

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8381 SENATE LABOR & COMMERCE

Fairbanks in addition to the oil fired capability. As oil is more expensive than gas from Cook Inlet, Fairbanks buys as much power as it can get over the intertie and supplements any additional requirements with oil fired generation. To summarize, Fairbanks can produce with coal fired generation all but 80MW of the Fairbanks needs during peak demand.

The City of Fairbanks has more than enough oil and generating capacity to meet current demand. The problem is that the cost of generating electricity with oil is significantly more expensive than generating electricity with gas or coal.

This then brings us to the Healy Coal project. In 1989, the Legislature segregated \$30 million within the Railbelt Energy Fund as a contingent appropriation for the construction of a coal co-generation plant at Healy. This appropriation lapsed back into the Railbelt Energy Fund without restrictions on June 30, 1990. The Legislature appropriated \$25 million to the Alaska Industrial Development and Export Authority to help fund the Healy Co-Generation project in 1990.

What does the term co-generation mean? The Federal definition of co-generation is "the utilization of at least 5% of generated energy output for heat load rather than for electric utility use in the electrical grid or area". Usibelli had planned and has requested AIEDA, the proposed project owner, to include provisions in the project design for utilizing heat from the new plant for coal processing (beneficiation). The availability of heat from the plant will depend upon the timing of the coal beneficiation plant, demand for electricity, and the economics of heat sales to Usibelli. Beneficiation is the process of treating coal including crushing coal, turning coal into liquid, drying of coal, and other techniques which enhance the energy value of extracted coal. Coal drying is one of the simplest forms of beneficiation.

Usibelli now exports coal to Korea. With current processing, approximately 1/4 of the tonnage is water. This led to the initial idea of developing a coal drying facility. However, upon further investigation, it became apparent that the quantity of heat necessary to run such an operation in comparison to the monetary benefits to be gained would not be economically feasible in today's market.

At present, the Department of Energy will only support the electrical generation part of the Healy project. DOE is looking for new combustion technology and has awarded a grant in the amount of \$93 million dollars for the construction of the new coal fired power generation plant at Healy.

This new plant will be capable of using "waste coal" whereas the existing plant at Healy can use only pure coal. The surface

of the coal seam must be continually scraped to remove the final amount of overburden (dirt) and expose a clean coal surface. The result of this continual scraping is "waste coal" or coal that is mixed with dirt. In the past, Usibelli has had no market for this "waste coal" and it has been shoved aside and/or buried. The new plant will provide a means to utilize more of the coal resource and minimize loss.

Usibelli is continuing to look at new technologies with the ultimate goal of exporting more coal and coal products. One distinct possibility lies in "carbon marbles" (or pellets) which can be used in place of coke from coking coal for steel making. This is a specialized product which has high potential for market expansion. The demand for coking coal in the Pacific Rim is several million tons per year. It is unknown at this time how much of that market could be captured by Alaskan coal products. At present, the Pacific Rim nations are importing coking coal from as far away as the eastern U.S. via the Panama Canal. Pacific Rim coke prices are reported in excess of \$100 per ton compared to approximately \$40 per ton for raw steam coal from Australia, the chief competitor in Pacific Rim steam coal markets. With Alaska's unique location, we should be able to tap a significant portion of the market. Usibelli anticipates a determination of the potential Alaska market share within one year and anticipates coming on line with a co-beneficiation project at about the same time the new generation plant comes on line.

When considering the cost/benefit of the new generation plant, one must take into consideration several factors. A new plant will enhance conservation of the coal resource (the new plant will be able to burn "waste coal"). New jobs will be created. More pure coal will be utilized thus producing more royalty revenue for the state which helps diversify our economy. And an economic supply of power will be available to the residents of Fairbanks. This would also enhance reliability of the entire grid system from Fairbanks to the Kenai Peninsula.

It is felt that there will be an increased need for base load capacity in this area around the turn of the century. With the Federal grant dollars, this plant will be producing the lowest cost power available around the year 2000. The cost of electricity from the new coal plant is expected to be 4.5 cents per KW hour as compared to a new diesel plant at 6 cents per KW hour, or a new gas fired plant at 4 cents per KW hour.

There are other factors also that should be considered when evaluating this project. We have for a long time held the position that we must diversify our economy and lessen our dependence on oil. Alaska has an abundant supply of natural resources, however most of those resources remain undeveloped or not developed to their maximum economic potential. Coal is

such a resource.

Enhanced processing (beneficiation) will aid in the maximum development of this resource which in turn will produce increased revenues to the state. When considering the potential of increased royalties to the state coffers, one must understand how royalties are calculated.

New leases and leases where royalty adjustments have taken place are based upon a percentage of the "adjusted gross value" (AGV), which is essentially equivalent to a "mine mouth" value for coal. That is, basic production costs are included but transportation and processing are not. Therefore, the royalty basis or AGV would increase only if a beneficiation plant could pay a higher price for raw coal feed to the plant. Some existing leases are still based on a fixed royalty per ton. The primary increase in payments to state coffers would come from the increased quantity of coal produced. Both the power plant and a beneficiation plant would result in increased payments to the state because of increased production.

The next project that must be touched on is the Full Upgrade of the Anchorage - Fairbanks Intertie. The estimated cost of this project is \$118 million dollars. AEA has concluded that the benefit value of a full upgrade is not sufficient to justify spending \$118 million dollars. The full upgrade of the line would increase the maximum power transfer from the existing 62MW output to 225MW output, substantially more than is anticipated being needed in the foreseeable future and would not be cost effective.

The \$10 million dollar partial upgrade on the northern intertie includes upgrading the entire line from Anchorage to Fairbanks. Equipment would be installed on the line that would bring the line up to within acceptable standards of stability. Stability, however, is not the only consideration. Reliability of the line is equally important. It is important to remember that when you upgrade a line and increase the transfer level you also increase the level of losses. This upgrade will only increase the transfer capability from the present 62MW output to 84MW output. Hence, the need to go beyond the partial upgrade for the northern part of the grid area.

Most of the power that is lost in transmission along the Anchorage - Fairbanks route is lost between Healy and Fairbanks. Consequently the recommendation of a second 138KV line between Healy and Fairbanks is warranted. The proposal includes splitting the power at Healy with 1/2 the power going up the existing line and the other 1/2 going up the new line. This will reduce power losses during transmission.

There is also an assumption among the electrical engineers that

by putting in the second line, the transfer capability of the entire circuit would be increased by an additional 20MW as well as reducing power transmission losses.

The railbelt utility companies hired AEA's consultant to look at whether it would be worth spending the required \$58.7 million for the potential increase in benefits that would be derived.

The opinion set forth in 1990 by the consultant is that there would be a \$60 million dollar additional benefit. There are perhaps some weaknesses and soft points that could be pointed out in looking at the cost benefit analysis but AEA has not taken a position on the analysis at this time.

Chugach Electric is now selling power to Fairbanks and the profits generated from these sales are to the direct benefit of the Anchorage consumer. If Healy comes on line, one might assume that there would be an increase in rates to the Anchorage consumer. According to Chugach Electric, any increase would be minimal and would only occur if Anchorage were to remain stagnant with no growth, an unlikely scenario.

The following numbers represent the peak demand needs and the generating capacity in the railbelt area.

LOCATION	PEAK DEMAND	GENERATING CAPACITY	LOCATION OF AND TYPE OF GENERATION

Fairbanks	120 MW	25 MW <u>20 MW</u> 45 MW	Coal - Healy Coal - Fairbanks Coal Generation
Anchorage	550 MW	360 MW 330 MW 30 MW <u>60 MW</u> 780 MW	Gas - Beluga Gas - ML&P Gas - Eklutna Gas - International
Kenai	80 MW	15 MW 40 MW <u>80 MW</u> 135 MW <u>+100 MW</u> 235 MW	Hydro - Cooper Lake Gas - Soldotna Gas - Bernice Lake Hydro - Bradley Lake

TOTAL: 750 MW of Power needed in the Railbelt Area

TOTAL GAS/HYDRO GENERATION AVAILABLE - 1060 MW

Upon first glance, one might assume that we have all the power we need. This simply is not the case when you consider reliability, transmission efficiency, and balance of the costs of the different methods of producing electricity. Additionally, one must realize that power generating plants cannot operate continually at maximum capacity. Gas fired plants are required to keep a substantial spinning reserve. Besides malfunctions which require generators to be shut down, they are also shut down for routine maintenance. This then requires additional backup to meet demand.

Now lets examine a potential outage scenario. Assume Beluga <360MW> goes down, Anchorage can draw 60 MW from Fairbanks over the existing line from the north, and 60 MW from Kenai over the existing line from the south. This combined with other Anchorage generation could provide 530 MW assuming that all other generation is up and working. Anchorage would still be down 20MW if this occurred during peak demand. This analysis is based on existing demand (turned down economy). The scenario will worsen as Anchorage rebuilds its economy.

Out of Municipal Light & Power's 330 MW generating capacity, 3 old turbines which generate 50 MW of power are due to be retired sometime within the near future. ML&P's report states that the remainder of their units are newer and they don't anticipate any major problems or upgrades until the year 2015. It is not economically feasible to design a system that will always meet the peak demand.

The next question examined was the need for the new southern intertie. The existing line is poor for bulk transmission. The line is scheduled for rebuilding and upgrade over the next 10 - 15 years. Technical studies say that with the addition of certain equipment, the existing Kenai transmission line can deliver 75 MW and still remain within the stability limits. Stability, however, is not the only consideration. Although the upgrading and rebuilding of the line will bring it up to a higher capacity, it will not address the reliability problems.

Reliability is very much a problem with the existing intertie between Anchorage and the Kenai Peninsula because it is primarily above ground and is routed along Turnagain Arm. Reliability problems include the line's vulnerability to avalanches, high winds, heavy snowfall and other natural occurrences.

The following table shows outages that have occurred since 1984.

1984 - 3 occurrences	1988 - 8 occurrences
1985 - 0 occurrences	1989 - 4 occurrences
1986 - 1 occurrence	1990 - 4 occurrences
1987 - 2 occurrences	1991 - 1 occurrence YTD

These outages were all the result of natural occurrences. The new proposed intertie would eliminate many of the problems encountered with the existing line because of better routing. The proposed new intertie will be of wood pole construction and will be built along one of two routes. The preferred route is through the Kenai National Wildlife Refuge (fairly level terrain) to Turnagain Arm where it would go under Turnagain Arm in a submarine crossing returning to the surface approximately 9 miles south of Potter Marsh. Limited segments between Turnagain Arm and Anchorage would go underground. The alternate route is along the coast from Kenai to North Kenai, then under Turnagain Arm in a submarine crossing at Point Possession returning to the surface near Point Woronzoff. The alternative coastal route will be more expensive but may need to be utilized if right-of-way problems cannot be resolved with the U.S. Fish and Wildlife Service. Either route will provide a more congenial environment.

Presently, most of the power on the Kenai Peninsula comes from Beluga. When Bradley Lake Hydro comes on line, this scenario will change. Bradley Lake is designed to generate 90 MW of power, however when the reservoir is full, generating capacity increases to approximately 119 MW. If we were to transfer this 119 MW over the existing line, we would have approximately 110 MW when the power arrived in Soldotna. If the reservoir were low, we would have approximately 100 MW of power arrive in Soldotna.

Using the anticipated 100 MW of power from Bradley Lake Hydro coupled with 15 MW of hydro power available from Cooper Lake, Kenai will have a total of 125 MW of hydro generated power available on the Kenai Peninsula. This is in addition to the generating capacity of existing gas turbines. At present, Kenai gets 60 MW from Beluga. Any power needed over the 60 MW from Beluga and the 15 MW from Cooper Lake comes from gas generated power plants at Bernice Lake or Soldotna.

After Bradley Lake comes on line, Kenai will have an excess of 35 MW of hydro power to deliver north if it is needed or wanted. The existing line can deliver this with no problem as far as capacity is concerned. The problem arises in the stability and reliability of the existing line.

The addition of a second 138 KV line would definitely improve reliability. The other consideration in evaluating the necessity of this line is that Bradley Lake cannot operate at maximum capacity full time. It can only operate at maximum capacity when the reservoir is full. Two lines routed through different environs would virtually eliminate transmission line power outages in southcentral Alaska.

One must also consider if the capability of shipping power north

is really necessary considering that Anchorage power suppliers are required to have spinning reserves of 45 MW. This means that Anchorage electric sources are not generating the total power they are capable of generating and could increase that generation by the "flick of a switch", so to speak. However, remaining spinning reserves available in Anchorage are not sufficient to make up the deficit in available power were Anchorage to lose Buluga.

The next topic discussed was the alternate Anchorage - Fairbanks route through Palmer - Glennallen - Delta to connect with Golden Valley's line to Fairbanks which would then provide a tie-in with the Valdez line to the Solomon Gulch hydro plant. The cost of this route would be somewhere in the neighborhood \$200 million dollars. There has been some concern that Solomon Gulch is spilling water (equating to approximately 12 million KW hours during the summer months.) Solomon Gulch operates at less than capacity during the winter months because of the low water level in the reservoir. It is the opinion of the AEA, however, that the benefits to be derived from installation of this line would not be worth the cost.

One must also consider that the lines between Anchorage and Palmer are not that good. There are lines along two routes. One line goes along the west side of Knik Arm from Beluga to Wasilla to Palmer - 138KV line. The other line goes from Anchorage to Eklutna to Palmer - 115 KV line. The northeast intertie route would not provide Anchorage with a full 2nd route. It would provide no more for Anchorage than the limited upgrade proposed and would cost significantly more.

Another consideration would be to construct an intertie from Glennallen to Delta. This would provide the missing link from Solomon Gulch to the Golden Valley Electric system at Delta running north to Fairbanks. During the summer months, Copper Valley Electric would be able to supply additional power to Fairbanks during the summer months should it be needed and would be able to purchase power from Golden Valley Electric or Chugach Electric during winter months. This would add to the total electrical grid system for southcentral Alaska. The current cost of construction of this line is estimated at \$92.5 million. AEA has not issued an opinion on the economic feasibility of this abbreviated project.

The question arose as to whether we could sell power to the Federal government for the Back Scatter Radar Site. Because of the critical nature of the radar site, reliability and stability are very important. AEA has been advised that there is no possibility of selling power to the Federal Government for this project.

Over one-half of Alaska's total population lives along the

railbelt area of the state. It is important that there be reliable sources of power available to this population. Most the state's businesses are also located in this area. If there were to be a major devastation of power sources in the railbelt area today, the mainstream of Alaska's citizenry would be affected. The majority of Alaska's businesses would be affected. If we are to have stability in our economy, we must ensure that there is stability and reliability in our power supplies. Businesses cannot operate in the dark or in the cold.

Additionally, if we intend to expand our economic base, we must be able to provide power to developing businesses. It is only reasonable to believe that new businesses will most likely be considered in areas of population density. If one were to ask the question about where there is population density, the answer would most assuredly be along the railbelt.

