NOTE: Polybutylene (PB) pipe was removed from the code as an approved material for use in potable water distribution systems inside or outside a building because of NUMEROUS reports of system failures. (It was originally authorized in the 1988 code, but it is not in the 1991 code.)