Another project that is badly needed is the Seward Intertie. The existing line to Seward has been down many times over the past few years. This line, like the existing southern intertie is extremely vulnerable to avalanches. When this line was built, it was routed along the roadway because of accessibility with the equipment that was available at the time. The new Seward intertie will be routed over more desirable terrain in areas of substantially less vulnerability.

There are many energy projects in the state which can be justified. Alaska spends millions of dollars annually on various projects. Knowing this, it is hard to fathom that many of our residents do not have the benefit of electricity other than through home generated power. It is also hard to fathom that the most highly populated regions of the state are vulnerable to complete power outages without the potential of bringing power in from an alternative source in sufficient quantity to meet at least minimum demand. This potential problem can be solved by construction of the new interties.

The benefits to be derived from the construction of the northern and southern interties and the new coal fired generating plant at Healy include the following:

1. Reliability - Interties affect system reliability which can be measured by the number, duration, and magnitude of customer outages.
2. Economy Energy Transfers - Savings are realized when lower cost energy is brought in from other areas to displace higher cost energy generated locally.
3. Transmission Efficiency - Transmission losses are reduced thus providing a cost savings.

4. State Revenue - State revenues will increase as new interties will lead to the use of more coal and gas, even with Bradley coming on line. Gas and coal will displace oil fired generation.

5. Capacity Sharing - Interties allow separate areas to share capacity thus deferring increasing plant capacities in each geographic location.

6. Operating Reserve Sharing - Interties allow separate areas to share operating reserves and therefore reduce operating costs.

The benefits that reduce to dollars and cents present the following picture:

<u>Project</u>	<u>Cost Benefit Ratio</u>
Healy-Fairbanks 138KV Intertie	1.64
Kenai-Anchorage 138KV Intertie	4.4
Anchorage-Fairbanks Limited Upgrade	4.45

Last but certainly not least is the realization that if these interties are funded this year, we are looking at a minimum of five years to completion. It is imperative that we look at long range planning and not just at the present. Alaska's economy has been in a slow down mode for the last few years, but this will not last forever. The pioneering spirit that built Alaska lives on and Alaska will prosper in the future but we must be wise with our resources, be they money, minerals, fish, or timber and we must plan for the future. We the members of the Legislature are the stewards of our state. Let us use that stewardship to keep Alaska as the Great Land.

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 2/10/93

FURTHER: FINANCE

Date of 5-Day Notice: 2/11/93
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2-16-93

L&C Committee considered SB 106

"An Act authorizing power transmission interties between Anchorage and the Kenai Peninsula, between Healy and Fairbanks, and between the Swan Lake and Tye Lake hydroelectric projects, and approving the design and construction costs of the interties; and providing for an effective date."

and recommends:

replace with _____ CS _____ ()

- same title
- new title
- technical title change (HB only)

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

*Appropriation
Bill to follow.
John Kelly
Committee Chair*

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

OTHER RECOMMENDATIONS:

No Recommendation
True since - No Rec
John Kelly No Rec.

Tom Kelly - Do Pass

Chair: Signature and Recommendation

Alaska State Legislature

SENATOR
BERT SHARP

DISTRICT P

CHAIRMAN
TRANSPORTATION COMMITTEE

MEMBER
FINANCE COMMITTEE
LEGISLATIVE BUDGET & AUDIT COMMITTEE
HEALTH & SOCIAL SERVICES



Senate

FAIRBANKS

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SESSION ADDRESS

STATE CAPITOL, ROOM 514
JUNEAU, ALASKA 99801-1182
(907) 465-3004/4921

MEMORANDUM

TO: Senator Tim Kelly, Chairman
Senate Labor & Commerce Committee

FROM: Senator Bert Sharp *Bert*

RE: Request for Hearing - SB-106

DATE: February 12, 1993

I am requesting Senate Bill 106; "An Act authorizing power transmission interties between Anchorage and the Kenai Peninsula, between Healy and Fairbanks, and between the Swan Lake and Tye Lake hydroelectric projects, and approving the design and construction costs of the interties; and providing for an effective date," be heard before the Senate Labor and Commerce Committee.

Thank you for your consideration.



REPRESENTING
GOLDEN HEART
OF ALASKA

SECTION ANALYSIS

SB - 106

SECTION 1. AS 44.83.185(c) contingent upon sec.4 of this Act, authorizes the Alaska Energy Authority to design and construct a 138 kilovolt power transmission intertie with the capability of being upgraded to 230 kilovolts, between Anchorage and the Kenai Peninsula at a cost of \$84,100,000.

SECTION 2. AS 44.83.185(c) contingent upon sec. 4 of this Act, authorizes the Alaska Energy Authority to design and construct a 138 kilovolt power transmission intertie with the capability of being upgraded to 230 kilovolts, between Healy and Fairbanks, at a cost of \$77,600.00.

SECTION 3. (a) AS 44.83.185.(c), authorizes the Alaska Energy Authority to design and construct a 138 kilovolt power transmission intertie between Swan Lake and Tye Lake hydroelectric projects, at a cost of \$55,600,000.

SECTION 3. (b) The Alaska Energy Authority shall finance the design and construction of the intertie authorized in (a) of this section through the sale of revenues bonds which are to be repaid from revenue from the sale of power from the hydroelectric projects included in the Four Dam Pool.

SECTION 4. The authorizations made by secs. 1 and 2 of the Act are contingent upon written agreement between the Alaska Energy Authority and the participating electric utilities, providing the participating utilities agree to pay 50 percent of the design and construction costs; and the total operation and maintenance costs of the power transmission interties authorized by this Act.

SECTION 5. Under AS 01.10.070(c), this Act takes effect immediately.

SPONSOR STATEMENT

SB - 106

Senator Bert Sharp

In the early 1980's, the State committed major sums of general funds to construct four hydro electric projects, two in southeastern Alaska, one in Kodiak, and one in Valdez.

The legislature set aside 200 million plus dollars in a special railbelt energy fund to utilize on energy projects that would provide similiar long term benefits to southcentral and interior Alaska.

This legislation would carry out this original legislative intent by constructing a power grid connecting the major population centers of Alaska with an electric intetie system. This inter connected system would present long term benefits to over 70 percent of Alaskans.

The major benefits offered by such an intertie system are:

- (a) Reliability of service.
- (b) Economy of size.
- (c) A mix of generating sources including hydro-electric, natural gas, coal and petroleum fueled generating costs.
- (e) Unified load dispatching.

Specifically Section 1. Authorizes the construction of a 138 kilovolt power transmission line between Soldotna and Anchorage. This line increases the capability to deliver major blocks of energy from the Bradley Lake Hydro Project into the greater Anchorage area.

Section 2. Authorizes the construction of a 138 kilovolt line from Healy to Fairbanks. This line will allow the maximum utilization of the transmission capacity of the Alaska Energy Authority line coming up out of Anchorage to Healy. This new line would provide the system to economically deliver Golden Valley Electric Association's share of Bradley Lake power into the interior as well

as allowing GVEA to purchase seasonally surpluses of energy from Anchorage based utilities.

Section 3. Authorizes an intertie between Swan Lake and Tyee Lake hydro sites. The economics and benefits offered by this facility can be better presented by Senator Robin Taylor.

I thank you for the opportunity to present this legislation to this committee.

RE: SB-106, authorizes interties between: Anchorage - Kenai Peninsula, Healy - Fairbanks, and Swan Lake and Tyee Lake hydroelectric projects.

Cost projections: \$217.3 million (S-106 authorizes AEA to design and construct. Also authorizes AEA to enter into agreements with participating electric utilities for them to pay 50% of D&C costs and O & M costs once the lines are up.

Time line: Permitting process 1993/4-1996

Construction: 1996-1998

Passage of the intertie legislation will allow us to move excess energy from one area of Alaska to other areas that need it. In the event of a power outage, the interties will enable quick movement of power from one area to another as an emergency back up - restoring power quickly rather than waiting hours or days, as we've experienced, as recently as last year and in December, 1989.

These intertie projects will help supply power to the population centers. They'll provide emergency backup power in outages. They will help sustain economic growth making power available for new housing and business development and they will put Alaskans to work.

According to the most recent estimates by the Alaska Energy Authority, the Anchorage to Kenai intertie will probably put at least 150 Alaskans to work, while the Healy to Fairbanks project will need 400 workers.

The interties make good economic sense for Alaska.

CITY OF PETERSBURG

P.O. Box 329 • PETERSBURG, ALASKA 99833 • PHONE (907) 772-4203

MUNICIPAL POWER
AND LIGHT DEPT.

FACSIMILE TRANSMISSION
907-772-9287

Date: 2-16-93

To: Senator Taylor

ATT: TERRY OTNESS

Phone (Fax) 465-3922

From: PETERSBURG MUNICIPAL
POWER & LIGHT
P.O. Box 329
Petersburg, Alaska 99833

Message consists of 5 pages, including this cover sheet.

		Project Management Committee		
		Summary Project KWH Purchases		
Year		KWH	Rate	Total
1992	Contract	228,907,000	0.040	\$8,078,280
	Excess	8,318,188	0.030	189,546
				\$9,265,826
1991	Contract	219,067,000	0.040	\$8,762,680
	Excess	22,238,626	0.030	667,159
				\$9,429,839
1990	Contract	212,993,000	0.040	\$8,519,720
	Excess	24,902,413	0.030	747,072
				\$9,266,792
1989	Contract	208,041,000	0.035	\$7,211,435
	Excess	26,248,361	0.025	658,209
				\$7,867,644
1988	Contract	189,181,000	0.032	\$6,373,792
	Excess	17,367,941	0.022	382,095
				\$6,755,887

PROJECT MANAGEMENT COMMITTEE - FOUR DAM POOL
 RENEWAL AND REPLACEMENT FUND
 PROJECT TO DATE STATEMENT OF OPERATIONS AND CHANGES IN FUND BALANCE

	1986	1987	1988	1989	1990	1991	1992
REVENUE AND TRANSFERS							
Interest income	6,261	43,601	92,097	162,093	196,245	200,869	246,154
Settlement from Alaska Energy Authority							3,000,000
Transfers from Initial Project Revenue Fund	333,333	500,000	500,000	500,000	500,000	500,000	500,000
TOTAL REVENUES AND TRASFERS	339,594	543,601	592,097	662,093	696,245	700,869	3,746,154
EXPENDITURES							
Solomon Gulch					97,126	194,743	
Swan Lake					6,569		119,880
Terror Lake						97,085	161,975
Lake Tye						6,755	424,197
Trust service fees			5,275	9,117	8,358	0	10,905
TOTAL EXPENDITURES	0	0	5,275	9,117	112,053	298,583	716,957
EXCESS OF REVENUE AND TRANSFERS OVER EXPENDITURES	339,594	543,601	586,822	652,976	584,192	402,286	3,029,197
FUND BALANCE BEGINNING	0	339,594	883,195	1,470,017	2,122,993	2,707,185	3,109,471
FUND BALANCE ENDING	339,594	883,195	1,470,017	2,122,993	2,707,185	3,109,471	6,138,668

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9077729287

12:16PM

SENT BY: PETERSBURG PWR & LIGHT: 2-16-93

PROJECT MANAGEMENT COMMITTEE - FOUR DAM POOL
 KWH PURCHASED AND DEBT SERVICE PAYMENTS TO ALASKA ENERGY AUTHORITY

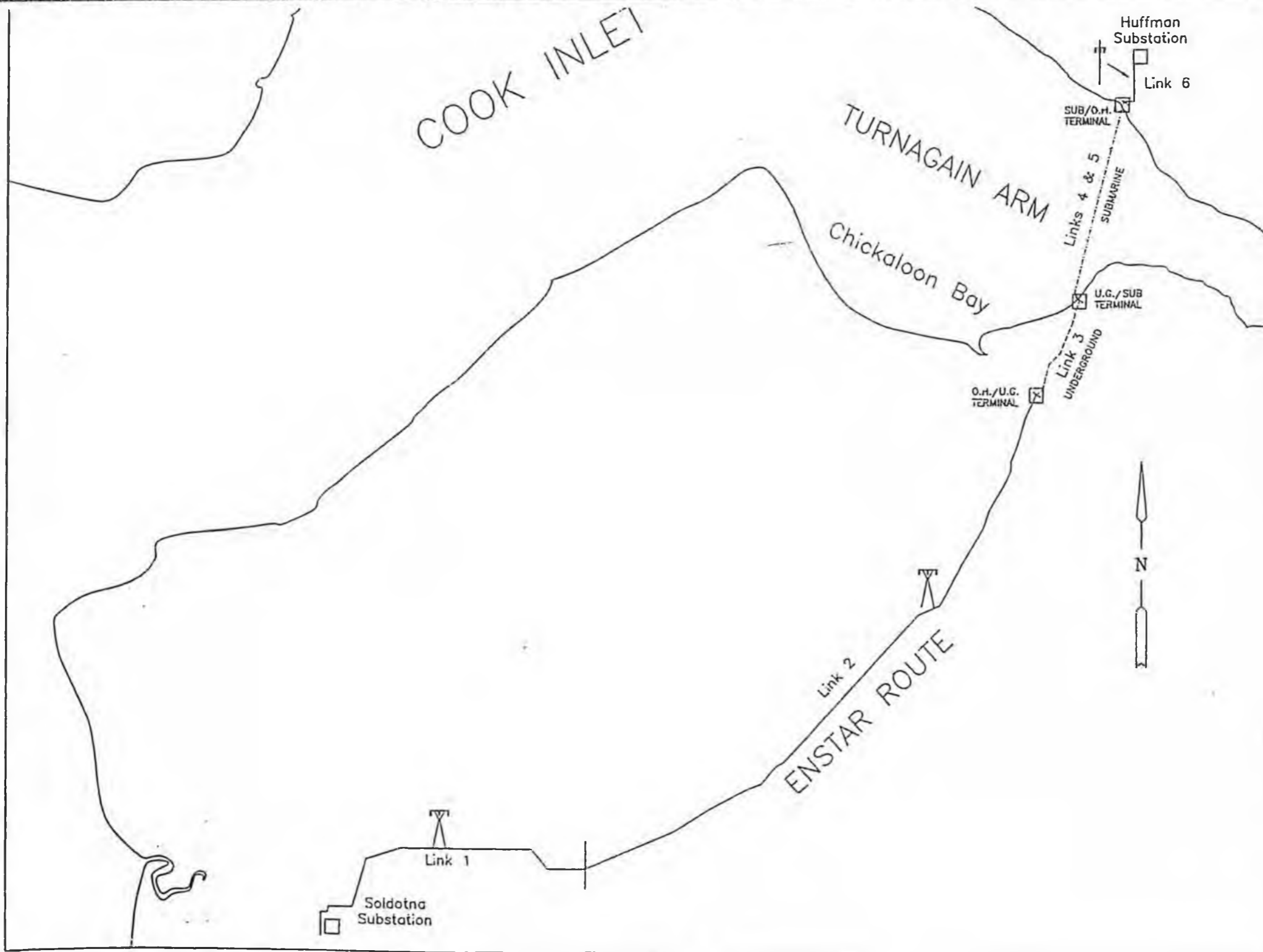
UTILITY	1986 KWH	1986 DEBT SERVICE	1987 KWH	1987 DEBT SERVICE	1988 KWH	1988 DEBT SERVICE
COOPER VALLEY ELECTRIC	21,594,057	544,714	40,584,034	1,101,027	38,522,128	1,203,674
KEETCHIKAN PUBLIC UTILITY	34,107,000	860,355	44,360,000	1,203,458	41,493,400	1,294,506
KODIAK ELECTRIC ASSOC.	54,739,800	1,380,822	91,909,793	2,493,346	102,671,415	3,203,261
CITY OF WRANGELL	9,852,000	248,518	17,457,000	473,658	18,341,000	572,151
CITY OF PETERSBURG	10,083,120	254,330	15,380,466	417,324	15,461,000	482,295
TOTALS	130,375,977	3,288,739	209,691,293	5,688,813	216,548,941	6,755,887

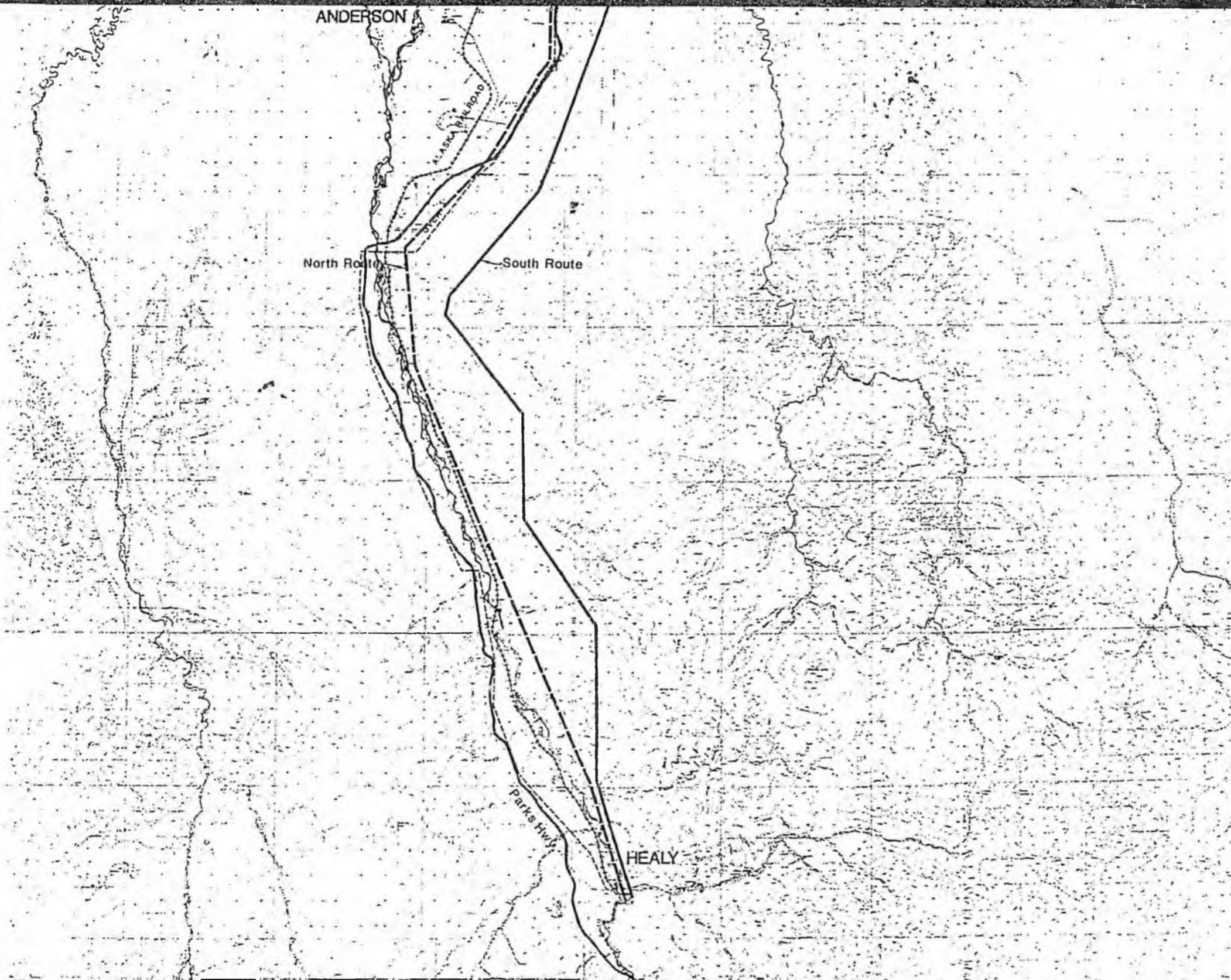
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1989 KWH	1989 DEBT SERVICE	1990 KWH	1990 DEBT SERVICE	1991 KWH	1991 DEBT SERVICE	1992 KWH	1992 DEBT SERVICE
36,686,771	1,242,563	39,388,355	1,534,199	39,147,589	1,531,107	40,159,659	1,596,115
50,419,590	1,707,686	48,369,074	1,884,003	69,290,320	2,709,924	57,122,420	2,267,008
107,567,000	3,643,360	111,528,987	4,344,750	91,391,717	3,574,261	99,364,109	3,948,177
19,594,000	663,639	19,311,000	752,174	20,535,000	805,166	17,425,000	692,918
18,022,000	610,396	19,298,000	751,667	20,891,000	817,134	19,154,000	761,608
232,269,361	7,867,644	237,895,416	9,266,793	241,305,626	9,437,592	233,225,188	9,265,826

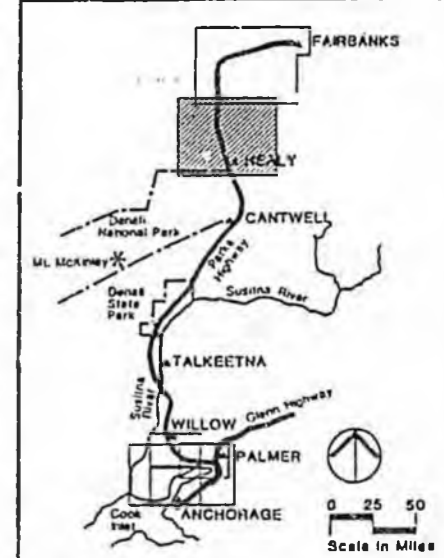
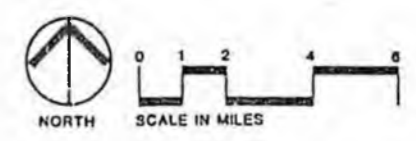
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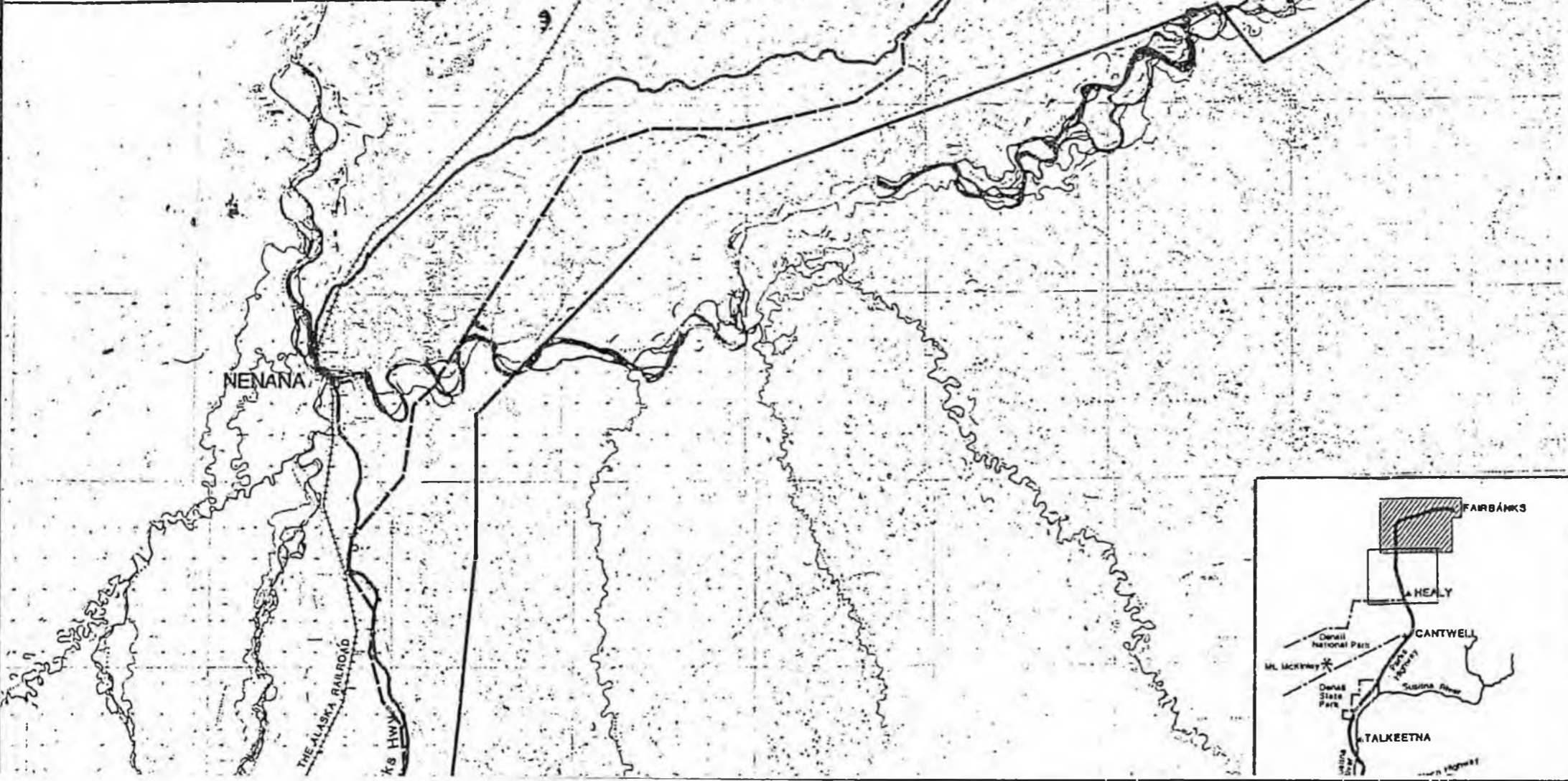
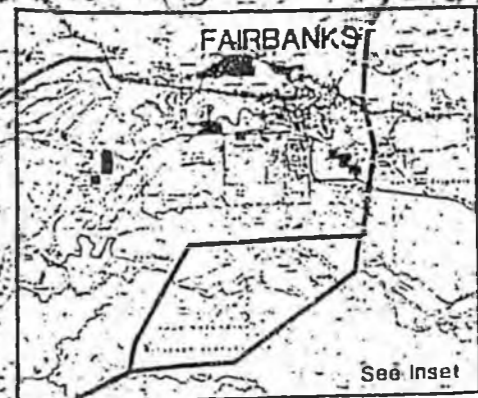
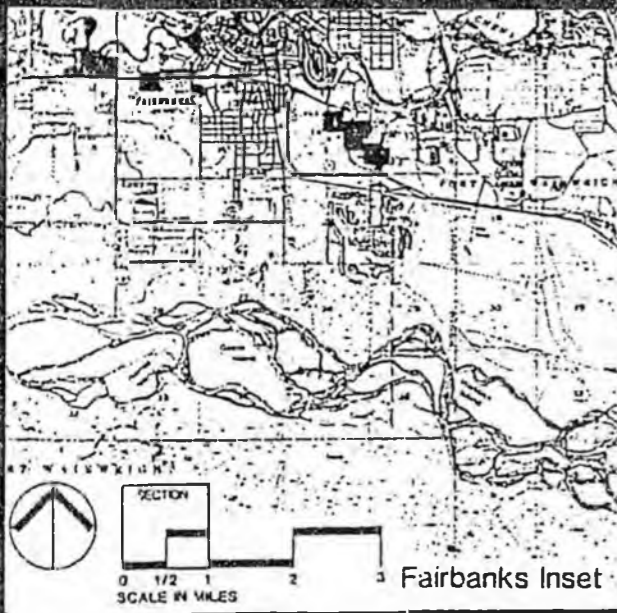


- Major Highways & Roads
- - - Existing Transmission Lines
- - - Railroad
- ⊙



ALASKA POWER AUTHORITY

North Study Area
Healy Subarea



DATA SOURCES

- USGS 1:63,000 Topographic Maps
- Utilities

- LEGEND**
- Major Highways & Roads
 - Intertie
 - Enstar Gasline
 - Existing Transmission Lines
 - Railroad



ALASKA POWER AUTHORITY

North Study Area
Fairbanks Subarea

S B

1 1 2

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

REPLY TO:

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P.O. BOX K— STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
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February 19, 1993

Hon. Tim Kelly
Alaska State Senate
State Capitol Building, Room 101
Juneau, AK 99801

Re: SB 112

Dear Senator Kelly:

The Department of Law has reviewed SB 112 and finds no legal problems.

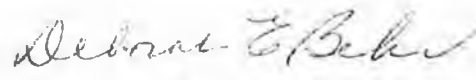
The bill makes important improvements to the Uniform Commercial Code.

We understand that the bill is before your committee. We would request early scheduling of a hearing on the bill.

If you have questions, please let us know.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: 
Deborah E. Behr
Assistant Attorney General

DEB:cl

cc: Alaska's Uniform Law Commissioners Delegation
Justice Jay Rabinowitz
Arthur H. Peterson, Esq.
Jerry Kurtz, Esq.
Tam Cook, Esq.
Grant Callow, Esq.

Kris Lethin, Legislative Liaison
Office of the Governor

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February 16, 1993

Terry Bannister
Legislative Counsel
Legislative Affairs Agency
130 Seward St., Rm. 405
Juneau, Alaska 99801-2105

HAND DELIVERED

Re: SB 112, UCC misc. (art. 2A, personal property leasing;
arts. 3 & 4, negotiable instruments; art. 6, bulk sales)

Dear Terry:

A copy of Professor Fred Miller's February 11, 1993 reply to my February 5 inquiry about your draft of this bill is attached, along with his marked-up copy of my letter, your page 112, and a sheet of citation updates. SB 112 was introduced last Thursday, February 11.

Fred designated parts of my letter with numbers, and referred to those numbers in his letter. Using the same numbers, here are my comments on his comments:

1. O.k. All of the identified changes should be made.
2. O.k. AS 45.03.102(a) (page 13, line 6, of the bill) should be changed as indicated in my letter, when the art. 4A bill (SB 86) passes.
3. O.k. AS 45.03.415(a) (page 48, line 16) should be changed to refer to "(b) - (e)."
4. O.k. The change in proposed AS 45.12.108(d) (page 93, line 15) has already been made.
5. Add the following sentence to the text of proposed AS 45.12.304(c) (page 106, line 26): "If the certificate of title statute is silent on the issue of transfer, this section controls." This is not a perfect solution, but it states their intent on the basic point, putting it in

Terry Bannister
February 16, 1993

Page 2

Re: SB 112, UCC misc. (art. 2A, personal property leasing; arts. 3 & 4, negotiable instruments; art. 6, bulk sales)

the text rather than "legislative history." It seems like a better approach than other proposals, although I still rather like my "provided by statute" (which Fred said was ambiguous).

6. I believe that Fred is wrong; proposed AS 45.12.--310(e) is not "technically correct." But, what he means by his "(3) and (4) are tied together and subsections (2) and (4) also are tied together," is that paragraph (4) is the constant. I.e, the correct interpretation is, in your and my description, "(2) or (3), and (4)." I also disagree with Fred that the best solution is to leave the provision alone and rely on legislative history, and I suggest that the correction be in the text. The fact that UCC § 9-314(4) (our AS 45.09.314(d), which changed NCCUSL's version to "(a) -- (c)") is also incorrectly drafted in the same way is not a persuasive reason to ignore the problem here. See Fred's corrections in your subsec. (f), which should also be made.

Presumably, these little amendments can be made in the Senate Labor and Commerce Committee. I would guess that Sen. Kerttula will want you to prepare them on an amendment sheet, for ease in presenting them to the committee. So far as I know, the bill has not yet been scheduled for a hearing.

So, that's it for now.

Yours truly.

Dillon & Findley

By: 

Arthur H. Peterson

AHP/sh
Enclosure

cc w/enc.: Hon. Jay Kerttula (Hand Delivered)
Alaska State Senate

L. S. Kurtz, Jr., Esq.
Anchorage

cc w/o enc.: Prof. Fred Miller, Exec. Dir., NCCUSL
c/o Univ. of Oklahoma College of Law



The
University of Oklahoma

COLLEGE OF LAW
300 Timberdell Road
Norman, Oklahoma 73019-0701
(405) 325-4689
FAX # (405) 325-6262

February 11, 1993

Arthur H. Peterson
Dillon & Findley
One Sealaska Plaza, Ste. 202
Juneau, AK 99801
FAX 907-586-3777

Re: UCC Amendments

Dear Art:

Hopefully this will respond to your letter to me dated February 5, 1993 (enclosed and questions numbered).

1. There are a number of cross references that should be updated, including the two you found. I enclose a sheet where the ones that Jack Burton and I have found to date are listed.
2. I have no idea why ULA drops the language about payment orders in § 3-102(a). That language should appear.
3. I agree with you the reference in § 3-415(a) should be to subsections (b) through (e); apparently we have made an error. I am copying the reporter with this letter, however, just in case I have overlooked something and we would be in error in making the change.
4. I am not sure how to respond because I do not have Alaska Civil Rule 82. It may be helpful to observe that often the specific rule will be construed to control the general rule; your proposed amendment to § 2A-108(4) would simply reflect that approach. Thus it should be okay.
5. The statute and the comment to § 2A-304 I believe are consistent. The statute is a general rule that both the certificate of title act and Article 2A must be considered. The comment says, if when that is done, the certificate of title act does not address the point, then Article 2A will control. This simply states the obvious. The first change to the statute that you propose would change the rule, however, and the second change leaves the matter ambiguous. If a change must be made, I would put in the Alaska legislative history or comments a change to the comment sentence: "If the certificate of title statute, after being consulted on the issue of

transfer, is silent, this section will control."

6. I agree the statement in § 2A-310(5) is unclear; in my opinion it could read: "When under subsections (2), (3) or (4) . . ." However, the section is derived from § 9-314(4) (which reads (1) or (2) and (3)) and we do not want to create a different interpretation. Moreover, since subsections (3) and (4) are tied together and subsections (2) and (4) also are tied together, the provision technically is correct. On balance, I would not change it; if more clarity is necessary, again I would use Alaska legislative history or comments.

By the way, I believe in restyling, your bill substantively changes the section. Your subsection (f) I believe should use "or" and not "and" between (1) and (2), and needs a reference to "lessor or the lessee" in (2). Also note the typo in the lead in.

If you have any other questions, please let me know.

Sincerely,



Fred H. Miller
Kenneth McAfee Centennial Professor of Law
George Lynn Cross Research Professor

/jw

Enclosures

cc: Robert L. Jordan FAX 310-206-7010
Carlyle C. Ring FAX 703-448-2956
John M. McCabe FAX 312-915-0187

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February 5, 1993

Fred H. Miller, Exec. Dir.
 NCCUSL
 c/o Univ. of Oklahoma, College of Law
 300 Timberdell Road
 Norman, OK 73019

Re: UCC amendments

Dear Fred:

At the request of a senator who has agreed to introduce our UCC changes, I reviewed his draft bill covering arts. 2A, 3, 4, and 6 (repeal). I have some questions.

1. I do not find in any UCC material I have, including West's new 1990 Official Text, an amendment of § 1-201(44) (definition of "value"), to reflect the 1990 renumbering of §§ 4-208 (now 210) and 4-209 (now 211). § 4-208 used to be captioned "Security Interest of Collecting Banks in Items, Accompanying Documents, and Proceeds" and § 4-209 was captioned "When Bank Gives Value for Purposes of Holder in Due Course." In the main part of the West publication, those captions and provisions are in §§ 210 and 211, respectively, and 208 and 209 are on different subjects, the changes being shown in West's Appendix IX, giving the 1990 art. 4 amendments. Am I correct in assuming a direct correspondence, and that no substantive change requires doing something different in that cross reference, other than amending "208" and "209" to read "210" and "211," respectively, in § 1-201(44)? (In a nutshell, what is the reason for that cross reference to 208/210? How does that section affect § 1-201(44)'s definition of "value"?)

✓ Also, no material that I have indicates the amendment of § 2-103(3)'s reference to "'Dishonor'. Section 3-507." The "dishonor" reference should now be to § 3-502.

2. Why does the ULA version of § 3-102(a) drop ", to payment orders governed by Article 4A," as I am told it does. Those words appear in the 8 1/2 x 11-inch sheets I received from NCCUSL (dated

sh/art/miller.let

Fred H. Miller, Exec. Dir., NCCUSL
February 5, 1993

Page 2

✓ 12/2/91) and in West's 1990 version. Am I correct in assuming that they should stay there?

3. Why does § 3-415(a) refer only to subsocs. (b) -- (d) of that section, and not to (e). Notwithstanding (e)'s condition referring back to (a), all four of the subsections after (a) speak of nonliability or discharge, thus making the general rule of (a) "subject to" (b) -- (e). No?

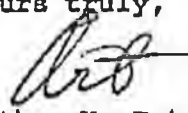
4. ✓ § 2A-108(4) provides for attorney fees in an action in which the lessee claims unconscionability, and sets out certain conditions for the award of those fees. Our Civil Rule 82 deals with attorney fees generally, so we need to clarify the relationship between the new statute and the rule. How about our starting the lead-in line of § 2A-108(4) with "Notwithstanding Rule 82, Alaska Rules of Civil Procedure"? That approach would have this statute govern in the particular circumstances described in it.

5. ✓ The Official Comment under § 2A-304 says, with regard to subsec. (3), "Where the certificate of title statute is silent on this issue of transfer, this section will control." How does that statement square with the use of "both" in the text? If the comment expresses your intent, shouldn't the text use "either"? Or perhaps say, simply, "provided by statute."

6. ✓ In § 2A-310, subsec. (5) says "When under subsections (2) or (3) and (4)" By joining the conjunctive "and" with the disjunctive "or" in the same series, this clause violates an important drafting principle and creates an ambiguity. Does the clause mean "(2), or (3) and (4)" or "(2) or (3), and (4)"? The Official Comment doesn't clarify the matter. Our legislative drafter changed the provision to read as shown on the attached sheet (substituting our (a), (b), (c), etc., for NCCUSL's (1), (2), (3), etc.). What do you think? *OK but redraft*

We appreciate your help. Thanks.

Yours truly,


Arthur H. Peterson
Uniform Law Commissioner
for Alaska

AHP/sh
Enclosure

sh/art/miller.let

Fred H. Miller, Exec. Dir., NCCUSL
February 5, 1993

Page 3

cc w/enc.: John McCabe, Legislative Director
and Legal Counsel
NCCUSL

Terry Bannister
Legislative Counsel
Legislative Affairs Agency

sh/art/miller.let

WORK DRAFT

WORK DRAFT

WORK DRAFT

1 interests in the whole except as stated in (d) of this section but is subordinate to
 2 interests in the whole existing at the time the lease contract was made unless the
 3 holders of those interests in the whole have in writing consented to the lease or
 4 disclaimed an interest in the goods as part of the whole.

5 (d) The interest of a lessor or a lessee under a lease contract described in (b)
 6 or (c) of this section is subordinate to the interest of

7 (1) a buyer in the ordinary course of business or a lessee in the
 8 ordinary course of business of any interest in the whole acquired after the goods
 9 became accessions; or

10 (2) a creditor with a security interest in the whole perfected before the
 11 lease contract was made to the extent that the creditor makes subsequent advances
 12 without knowledge of the lease contract.

13 (c) When under (b) - (d) of this section, and subject to (f) of this section, a
 14 lessor or a lessee of accessions holds an interest that is superior to all interests in the
 15 whole, the lessor or the lessee may remove the goods from the whole, free and clear
 16 of all interests in the whole, but the lessor or lessee must reimburse a holder of an
 17 interest in the whole who is not the lessee and who has not otherwise agreed, for the
 18 cost of repair of physical injury but not for a diminution in value of the whole caused
 19 by the absence of the goods removed or by a necessity for replacing them. A person
 20 entitled to reimbursement may refuse permission to remove until the party seeking
 21 removal gives adequate security for the performance of this obligation.

22 (f) The lessor or the lessee may remove the goods under (e) of this section

23 (1) on default, expiration, termination, or cancellation of the lease
 24 contract by the other party but subject to the provisions of the lease contract and this
 25 chapter; and

26 (2) if necessary to enforce other rights and remedies of the lessor under
 27 this chapter.

28 Sec. 45.12.311. PRIORITY SUBJECT TO SUBORDINATION. Nothing in
 29 this chapter prevents subordination by agreement by a person entitled to priority.

30 ARTICLE 4. PERFORMANCE OF LEASE CONTRACT.

31 Sec. 45.12.401. INSECURITY: ADEQUATE ASSURANCE OF

32A-310

1. The reference in UCC § 2-511 to § 3-802, upon enactment of Revised Article 3, should be § 3-310.
2. The reference in UCC § 2-403(4) to Article 6 should reflect the action taken with respect to Article 6, whether repeal or revision.
3. Upon enactment of Article 2A and Revised Articles 3 and 4, definitional cross references in the following sections need attention: ~~§ 5-103(3)~~ (reference to "acceptance" should be from § 3-410 to § 3-409); ~~§ 9-203(1)~~ (reference to § 4-208 should be § 4-210, and the reference to the "Article on Sales" should be the "Articles on Sales and Leases"); ~~§ 9-206(1)~~ (reference to "Article on Commercial Paper (Article 3)" should be "Article on Negotiable Instruments (Article 3)"); ~~§ 9-312(1)~~ (reference to § 4-208 should be to § 4-210); ~~§ 2-103(2)~~ (reference to "dishonor" and § 3-507 should be § 3-502); ~~§ 1-201(44)~~ (reference to §§ 4-208 and 4-209 should be §§ 4-210 and 4-211); ~~§ 2-511(3)~~ (reference to § 3-802 should be § 3-310); and ~~§ 1-201(3)~~ (reference to § 2A-207 should be added).

4-202 (1) (F)
 2/11/93
 J.C. C. C. C. C. C.
 C. J. C. C. C. C.

As Articles 2, 5, 8 and 9 are revised in the future, this same issue will present itself. Moreover, to the extent a state enacts revisions out of order, references may need to be amended twice; e.g., if a state were to enact revised Article 5 before revised Articles 3 and 4, the cross references in revised Article 5 would have to be changed to refer to old Article 3, and then again upon enactment of revised Article 3. Finally, some like kind additions to the Official Comments are in order; for example, to add the comparable references to Article 2A in the comments to §§ 1-102 and 1-203. Again, the question asked under the Overview as to Article 1 is raised.

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February 4, 1993

The Honorable Jay Kerttula
Alaska State Senate
Room 427, State Capitol
Juneau, AK 99801-1182

HAND-DELIVERED

Re: Your draft bill on Uniform Commercial Code changes: Art. 2A (personal property leasing), Arts. 3 and 4 (negotiable instruments, etc.), and repeal of Art. 6 (bulk sales) LAA Work Order No. 8-LS0227\E

Dear Jay:

As you requested recently, I have reviewed the January 4, 1993 draft of this bill, accompanied by the December 31, 1992 cover memo from Terry Bannister to you. I have addressed the 38 points set out in her memo. The bill should now be ready for preparation in final form and early introduction.

In the art. 2A portion, the bill includes proposed AS 45.12.104(a)(4) (page 92, line 3), originally requested by the Department of Administration to make clear the relationship to the state's Procurement Code (existing AS 36.30). A spot check indicates that it also includes the NCCUSL's 1990 amendments to art. 2A.

As you also requested, you will find attached a brief description of the bill, citing bill section numbers as they appear in this draft. I could not keep it to one page, since the bill covers three major areas of the law and is 136 pages long. I trust that you will find this description helpful for press releases, committee discussion, and floor debate. The Department of Law, the Legislative Affairs Agency, and I have additional background material if you would care to see it.

Here are some changes to be made before introduction:

A. On page 11, line 25, "45.04.210 and" should be inserted in front of "45.04.211," to maintain a direct correspondence with the NCCUSL's numbering changes in art. 4.

sh/art/kerttula.lt2

UNIFORM LAW COMMISSIONER'S
SUGGESTED TECHNICAL CHANGES

The Honorable Jay Kerttula

Page 2

February 4, 1993

Re: Draft bill proposing UCC changes (arts 2A, 3, 4, & 6)

B. On page 13, line 6, after "money," insert, "to payment orders governed by AS 45.14,". This change picks up the NCCUSL's reference to the new art. 4A (funds transfers) in your other UCC bill.

C. On page 111, line 8, "filing" needs to be corrected to "recording," in proposed AS 45.12.309(i). This change from the NCCUSL wording was already made in (j)(2) of that section (page 111, line 13). It accommodates a Department of Natural Resources request, to conform to existing AS 40.17.110(b)(51).

D. On page 119, line 26, change "time" to read "times," to conform to official NCCUSL wording.

E. On page 134, line 8, in proposed AS 45.12.529(e), the "a" in front of "default" should be deleted. On the following line, "the" should be inserted in front of "lessee." These two minor changes conform to the NCCUSL's wording, and correct what appear to be typographical errors.

Here are my comments on Terry's 32 points, using her numbers:

1. Although I would not have made some of the rearrangements that Terry made in the sections cited, I have no real objection to them. While there is a value to maintaining the national sequence of provisions, as well as the national wording, Terry's changes do not do violence to the national approach, and it is most important to get the bill introduced and enacted soon.

2 -- 4. O.k.

5. The insertion of the term "code" is an excellent idea.

6 & 7. O.k.

8. So far as I can tell at the moment, the applicability section (sec. 129) looks good.

9. I have not compared this draft word for word with the NCCUSL version, but, being somewhat familiar with the Alaska Legislature's drafting style, I assume that Terry's miscellaneous style changes are o.k.

10. Terry's cross reference to our existing statutory construction provisions is substantively o.k., and I am not

The Honorable Jay Kerttula
February 4, 1993

Page 3

Re: Draft bill proposing UCC changes (arts 2A, 3, 4, & 6)

requesting that the original NCCUSL language be restored. I should say, however, that I am slightly concerned about outsiders looking for the exact NCCUSL language in the cited provisions. But, again, it is most important to get this bill introduced soon, and I am not suggesting a change.

11 -- 13. O.k.

14. As indicated above, in my suggestions for change preceding this list of responses to Terry's points, I believe that the reference to AS 45.04.210 should be reinserted. I will write to the national experts to get their opinion on this. But, for now, it is important to get the bill introduced and moving.

15. Terry's change, based on the ULA version, reflects what appears to be an error in the ULA version. The following words appear in the official publication of the UCC by West Publishing Company under contract with NCCUSL, and should be reinserted in AS 45.03.102(a) (page 13, line 6), following "money": ", to payment orders governed by AS 45.14,".

16 & 17. O.k.

18. I think that Terry is right, but I am writing to the national experts to check on this point. In the meantime, proposed AS 45.03.415(a) (page 48, line 16) should remain as it appears in your draft.

19 & 20. O.k.

21. Terry is correct. The official NCCUSL version poses the two alternatives for subsec. (b). Subsection (c) is supposed to be there, regardless of which alternative is chosen for subsec. b. Terry has chosen Alternative A, and I believe that she has made the appropriate choice, but I will defer to the bankers on this one.

22 -- 25. O.k.

26. Terry's point is a good one. However, I recommend leaving the draft's provision alone and tracking the "official" NCCUSL version of AS 45.04.215.

27. I believe that Terry's draft is appropriate, and that the dollar amount should not be inserted. This is the approach taken

The Honorable Jay Kerttula
February 4, 1993

Page 4

Re: Draft bill proposing UCC changes (arts 2A, 3, 4, & 6)

in prior drafts of this part of your bill, including last legislature's HB 294. I heard no objections to it then.

28. This is a good point, comparable to the one Terry raised in connection with two provisions in your other UCC bill. However, to maintain as much consistency with the "official" NCCUSL version as possible, I recommend that we address the point by amending proposed AS 45.12.108(d), rather than deleting it. In the meantime, I will include this question with those I am sending to the national experts on this subject. My suggestion is that, at page 93, line 15, the following words be inserted in front of "in an action": "Notwithstanding Rule 82, Alaska Rules of Civil Procedure,".

29 & 30. O.k.

31. Again, Terry has raised a good point. I am inclined to think that the provision should be amended (at page 106, lines 25 and 26) simply to say "provided by statute." However, I prefer to leave proposed AS 45.12.304(c) as it appears in the draft until I hear from the national experts on this point.

32. O.k.

33. Another excellent point! I don't know the answer, but recommend keeping Terry's interpretation in the draft until I hear from the national experts. I will ask them about this point too.

34 & 35. O.k.

36. Terry's point is good, proposed AS 45.12.522(b) could be clearer. However, her assumption is correct, and I recommend that her draft's wording be retained until the official NCCUSL version is changed.

37. O.k.

38. Terry's point is good, but I think that her proposed solution is awkward. I recommend inserting commas around the intervening prepositional phrase, so that the references would read as follows: "After default, by the lessee under the lease contract, of the type described" This approach flows, makes

The Honorable Jay Kerttula

Page 5

February 4, 1993

Re: Draft bill proposing UCC changes (arts 2A, 3, 4, & 6)

the appropriate clarification, and most closely tracks the official version.

Phew!!!

Let me know if I can be of further assistance.

Yours truly,



Arthur H. Peterson
Uniform Law Commissioner
for Alaska

AHP/sh
Enclosures

cc w/enc.: Rest of Alaska's ULC Delegation:

Jay A. Rabinowitz

W. Grant Callow

Tamara Brandt Cook (Hand-Delivered)

L. S. Kurtz, Jr.

Deborah E. Behr (Hand-Delivered)

Terry Bannister, Legislative Counsel (Hand-Delivered)
Legislative Affairs Agency

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February 4, 1993

The Honorable Jay Kerttula
Alaska State Senate
Room 427, State Capitol
Juneau, AK 99801-1182

Re: Your draft bill on Uniform Commercial Code changes: Art. 2A (personal property leasing), Arts. 3 and 4 (negotiable instruments, etc.), and repeal of Art. 6 (bulk sales) LAA Work Order No. 8-LS0227\E

Dear Jay:

As you requested recently, I have reviewed the January 4, 1993 draft of this bill, accompanied by the December 31, 1992 cover memo from Terry Bannister to you. I have addressed the 38 points set out in her memo. The bill should now be ready for preparation in final form and early introduction.

In the art. 2A portion, the bill includes proposed AS 45.12.104(a)(4) (page 92, line 3), originally requested by the Department of Administration to make clear the relationship to the state's Procurement Code (existing AS 36.30). A spot check indicates that it also includes the NCCUSL's 1990 amendments to art. 2A.

As you also requested, you will find attached a brief description of the bill, citing bill section numbers as they appear in this draft. I could not keep it to one page, since the bill covers three major areas of the law and is 136 pages long. I trust that you will find this description helpful for press releases, committee discussion, and floor debate. The Department of Law, the Legislative Affairs Agency, and I have additional background material if you would care to see it.

Here are some changes to be made before introduction:

A. On page 11, line 25, "45.04.210 and" should be inserted in front of "45.04.211," to maintain a direct correspondence with the NCCUSL's numbering changes in art. 4.

sh/art/kerttula.lt2

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Re: Draft bill proposing UCC changes (arts 2A, 3, 4, & 6)

B. On page 13, line 6, after "money," insert, "to payment orders governed by AS 45.14,". This change picks up the NCCUSL's reference to the new art. 4A (funds transfers) in your other UCC bill.

C. On page 111, line 8, "filing" needs to be corrected to "recording," in proposed AS 45.12.309(i). This change from the NCCUSL wording was already made in (j)(2) of that section (page 111, line 13). It accommodates a Department of Natural Resources request, to conform to existing AS 40.17.110(b)(51).

D. On page 119, line 26, change "time" to read "times," to conform to official NCCUSL wording.

E. On page 134, line 8, in proposed AS 45.12.529(e), the "a" in front of "default" should be deleted. On the following line, "the" should be inserted in front of "lessee." These two minor changes conform to the NCCUSL's wording, and correct what appear to be typographical errors.

Here are my comments on Terry's 38 points, using her numbers:

1. Although I would not have made some of the rearrangements that Terry made in the sections cited, I have no real objection to them. While there is a value to maintaining the national sequence of provisions, as well as the national wording, Terry's changes do not do violence to the national approach, and it is most important to get the bill introduced and enacted soon.

2 -- 4. O.k.

5. The insertion of the term "code" is an excellent idea.

6 & 7. O.k.

8. So far as I can tell at the moment, the applicability section (sec. 129) looks good.

9. I have not compared this draft word for word with the NCCUSL version, but, being somewhat familiar with the Alaska Legislature's drafting style, I assume that Terry's miscellaneous style changes are o.k.

10. Terry's cross reference to our existing statutory construction provisions is substantively o.k., and I am not

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requesting that the original NCCUSL language be restored. I should say, however, that I am slightly concerned about outsiders looking for the exact NCCUSL language in the cited provisions. But, again, it is most important to get this bill introduced soon, and I am not suggesting a change.

11 -- 13. O.k.

14. As indicated above, in my suggestions for change preceding this list of responses to Terry's points, I believe that the reference to AS 45.04.210 should be reinserted. I will write to the national experts to get their opinion on this. But, for now, it is important to get the bill introduced and moving.

15. Terry's change, based on the ULA version, reflects what appears to be an error in the ULA version. The following words appear in the official publication of the UCC by West Publishing Company under contract with NCCUSL, and should be reinserted in AS 45.03.102(a) (page 13, line 6), following "money": ", to payment orders governed by AS 45.14,".

16 & 17. O.k.

18. I think that Terry is right, but I am writing to the national experts to check on this point. In the meantime, proposed AS 45.03.415(a) (page 48, line 16) should remain as it appears in your draft.

19 & 20. O.k.

21. Terry is correct. The official NCCUSL version poses the two alternatives for subsec. (b). Subsection (c) is supposed to be there, regardless of which alternative is chosen for subsec. (c). Terry has chosen Alternative A, and I believe that she has made the appropriate choice, but I will defer to the bankers on this one. (e. (b))

22 -- 25. O.k.

26. Terry's point is a good one. However, I recommend leaving the draft's provision alone and tracking the "official" NCCUSL version of AS 45.04.215.

27. I believe that Terry's draft is appropriate, and that the dollar amount should not be inserted. This is the approach taken

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in prior drafts of this part of your bill, including last legislature's HB 294. I heard no objections to it then.

28. This is a good point, comparable to the one Terry raised in connection with two provisions in your other UCC bill. However, to maintain as much consistency with the "official" NCCUSL version as possible, I recommend that we address the point by amending proposed AS 45.12.108(d), rather than deleting it. In the meantime, I will include this question with those I am sending to the national experts on this subject. My suggestion is that, at page 93, line 15, the following words be inserted in front of "in an action": "Notwithstanding Rule 82, Alaska Rules of Civil Procedure,".

29 & 30. O.k.

31. Again, Terry has raised a good point. I am inclined to think that the provision should be amended (at page 106, lines 25 and 26) simply to say "provided by statute." However, I prefer to leave proposed AS 45.12.304(c) as it appears in the draft until I hear from the national experts on this point.

32. O.k.

33. Another excellent point! I don't know the answer, but recommend keeping Terry's interpretation in the draft until I hear from the national experts. I will ask them about this point too.

34 & 35. O.k.

36. Terry's point is good, proposed AS 45.12.522(b) could be clearer. However, her assumption is correct, and I recommend that her draft's wording be retained until the official NCCUSL version is changed.

37. O.k.

38. Terry's point is good, but I think that her proposed solution is awkward. I recommend inserting commas around the intervening prepositional phrase, so that the references would read as follows: "After default, by the lessee under the lease contract, of the type described" This approach flows, makes

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the appropriate clarification, and most closely tracks the official version.

Phew!!!

Let me know if I can be of further assistance.

Yours truly,



Arthur H. Peterson
Uniform Law Commissioner
for Alaska

AHP/sh
Enclosures

cc w/enc.: Rest of Alaska's ULC Delegation:

Jay A. Rabinowitz
W. Grant Callow
Tamara Brandt Cook (Hand-Delivered)
L. S. Kurtz, Jr.
Deborah E. Behr (Hand-Delivered)

Terry Bannister, Legislative Counsel (Hand-Delivered)
Legislative Affairs Agency

DESCRIPTION OF BILL ON
UNIFORM COMMERCIAL CODE CHANGES:
PERSONAL PROPERTY LEASING, NEGOTIABLE INSTRUMENTS,
AND BULK SALES

With all other U.S. jurisdictions (except Louisiana, which has enacted parts of it), Alaska enacted the Uniform Commercial Code (UCC), promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL). This bill reflects a major effort to update the UCC. The bill has three basic parts: (1) a new art. 2A on personal property leasing (sec. 125 of the bill), (2) amendments to the UCC's arts. 3 and 4, regarding negotiable instruments and bank deposits and collections (secs. 14 through 117 and 127 of the bill); (3) repeal of UCC art. 6, on bulk sales (sec. 127 of the bill). (The other bill sections contain changes to accommodate those basic parts of the bill.) Benefits to Alaska of keeping its UCC up to date are enormous. These proposed changes, promulgated by the NCCUSL, are essential to business and consumers involved in commercial transactions; they will encourage a predictable and favorable business climate here.

Personal Property Leasing

UCC art. 2 (AS 45.02) deals with sales. Article 9 (AS 45.09) deals with secured transactions. But nothing currently deals with leasing of personal property, a multi-billion dollar industry. The new art. 2A (proposed AS 45.12) fills the gap.

Personal property being leased ranges from horses, cars, and moving vans, to heavy construction equipment and oil rigs. The new article deals with what are called "true" leases and "finance" leases. It tailors some concepts from the current art. 2. It provides statutory answers to a broad range of legal issues, covering such matters as offer and acceptance, warranties, mistake, failure to perform, risk of loss, and remedies. The current absence of these rules promotes litigation.

Negotiable Instruments and Bank Deposits and Collections

In the UCC, arts. 3 and 4 (AS 45.03 and 45.04, respectively) are companion articles. Article 3 provides for all negotiable instruments, including checks and certificates of deposit. Most checks are drawn upon bank accounts, and certificates of deposits are banking instruments. Amendments in this bill pertaining to these two articles are made primarily to recognize modern electronic technology and banking practices. In revising art. 3, some companion amendments to art. 4 (bank deposits and collections) and to art. 1 (general provisions) have been necessary. It has been said that "Negotiable instruments make the

economy go around." That is why it is important for Alaska to keep its law on the subject up to date.

Much of the language in present art. 3 is unnecessarily technical and archaic. This bill's revision reorganizes the material into a more logical sequence and significantly clarifies and modernizes the law, thus fixing numerous problems that have arisen over the past 40 years of experience with the UCC and negotiable instruments. One especially important feature is that the revision recognizes that there are two types of instruments -- notes and drafts -- which usually perform different functions and merit different treatment.

The revised art. 3 (with conforming amendments in arts. 1 and 4) provide numerous benefits to the public interest, to users of negotiable instruments, and to banks. Among the benefits are the following: certainty of the law; speed and reliability, by addressing new technologies; lower costs; reduced litigation, by removing troublesome issues; expansion of the definition of "good faith"; stricter standards for fiduciaries; improvements to the acceptability of bank obligations such as cashier checks; and a variety of other improvements of the law.

Bulk Sales

A "bulk sale" is one in which a business sells all or a large part of its inventory to a single buyer outside the ordinary course of business. Such a sale has also been called a "bulk transfer." One goal of the laws on this subject had been to protect creditors of such businesses from the proprietor who absconds with the proceeds of the sale. UCC art. 6 replaced a variety of earlier bulk sales laws in the states. All of them were enacted in a climate of smaller businesses that were localized in scope. But the credit environment has changed, so that the risk of the absconding merchandiser is no longer very great. Business creditors can evaluate creditworthiness far better than was the case when the UCC was first promulgated, and they can pursue absconding sellers with much less difficulty. New laws have partially overlapped art. 6, and more sophisticated and wide-spread inventory financing under art. 9 of the UCC has provided even more significant protections for creditors. Therefore, the NCCUSL recommended repeal of art. 6, but, as an alternative for states where this would be appropriate, also offered a thorough revision of art. 6. As of 1991, 14 states had addressed the issue, and 10 of them opted for the repeal approach. A group of 16 Alaska business law attorneys has written to say that they unanimously support the repeal approach offered in this bill.

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Juneau, Alaska 99801-2105

Rec'd.
AHT
Jan. 13 or 14, 1993

December 31, 1992

MEMORANDUM

SUBJECT: Uniform Commercial Code bill (Work Order No. 8-LS0227E)
TO: Senator Jalmar Kerttula
FROM: Theresa L. Bannister
Legislative Counsel

This memo accompanies the draft of the above-mentioned bill that you requested relating to the Uniform Commercial Code ("UCC"). The draft contains a revised chapter on negotiable instruments (AS 45.03), revisions to the chapter on bank deposits and collections (AS 45.04), a repeal of the chapter on bulk sales (AS 45.06), a new chapter on leases (AS 45.12), and other modifications of the UCC that are necessary to implement these changes.

As a starting point for drafting the bill, I have used the draft recommended by Art Peterson and prepared in part by the Department of Law last year.

The bill was prepared with the goal of balancing the use of our legislative drafting style with the need to keep the material uniform with other states. With that in mind, the following comments are brought to your attention. The references to "ULA" mean the Uniform Laws Annotated, which is the authority on UCC bills. } ?

- (✓) 1. Some of the sections were rearranged to comply with our drafting style (e.g. secs. 45.03.312, 45.03.605, 45.12.303, 45.12.309, 45.12.310, and 45.12.529).
 (✓) (✓) (✓) (✓) (✓) → Does (a) reflect the 1978 amend. memo? Yes.
- ✓ 2. Some parenthesized citations were blended into the text with words like "under" or "as provided in," particularly in AS 45.12. (E.g., secs. 45.01.201(45), 45.03.305(c), 45.12.518(b), and 45.12.523(a)(3)).
- ✓ 3. The word "any" was replaced with "an" or "a," or deleted, where appropriate.
- ✓ 4. To a limited degree, definitions were rearranged to comply with our drafting style.
- ✓ 5. A new term, "code," was inserted and defined to refer to the expanded UCC provided in the bill. The new term is particularly useful where a reference to the

Senator Jalmar Kerttula
December 31, 1992
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new chapter (AS 45.12, leases) is added but produces an unclear result. This was not necessary in the ULA because new chapters are added within the existing UCC numbering (e.g. the new chapter on leases is numbered "2A"), which we can't do in this case.

- ✓ 6. References to "his" and "her" were replaced with appropriate terms.
- ✓ 7. The structure of a sentence was changed when the sentence used a form such as "no delivery is necessary" (changed to "delivery is not necessary"). Examples are found in secs. 45.03.312(c)(2), 45.03.416(a)(5), 45.03.417(a)(3), 45.04.210, 45.12.303, and 45.12.309.
- ✓ 8. An applicability section was added to provide some guidance for the application of the amendments, repealers, and new chapter. Aside from the repeal of AS 45.06 (bulk sales), there was not much guidance on this in the ULA, and, except for the AS 45.06 language in (b) of the applicability section, the section is original drafting. The applicability section should be examined carefully to determine if it handles the transition as you want it handled.
- ✓ 9. Miscellaneous style changes were made.
- ✓ 10. Since sec. 45.01.102(e)(1) and (2) are essentially covered by AS 01.10.050(b) and (c), I retained the introductory language, deleted paragraphs (1) and (2), and added a cross reference to AS 01.10.050(b) and (c).
- ✓ 11. Sec. 45.01.105(b) was stylistically rearranged.
- ✓ 12. Since AS 45.01.109 is an exception to all other Alaska statutory law, a "notwithstanding" clause has been added to the section to reflect this. Also, the word "headings" is substituted for "captions" to conform to Alaska practice.
- ✓ 13. In sec. 45.01.201(44), the phrase "or endorsement," was deleted pursuant to the ULA.
- ✗ 14. In sec. 45.01.201(45), the reference to the present AS 45.04.208 (now found in sec. 45.04.210 of the bill) has been deleted based on logic and on the draft we received. However, the ULA does not make this deletion.
- ✗ 15. In sec. 45.03.102(a), the phrase, "to payment orders," was deleted pursuant to the ULA.
- ✓ 16. In secs. 45.03.103(c), 45.04.104(c), and 45.12.103(c), the section references were placed in parentheses.

- ✓ 17. Sec. 45.03.312 was added pursuant to the ULA. — 1991 amend.
- ✓ 18. I suggest that the reference in sec. 45.03.415(a) to "(b) - (d)" be changed to "(b) - (e)." The ULA uses "(b) - (d)," but it does not seem logical to exclude "(e)."
- ✓ 19. Sec. 45.03.419(c) was rewritten slightly to make it clearer.
- ✓ 20. In sec. 45.03.502(b)(1), "otherwise" was replaced with "other."
- ✓ 21. In sec. 45.04.106(c), subsec. (c) was added from the ULA. Subsec. (c) appears to be separate from the two alternatives that the ULA provided for subsec. (b).
- ✓ 22. In sec. 45.04.107, the phrase, "and under AS 45.03," was added pursuant to the ULA.
- ✓ 23. In sec. 45.04.201(a), "valid" was deleted pursuant to the ULA.
- ✓ 24. In AS 45.04.202, the catchline for the section was amended pursuant to the ULA.
- ✓ 25. In sec. 45.04.213(a)(2)(C), "in account" was replaced by "an account." The ULA uses "in," but that doesn't seem to make sense.
- 1/0. 26. Do you want to insert a reference to sec. 45.03.418(d) in sec. 45.04.215? Sec. 45.03.418(d) creates an exception to sec. 45.04.215. A cross-reference note under the statute could be used, but it would be easier for the reader to notice the exception if it were in the statute itself.
- 1/0. 27. In sec. 45.12.103(a)(5), do you want to set a maximum dollar amount for a lease to qualify as a consumer lease? The ULA allows this alternative.
- 1/0, amend 28. I recommend that sec. 45.12.108(d), which refers to the award of attorney fees, be deleted. Alaska already has a court rule generally providing for the award of attorney fees in a court action. The language of sec. 45.12.108(d) is designed for a jurisdiction that does not have such a court rule. Therefore, sec. 45.12.108(d) makes it unclear whether attorney fees are allowed in all UCC lease cases or only where the lessee claims unconscionability with respect to a consumer lease. To cure this problem, you could delete the subsection, clarify the subsection, or provide a letter of intent. Please keep in mind that although courts do give some consideration to letters of intent when interpreting statutes, letters of intent are not binding and it is best if the statute itself states its intent clearly.
- ✓ 29. In sec. 45.12.209(a), several words were added to conform to the ULA and to clarify the section.

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- ✓ 30. The language of sec. 45.12.219(b) was rewritten slightly from the ULA to reflect my understanding of it.
- ✗ 31. Sec. 45.12.304(c) does not appear to be clear. The use of the word "both" is susceptible of two meanings: (1) that the controlling rights have to be found in both sec. 45.12.304 and the certificate of title statute; or (2) that the controlling rights have to be found in either sec. 45.12.304 or the certificate of title statute. I suggest that the subsection be clarified on this point.
- ✓ 32. The order of the definitions was changed in sec. 45.12.309(j).
- (✓) 33. In sec. 45.12.310(e), the ULA employed a confusing reference: at the beginning of the subsection, it states "When under subsections (2) or (3) and (4)." (For our purposes, read "(b) or (c) and (d)" for "(2) or (3) and (4).") It is not clear whether the ULA intended "(2), or (3) and (4)" or "(2) or (3), and (4)." The bill draft contains our interpretation of the reference.
- ✓ 34. The heading for Article 4 (covering secs. 45.12.401 - 45.12.407) was changed by deleting the words "repudiated, substituted, and excused." Those words did not cover all that the article covers.
- ✓ 35. In sec. 45.12.507(a), several words were added pursuant to the ULA.
- ✓ 36. It is not clear whether sec. 45.12.522(b) applies just in insolvency cases. I assume that it does, due to the title of the section (which are made substantive in the UCC), but it is not clear.
- ✓ 37. In secs. 45.12.518(b), 45.12.519(a), 45.12.527(b), and 45.12.528(a), "under" has been used in place of "pursuant to."
- (✗) 38. In secs. 45.12.523, 45.12.524(a), 45.12.525(b), 45.12.527(a), 45.12.528(a), and 45.12.529(a) and (e), it is not clear what the phrase "of the type" refers to. It appears to refer to "default," so I suggest redoing the phrase to read "of the type of default."

If you wish to be provided with more details on the above comments, please advise.

If I may be of further assistance, please advise.

TLB:mi:gc:mi
92-165.mai

Enclosure

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MEMORANDUM

March 4, 1993

SUBJECT: Additional section affecting change made in CSSB 112 (L&C)
(Work Order No. 8-LS0227\O)

TO: Senator Tim Kelly
Chair
Senate Labor and Commerce Committee

FROM: Theresa L. Bannister *TB*
Legislative Counsel

This memo accompanies the final version that you requested of CSSB 112 (L&C). In that version, AS 45.09.312(a) is amended to add a provision indicating the priority of municipal tax liens under AS 29.45.300(b).

Please note that AS 45.09.301(a) - (b) appears to create an exception to the priorities established by AS 45.09.312. Therefore, in order to accomplish the apparent purpose of the amendment, it would be advisable to include a reference to AS 45.09.301 to the language added by the amendment. For example, the amendment might be written to read:

These sections and AS 45.09.301 may not be construed to defeat the prior and paramount position of a municipal tax lien under AS 29.45.300(b).

Since this bill has passed out of your committee, you may wish to pass this memo along to the next committee of referral, so that it may consider this addition.

If I may be of further assistance, please advise.

TLB:mi:pl
93-038.mai

Enclosure

*Josh -
for the file*

SUMMARY OF
SENATE BILLS 86 AND 112
"UNIFORM COMMERCIAL CODE"

THANK YOU, MR. PRESIDENT.

JUSTICE RABINOWITZ, FOR THE ALASKA SUPREME COURT, THE ALASKA UNIFORM COMMERCIAL CODE COMMISSIONERS, AND ATTORNEY GENERAL COLE REQUESTED LAST FALL THAT I FACILITATE INTRODUCTION OF LEGISLATION CHANGING AND UPDATING ALASKA'S UNIFORM COMMERCIAL CODE.

THESE BILLS AMEND ALASKA'S UNIFORM COMMERCIAL CODE TO BRING IT UP TO DATE WITH REGARD TO MODERN TECHNOLOGICAL INNOVATIONS CURRENTLY BEING USED BY THE BUSINESS AND COMMERCIAL COMMUNITIES IN THE STATE AND THE NATION.

AS SPONSOR, OR FACILITATOR OF THE BILLS IN THE SENATE, I WILL PROVIDE A BRIEF OVERVIEW OF EACH BILL.

I WILL BEGIN WITH SENATE BILL 86, ALSO KNOWN AS THE "FUNDS TRANSFERS" BILL.

GENERALLY SPEAKING, S.B. 86 WILL ENACT THE NEW ARTICLE 4A INTO THE STATE'S UNIFORM COMMERCIAL CODE. THE U.C.C. IS A COMPREHENSIVE CODIFICATION OF COMMERCIAL LAW THROUGHOUT THE COUNTRY.

UNTIL 1989, HOWEVER, THE U.C.C. DID NOT DEAL WITH FUNDS TRANSFERS BETWEEN COMMERCIAL ENTITIES. AS BUSINESS PRACTICE HAS COME TO RELY MORE HEAVILY ON THE SPEED, EFFICIENCY, RELIABILITY AND RELATIVELY LOW COST OF ELECTRONIC TECHNOLOGY, IT IS APPARENT THAT ALASKA'S COMMERCIAL LAWS NEED TO BE BROUGHT UP TO DATE.

THE NEW ARTICLE 4A EMBODIED IN S.B. 86 DOES THIS. THE PROVISIONS IN S.B. 86 HAVE ALREADY BEEN ADOPTED BY 44 OTHER STATES, INCLUDING NEW YORK, ILLINOIS AND CALIFORNIA--THE MAJOR FINANCIAL CENTERS FOR AMERICA.

THE SHEER VOLUME OF COMMERCIAL FUNDING TRANSACTIONS VIA MODERN TECHNOLOGY MAKES ENACTMENT OF S.B. 86 NECESSARY. IN 1989, A RECORD THREE TRILLION

DOLLARS WERE TRANSFERRED ON A SINGLE DAY--MORE MONEY THAN THE 1989 U.S. GROSS NATIONAL PRODUCT. THE AVERAGE INDIVIDUAL FUNDS TRANSFER IN 1989 WAS FIVE MILLION DOLLARS, AND THE AVERAGE DAILY TRANSFER WAS ONE TRILLION DOLLARS.

UNLESS THE PARTIES TO A TRANSACTION USE THE SAME BANK, A FUNDS TRANSFER, ON AVERAGE, INVOLVES AT LEAST FOUR ENTITIES: THE ORIGINATOR OF THE PAYMENT; THE BANK TO WHICH THE ORIGINATOR COMMUNICATES THE FIRST PAYMENT ORDER; THE BANK OF THE ENTITY RECEIVING THE ORDER; AND THE RECIPIENT OR BENEFICIARY.

BECAUSE THESE TRANSACTIONS ARE DONE ELECTRONICALLY, AND NOT IN CASH, A NUMBER OF QUESTIONS REGARDING RESPONSIBILITY AND LIABILITY ARISE. QUESTIONS SUCH AS: WHAT HAPPENS IF THE FIRST BANK MAKES A MISTAKE ON THE AMOUNT TO BE PAID? WHAT IF THE SECOND BANK FAILS TO NOTIFY THE RECIPIENT? WHAT HAPPENS IF THE ORIGINAL PAYMENT ORDER IS FRAUDULENT AND NOT ACTUALLY ISSUED BY THE

ORIGINATOR? WHO BEARS THE RISK OF LOSS AT A GIVEN TIME IN THE TRANSACTION PROCESS? AND WHAT CONSTITUTES ACCEPTANCE AND REJECTION OF A PAYMENT ORDER?

THESE AND OTHER QUESTIONS ARE ANSWERED IN THE ARTICLE 4A ENACTED BY SENATE BILL 86 WHICH, BASICALLY, ESTABLISHES THE RULES GOVERNING THE PAYMENT OF LARGE SUMS OF MONEY.

THE BILL PROVIDES A SIGNIFICANT IMPROVEMENT IN ALASKA COMMERCIAL LAW. IT WILL HELP KEEP ALASKA'S UNIFORM COMMERCIAL CODE UP TO DATE WHICH, IN TURN, HELPS ASSURE A FAVORABLE COMMERCIAL CLIMATE IN ALASKA--ONE THAT IS IN LINE WITH THE REST OF THE NATION AND CAN, ACCORDINGLY, HELP ENCOURAGE ECONOMIC DEVELOPMENT AND GROWTH IN ALASKA.

S.B. 86 HAS A ZERO FISCAL NOTE FROM THE DEPARTMENT OF LAW. IN ADDITION, FEDERAL FINANCIAL REGULATORS ARE ENCOURAGING INDIVIDUAL STATES TO ENACT THE PROVISIONS EMBODIED IN S.B. 86. TO BRING

THEIR RESPECTIVE STATE LAWS INTO COMPLIANCE WITH FEDERAL LAW. UNLESS STATES ADOPT THESE PROVISIONS, THE FEDERAL GOVERNMENT WILL STEP IN AND PERFORM THE REGULATORY AND ENFORCEMENT DUTIES RELATING TO FUNDS TRANSFERS.

THE PROVISIONS IN S.B. 86 HAVE BEEN ENDORSED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

SENATE BILL 112

SENATE BILL 112 ALSO MAKES AMENDMENTS TO ALASKA'S UNIFORM COMMERICAL CODE. IN MOST INSTANCES THESE CHANGES ARE DESIGNED TO BRING THE CODE UP TO DATE WITH THE REST OF THE COUNTRY.

THE FIRST CHANGE ADDS A NEW ARTICLE 2A TO THE EXISTING LAW. WHILE THE EXISTING LAW COVERS SALES AND SECURED TRANSACTIONS, THERE IS NO LANGUAGE RELATING TO PERSONAL PROPERTY LEASING.

PERSONAL PROPERTY BEING LEASED RANGES FROM CARS, HORSES, AND MOVING VANS TO CONSTRUCTION EQUIPMENT, OIL RIGS, AND TRACTORS.

ARTICLE 2A DEALS WITH WHAT ARE CALLED "TRUE" LEASES AND "FINANCE' LEASES. THE ARTICLE PROVIDES THE STATUTORY ANSWERS TO A BROAD RANGE OF LEGAL ISSUES, COVERING SUCH MATTERS AS OFFER AND ACCEPTANCE, WARRANTIES, MISTAKE, FAILURE TO PERFORM, RISK OF LOSS AND REMEDIES.

THE CURRENT ABSENCE OF THESE RULES PROMOTES LITIGATION.

ARTICLE 3 OF S.B. 112, FOR THE MOST PART, REORGANIZES THE EXISTING MATERIAL IN THE STATE CODE TO MAKE IT MORE CLEAR AND TO ACCOUNT FOR MODERN TECHNOLOGIES. THESE REVISIONS FIX MANY OF THE PROBLEMS THAT HAVE ARISEN OVER THE PAST 40 YEARS WITH THE UNIFORM COMMERCIAL CODE AND WITH NEGOTIABLE INSTRUMENTS. SOME OF THE CHANGES INCLUDED IN ARTICLE 3

AND ARTICLE 1 OF S.B. 112 ARE NECESSARY TO BRING THESE ARTICLES INTO COMPLIANCE WITH THE NEW LANGUAGE IN ARTICLE 4A AS IT APPEARS IN S.B. 86.

ONE IMPORTANT CHANGE IN ARTICLE 3 IS THAT THE REVISION RECOGNIZES THAT THERE ARE TWO TYPES OF INSTRUMENTS--NOTES AND DRAFTS--WHICH USUALLY PERFORM DIFFERENT FUNCTIONS AND, THEREFORE, MERIT DIFFERENT TREATMENT.

BENEFITS FROM ENACTING ARTICLE 3 OF S.B. 112 INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING: CERTAINTY OF THE LAW, SPEED AND RELIABILITY, LOWER COSTS, REDUCED LITIGATION, AND STRICTER STANDARDS FOR FIDUCIARIES.

SENATE BILL 112 REPEALS ARTICLE 6 OF THE PRESENT UNIFORM COMMERCIAL CODE. ARTICLE 6 DEALS WITH BULK SALES. A BULK SALE IS ONE IN WHICH A BUSINESS SELLS ALL OR A LARGE PART OF ITS INVENTORY TO A SINGLE BUYER OUTSIDE THE ORDINARY COURSE OF BUSINESS.

THE EXISTING LAW WAS DESIGNED TO PROTECT CREDITORS OF SUCH BUSINESSES FROM THE PROPRIETOR WHO ABSCONDS WITH THE PROCEEDS OF SUCH A SALE. THESE LAWS WERE ENACTED IN A CLIMATE OF SMALLER BUSINESSES.

BUT THE CREDIT ENVIRONMENT HAS CHANGED DRASTICALLY OVER THE YEARS, SO THAT THE RISK OF THE ABSCONDING PROPRIETOR IS NO LONGER VERY GREAT. IT IS NOW EASIER FOR BUSINESSES TO ESTABLISH THE CREDITWORTHINESS OF A PROPRIETOR OR MERCHANT, AND EASIER TO PURSUE THOSE FEW WHO DO "TAKE THE MONEY AND RUN".

IN ADDITION, UNDER ARTICLE 9 OF THE EXISTING CODE, PROTECTIONS FOR CREDITORS ARE MORE SIGNIFICANT THAN IN THE PAST.

BECAUSE OF THESE FACTORS, THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, AND A GROUP OF 16 ALASKA BUSINESS LAW ATTORNEYS,

HAVE RECOMMENDED THAT ARTICLE 6 BE REPEALED.

THIS BILL RECEIVED A ZERO FISCAL NOTE FROM THE DEPARTMENT OF LAW'S DIVISION OF LEGAL SERVICES. ACCORDING TO THE DEPARTMENT'S ANALYSIS ACCOMPANYING THIS FISCAL NOTE, THE BASIC CHANGES PROPOSED IN S.B. 112 ARE--AND I QUOTE:

". . .NEEDED TO HELP BRING ALASKA BUSINESSES AND CONSUMERS INVOLVED IN COMMERCIAL TRANSACTIONS UP TO DATE WITH BUSINESSES AND CONSUMERS IN THE REST OF THE COUNTRY." (END QUOTE).

BECAUSE OF THIS, AND THE OTHER REASONS I HAVE OUTLINED IN MY STATEMENT, IT IS MY HOPE THAT THE SENATE WILL PASS BOTH SENATE BILL 86 AND SENATE BILL 112.

(end statement)

**MUNICIPALITY OF ANCHORAGE
1993 LEGISLATIVE PROGRAM**

LEGISLATIVE ISSUES

TITLE: Amend A.S.45.09.312(a) Uniform Commercial Code

To clarify the Alaska Uniform Commercial Code with reference to a Municipality's prior and paramount lien against personal property on which taxes have been assessed, add the underlined:

"Sec. 45.09.312. Priorities among conflicting security interests in the same collateral. (a) The rules of priority stated in A.S. 45.09.301 - 45.09.318 and in the following sections govern where applicable: A.S. 45.04.208 with respect to the security interest of collecting banks, in items being collected, accompanying documents, and proceeds; A.S. 45.09.103 on security interests relating to other jurisdictions; A.S. 45.09.114 on consignments. Nothing in these sections shall be construed to defeat the prior and paramount position of the municipal tax liens established in A.S. 29.45.300.

Currently, Alaska's version of Article 9 of the Uniform Commercial Code makes no reference to the prior and paramount lien that a municipality has against property on which taxes have been assessed. In administering bankruptcy claims, this causes a great deal of additional work to point out to other secured creditors (usually banks) that the municipality's lien has priority over theirs. Most of the problems have arisen with business personal property taxes.

Contact: Jerry Anderson, Chief Fiscal Officer
Phone: 343-6610

(391)

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 2/11/93

FURTHER: JUDICIARY
FINANCE

Date of 5-Day Notice: 2-25-93
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3/5/93

L&C Committee considered SB 112

"An Act relating to the Uniform Commercial Code; amending Alaska Rules of Civil Procedure 8 and 82, and Alaska Rule of Evidence 402; and providing for an effective date."

and recommends:

replace with _____ CS SB 112 (L&C)

same title
 new title
 technical title change
(HB only)

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
DCED	3/2/93	✓	
LAW	2/18/93	✓	

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

OTHER RECOMMENDATIONS:

True Finance - No Rec
Other Recs No Rec
Commissioner's Rec NR

Tim Kelly - Do Pass

Chair: Signature and Recommendation

STATEMENT OF
SEN. JAY KERTTULA
ON
S.B. 86 AND S.B. 112
"UNIFORM COMMERCIAL CODE"
BEFORE THE
SENATE LABOR AND COMMERCE COMMITTEE
MARCH 2, 1993

GOOD AFTERNOON. I'D LIKE TO THANK COMMITTEE
CHAIRMAN SENATOR KELLY AND THE MEMBERS OF THE LABOR
AND COMMERCE COMMITTEE FOR SCHEDULING SENATE BILLS
86 AND 112 FOR A PUBLIC HEARING TODAY. THE BILLS
ARE COMPANION PIECES OF LEGISLATION AMENDING
ALASKA'S UNIFORM COMMERCIAL CODE.

AS SPONSOR OF THE BILLS IN THE SENATE, I WILL
PROVIDE A BRIEF OVERVIEW OF EACH BILL. I HAVE ALSO
ASKED LEGISLATIVE LEGAL COUNSEL AND REPRESENTATIVES
FOR THE DEPARTMENT OF LAW TO BE HERE TODAY TO EXPLAIN
SOME OF THE MORE TECHNICAL AND LEGAL ASPECTS OF THESE
BILLS.

I WILL BEGIN WITH SENATE BILL 86, ALSO KNOWN AS
THE "FUNDS TRANSFERS" BILL.

SPONSOR STATEMENT-SB 86 AND AB 112
PAGE 2

GENERALLY SPEAKING, SENATE BILL 86 BRINGS THE FUNDS TRANSFERS PORTION OF ALASKA'S UNIFORM COMMERCIAL CODE UP TO DATE WITH REGARD TO CURRENT ELECTRONIC TECHNOLOGY AS IT APPLIES TO MODERN BUSINESS PRACTICES.

S.B. 86 WILL ENACT THE NEW ARTICLE 4A INTO THE STATE'S UNIFORM COMMERCIAL CODE. THE U.C.C. IS A COMPREHENSIVE CODIFICATION OF COMMERCIAL LAW THROUGHOUT THE COUNTRY. UNTIL 1989, HOWEVER, THE U.C.C. DID NOT DEAL WITH FUNDS TRANSFERS BETWEEN COMMERCIAL ENTITIES. AS BUSINESS PRACTICE HAS COME TO RELY MORE HEAVILY ON THE SPEED, EFFICIENCY, RELIABILITY AND RELATIVELY LOW COST OF ELECTRONIC TECHNOLOGY, IT IS APPARENT THAT ALASKA'S COMMERCIAL LAWS BE BROUGHT UP TO DATE.

THE NEW ARTICLE 4A EMBODIED IN S.B. 86 DOES THIS. THE PROVISIONS IN S.B. 86 HAVE ALREADY BEEN ADOPTED BY 44 OTHER STATES, INCLUDING NEW YORK, ILLINOIS AND CALIFORNIA--THE MAJOR FINANCIAL CENTERS FOR AMERICA.

THE SHEER VOLUME OF COMMERCIAL FUNDING TRANSACTIONS VIA MODERN TECHNOLOGY MAKES ENACTMENT OF S.B. 86 NECESSARY. IN 1989, A RECORD THREE TRILLION DOLLARS WERE TRANSFERRED ON A SINGLE DAY--MORE MONEY THAN THE 1989 U.S. GROSS NATIONAL PRODUCT. THE AVERAGE INDIVIDUAL FUNDS TRANSFER IN 1989 WAS FIVE MILLION DOLLARS, AND THE AVERAGE DAILY TRANSFER WAS ONE TRILLION DOLLARS.

UNLESS THE PARTIES TO A TRANSACTION USE THE SAME BANK, A FUNDS TRANSFER, ON AVERAGE, INVOLVES AT LEAST FOUR ENTITIES: THE ORIGINATOR OF THE PAYMENT; THE BANK TO WHICH THE ORIGINATOR COMMUNICATES THE FIRST PAYMENT ORDER; THE BANK OF THE ENTITY RECEIVING THE ORDER; AND THE RECIPIENT OR BENEFICIARY.

BECAUSE THESE TRANSACTIONS ARE DONE ELECTRONICALLY, AND NOT IN CASH, A NUMBER OF QUESTIONS REGARDING RESPONSIBILITY AND LIABILITY ARISE. QUESTIONS SUCH AS: WHAT HAPPENS IF THE FIRST

SPONSOR STATEMENT--SB 86 AND SB 112
PAGE 4

BANK MAKES A MISTAKE ON THE AMOUNT TO BE PAID? WHAT
IF THE SECOND BANK FAILS TO NOTIFY THE RECIPIENT?
WHAT HAPPENS IF THE ORIGINAL PAYMENT ORDER IS
FRAUDULENT AND NOT ACTUALLY ISSUED BY THE
ORIGINATOR? WHO BEARS THE RISK OF LOSS AT A GIVEN
TIME IN THE TRANSACTION PROCESS? AND WHAT
CONSTITUTES ACCEPTANCE AND REJECTION OF A PAYMENT
ORDER?

THESE AND OTHER QUESTIONS ARE ANSWERED IN THE
ARTICLE 4A ENACTED BY SENATE BILL 86 WHICH,
BASICALLY, ESTABLISHES THE RULES GOVERNING THE
PAYMENT OF LARGE SUMS OF MONEY.

THE BILL PROVIDES A SIGNIFICANT IMPROVEMENT IN
ALASKA COMMERCIAL LAW. IT WILL HELP KEEP ALASKA'S
UNIFORM COMMERCIAL CODE UP TO DATE WHICH, IN TURN,
HELPS ASSURE A FAVORABLE COMMERCIAL CLIMATE IN
ALASKA--ONE THAT IS IN LINE WITH THE REST OF THE
NATION AND CAN, ACCORDINGLY, HELP ENCOURAGE
ECONOMIC DEVELOPMENT AND GROWTH IN ALASKA.

SPONSOR STATEMENT-SB 86 AND SB 112
PAGE 5

S.B. 86 HAS A ZERO FISCAL NOTE FROM THE DEPARTMENT OF LAW. IN ADDITION, FEDERAL FINANCIAL REGULATORS ARE ENCOURAGING INDIVIDUAL STATES TO ENACT THE PROVISIONS EMBODIED IN S.B. 86. TO BRING THEIR RESPECTIVE STATE LAWS INTO COMPLIANCE WITH FEDERAL LAW. UNLESS STATES ADOPT THESE PROVISIONS, THE FEDERAL GOVERNMENT WILL STEP IN AND PERFORM THE REGULATORY AND ENFORCEMENT DUTIES RELATING TO FUNDS TRANSFERS.

THE PROVISIONS IN S.B. 86 HAVE BEEN ENDORSED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

SENATE BILL 112

SENATE BILL 112, IN GENERAL, ALSO MAKES AMENDMENTS TO ALASKA'S UNIFORM COMMERICAL CODE. IN MOST INSTANCES THESE CHANGES ARE DESIGNED TO BRING THE CODE UP TO DATE WITH THE REST OF THE COUNTRY.

SPONSOR STATEMENT-SB 86 AND SB 112
PAGE 6

THE FIRST CHANGE ADDS A NEW ARTICLE 2A TO THE EXISTING LAW. WHILE THE EXISTING LAW COVERS COMMERCIAL PROPERTY LEASES, THERE IS NO LANGUAGE RELATING TO PERSONAL PROPERTY LEASING.

PERSONAL PROPERTY BEING LEASED RANGES FROM CARS, HORSES, AND MOVING VANS TO CONSTRUCTION EQUIPMENT AND OIL RIGS.

ARTICLE 2A DEALS WITH WHAT ARE CALLED "TRUE" LEASES AND "FINANCE" LEASES. THE ARTICLE PROVIDES THE STATUTORY ANSWERS TO A BROAD RANGE OF LEGAL ISSUES, COVERING SUCH MATTERS AS OFFER AND ACCEPTANCE, WARRANTIES, MISTAKE, FAILURE TO PERFORM, RISK OF LOSS AND REMEDIES.

THE CURRENT ABSENCE OF THESE RULES PROMOTES LITIGATION.

ARTICLE 3 OF S.B. 112, FOR THE MOST PART, REORGANIZES THE EXISTING MATERIAL IN THE STATE CODE TO MAKE IT MORE CLEAR AND TO ACCOUNT FOR MODERN

TECHNOLOGIES. THESE REVISIONS FIX MANY OF THE PROBLEMS THAT HAVE ARISEN OVER THE PAST 40 YEARS WITH THE UNIFORM COMMERCIAL CODE AND WITH NEGOTIABLE INSTRUMENTS. SOME OF THE CHANGES INCLUDED IN ARTICLE 3 AND ARTICLE 1 OF S.B. 112 ARE NECESSARY TO BRING THESE ARTICLES INTO COMPLIANCE WITH THE NEW LANGUAGE IN ARTICLE 4A AS IT APPEARS IN S.B. 86.

ONE IMPORTANT CHANGE IN ARTICLE 3 IS THAT THE REVISION RECOGNIZES THAT THERE ARE TWO TYPES OF INSTRUMENTS--NOTES AND DRAFTS--WHICH USUALLY PERFORM DIFFERENT FUNCTIONS AND, THEREFORE, MERIT DIFFERENT TREATMENT.

BENEFITS FROM ENACTING ARTICLE 3 OF S.B. 112 INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING: CERTAINTY OF THE LAW, SPEED AND RELIABILITY, LOWER COSTS, REDUCED LITIGATION, AND STRICTER STANDARDS FOR FIDUCIARIES.

SPONSOR STATEMENT-SB 86 & SB 112
PAGE 8

FINALLY, SENATE BILL 112 SEEKS TO REPEAL ARTICLE 6 OF THE PRESENT UNIFORM COMMERCIAL CODE. ARTICLE 6 DEALS WITH BULK SALES. A BULK SALE IS ONE IN WHICH A BUSINESS SELLS ALL OR A LARGE PART OF ITS INVENTORY TO A SINGLE BUYER OUTSIDE THE ORDINARY COURSE OF BUSINESS.

THE EXISTING LAW WAS DESIGNED TO PROTECT CREDITORS OF SUCH BUSINESSES FROM THE PROPRIETOR WHO ABSCONDS WITH THE PROCEEDS OF SUCH A SALE. THESE LAWS WERE ENACTED IN A CLIMATE OF SMALLER BUSINESSES.

BUT THE CREDIT ENVIRONMENT HAS CHANGED DRASTICALLY OVER THE YEARS, SO THAT THE RISK OF THE ABSCONDING PROPRIETOR IS NO LONGER VERY GREAT. IT IS NOW EASIER FOR BUSINESSES TO ESTABLISH THE CREDITWORTHINESS OF A PROPRIETOR OR MERCHANTISER, AND EASIER TO PURSUE THOSE FEW WHO DO "TAKE THE MONEY AND RUN".

SPONSOR STATEMENT-SB 86 AND SB 112
PAGE 9

IN ADDITION, UNDER ARTICLE 9 OF THE EXISTING CODE, PROTECTIONS FOR CREDITORS ARE MORE SIGNIFICANT THAN IN THE PAST.

BECAUSE OF THESE FACTORS, THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, AND A GROUP OF 16 ALASKA BUSINESS LAW ATTORNEYS, HAVE RECOMMENDED THAT ARTICLE 6 BE REPEALED. AS OF 1991, 14 STATES HAD APPROACHED THIS ISSUE AND TEN OF THEM OPTED FOR THE REPEAL APPROACH ENACTED IN SENATE BILL 112.

THIS BILL RECEIVED A ZERO FISCAL NOTE FROM THE DEPARTMENT OF LAW'S DIVISION OF LEGAL SERVICES. ACCORDING TO THE DEPARTMENT'S ANALYSIS ACCOMPANYING THIS FISCAL NOTE, THE BASIC CHANGES PROPOSED IN S.B. 112 ARE--AND I QUOTE:

". . .NEEDED TO HELP BRING ALASKA BUSINESSES AND CONSUMERS INVOLVED IN COMMERCIAL TRANSACTIONS UP TO DATE WITH BUSINESSES AND CONSUMERS IN THE REST OF THE COUNTRY." (END QUOTE).

SPONSOR STATEMENT-SB 86 AND SB 112
PAGE 10

BECAUSE OF THIS, AND THE OTHER REASONS I HAVE
OUTLINED IN MY STATEMENT, IT IS MY HOPE THAT THIS
COMMITTEE WILL LOOK FAVORABLY ON BOTH SENATE BILL 86
AND SENATE BILL 112, GIVING IT A "DO PASS"
RECOMMENDATION.

(end statement)

**A Few Facts About
The Uniform Commercial Code,
Article 2A – Leases**

Purpose: To provide states with a legal framework for any transaction, regardless of form, that creates a lease.

Origin: Completed by the Uniform Law Commissioners in 1987 and amended in 1990.

Endorsed by: American Bar Association
American Law Institute

**State
Adoptions of
1987 Act:**

Florida
Oregon

South Dakota
Utah

**Adoptions with
1990 Amendments:**

Alabama
Arizona
California
Colorado
Delaware
District of Columbia
Hawaii
Illinois
Indiana
Kansas
Kentucky
Maine
Michigan
Minnesota

Missouri
Montana
Nebraska
Nevada
New Mexico
North Dakota
Ohio
Oklahoma
Pennsylvania
Rhode Island
Virginia
Wisconsin
Wyoming

**1993
Introductions:**

Maryland
Massachusetts
New Hampshire

New Jersey
West Virginia

For any further information regarding Article 2A of the Uniform Commercial Code, please contact John McCabe or Katie Robinson at 312-915-0195.

(2/1/93)

STATE THAT HAVE
ADOPTED U.C.C. CHANGES

A Few Facts About Revised Article 3 of the UCC

(With Conforming and Miscellaneous Amendments to Articles 1 and 4)

Purpose: To update provisions of the UCC dealing with payment by checks and other paper instruments to provide essential rules for the new technologies and practices in payment systems.

Origin: Completed by the Uniform Law Commissioners in 1990.

Endorsed by: American Bar Association
American Law Institute

State Adoptions:

Arkansas	Missouri
California	Montana
Connecticut	Nebraska
Florida	New Mexico
Hawaii	North Dakota
Illinois	Oklahoma
Kansas	Pennsylvania
Louisiana	Virginia
Minnesota	Wyoming
Mississippi	

1993 Introductions:

Arizona	New Hampshire
Massachusetts	West Virginia

For any further information regarding Revised Article 3 of the Uniform Commercial Code (with conforming and miscellaneous amendments to Articles 1 and 4), please contact John McCabe or Katie Robinson at 312-915-0195.

(2/1/93)

A Few Facts About
REVISED ARTICLE 6 OF THE UNIFORM COMMERCIAL CODE

PURPOSE: To provide states with the option of repealing or revising current Article 6 of the UCC.

ORIGIN: Completed by the Uniform Law Commissioners in 1989.

ENDORSED BY: American Bar Association
American Law Institute

STATE ADOPTIONS
OF REVISED UCC6:

Arizona
California
Hawaii
Oklahoma
Utah

STATE REPEALS
OF UCC6:

Arkansas	Montana
Colorado	Nebraska
Illinois	Nevada
Kansas	New Mexico
Kentucky	Oregon
Louisiana	Pennsylvania
Maine	West Virginia
Minnesota	Wyoming

INTRODUCTIONS
TO REPEAL UCC6:

New Hampshire
New Jersey
North Dakota

INTRODUCTIONS
TO REVISE UCC6:

For any further information regarding the revised Article 6 of the Uniform Commercial Code, please contact John McCabe or Katie Robinson at 312-915-0195.

DESCRIPTION OF BILL ON
UNIFORM COMMERCIAL CODE CHANGES:
PERSONAL PROPERTY LEASING, NEGOTIABLE INSTRUMENTS,
AND BULK SALES

With all other U.S. jurisdictions (except Louisiana, which has enacted parts of it), Alaska enacted the Uniform Commercial Code (UCC), promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL). This bill reflects a major effort to update the UCC. The bill has three basic parts: (1) a new art. 2A on personal property leasing (sec. 125 of the bill), (2) amendments to the UCC's arts. 3 and 4, regarding negotiable instruments and bank deposits and collections (secs. 14 through 117 and 127 of the bill); (3) repeal of UCC art. 6, on bulk sales (sec. 127 of the bill). (The other bill sections contain changes to accommodate those basic parts of the bill.) Benefits to Alaska of keeping its UCC up to date are enormous. These proposed changes, promulgated by the NCCUSL, are essential to business and consumers involved in commercial transactions; they will encourage a predictable and favorable business climate here.

Personal Property Leasing

UCC art. 2 (AS 45.02) deals with sales. Article 9 (AS 45.09) deals with secured transactions. But nothing currently deals with leasing of personal property, a multi-billion dollar industry. The new art. 2A (proposed AS 45.12) fills the gap.

Personal property being leased ranges from horses, cars, and moving vans, to heavy construction equipment and oil rigs. The new article deals with what are called "true" leases and "finance" leases. It tailors some concepts from the current art. 2. It provides statutory answers to a broad range of legal issues, covering such matters as offer and acceptance, warranties, mistake, failure to perform, risk of loss, and remedies. The current absence of these rules promotes litigation.

Negotiable Instruments and Bank Deposits and Collections

In the UCC, arts. 3 and 4 (AS 45.03 and 45.04, respectively) are companion articles. Article 3 provides for all negotiable instruments, including checks and certificates of deposit. Most checks are drawn upon bank accounts, and certificates of deposits are banking instruments. Amendments in this bill pertaining to these two articles are made primarily to recognize modern electronic technology and banking practices. In revising art. 3, some companion amendments to art. 4 (bank deposits and collections) and to art. 1 (general provisions) have been necessary. It has been said that "Negotiable instruments make the

BILL DESCRIPTION

economy go around." That is why it is important for Alaska to keep its law on the subject up to date.

Much of the language in present art. 3 is unnecessarily technical and archaic. This bill's revision reorganizes the material into a more logical sequence and significantly clarifies and modernizes the law, thus fixing numerous problems that have arisen over the past 40 years of experience with the UCC and negotiable instruments. One especially important feature is that the revision recognizes that there are two types of instruments -- notes and drafts -- which usually perform different functions and merit different treatment.

The revised art. 3 (with conforming amendments in arts. 1 and 4) provide numerous benefits to the public interest, to users of negotiable instruments, and to banks. Among the benefits are the following: certainty of the law; speed and reliability, by addressing new technologies; lower costs; reduced litigation, by removing troublesome issues; expansion of the definition of "good faith"; stricter standards for fiduciaries; improvements to the acceptability of bank obligations such as cashier checks; and a variety of other improvements of the law.

Bulk Sales

A "bulk sale" is one in which a business sells all or a large part of its inventory to a single buyer outside the ordinary course of business. Such a sale has also been called a "bulk transfer." One goal of the laws on this subject had been to protect creditors of such businesses from the proprietor who absconds with the proceeds of the sale. UCC art. 6 replaced a variety of earlier bulk sales laws in the states. All of them were enacted in a climate of smaller businesses that were localized in scope. But the credit environment has changed, so that the risk of the absconding merchandiser is no longer very great. Business creditors can evaluate creditworthiness far better than was the case when the UCC was first promulgated, and they can pursue absconding sellers with much less difficulty. New laws have partially overlapped art. 6, and more sophisticated and wide-spread inventory financing under art. 9 of the UCC has provided even more significant protections for creditors. Therefore, the NCCUSL recommended repeal of art. 6, but, as an alternative for states where this would be appropriate, also offered a thorough revision of art. 6. As of 1991, 14 states had addressed the issue, and 10 of them opted for the repeal approach. A group of 16 Alaska business law attorneys has written to say that they unanimously support the repeal approach offered in this bill.

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 112

ANALYSIS (Continued):

This bill makes substantial amendments to the state's Uniform Commercial Code (UCC) under AS 45.01- AS 45.09 and AS 45.12. This bill is a major effort to update Alaska's UCC by adding a new article (Art. 2A) on personal property leasing; amending the UCC's Arts. 3 and 4, regarding negotiable instruments and bank deposits and collections; repealing UCC Art. 6, on bulk sales; and making other changes in the UCC that are necessary to accommodate the basic changes being made in the bill. These basic changes have been proposed by the National Conference of Commissioners on Uniform State Laws (NCCUSL), and they are needed to help bring Alaska business and consumers involved in commercial transactions up to date with businesses and consumers in the rest of the country. Because the bill deals with transactions between private parties it will not have a fiscal impact for the Department of Law. To the extent that the bill impacts state-funded loan and investment programs, it should have a beneficial effect.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 112

Revision Date: February 18, 1993

Title: "An Act relating to the Uniform Commercial Code..."

Department Affected: Department of Law

BRU: Legal Services

Component: Operations

Sponsor: Senator Kerttula

Requestor: Senator Kerttula

COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE FUND SOURCE:						
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FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

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

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard I. Peques

Prepared by: Richard I. Peques, Director

Phone: 465-3672

Division: Administrative Services Division

Date: February 18, 1993

Richard I. Peques/AR

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law

Date: February 18, 1993

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DEPT. OF LAW'S FISCAL
NOTE & POSITION PAPER

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 112

Revision Date: _____
 Title: An Act relating to the UCC

 Sponsor: Senator Kerttula
 Requestor: _____

Department Affected: Commerce and Economic Development
 BRU: Banking, Securities and Corporations
 Component: _____
 COMPONENT SERIAL NO. 1233

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year (FY 93) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director
 Division: Banking, Securities and Corporations

Phone: 465-2521
 Date: _____

Approved by Commissioner: Paul Fuhs
 Agency: Commerce and Economic Development

Date: 3-2-93

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