

HB

767

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS

POUCH D
JUNEAU, ALASKA 99811

February 27, 1980

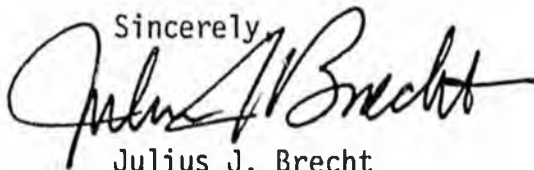
Honorable Fred F. Zharoff
Chairman, Foreign Investment Committee
House of Representatives
Mail Stop: 3100
Juneau, Alaska 99811

Dear Mr. Zharoff:

Please find attached a signed copy of my memorandum giving a section-by-section analysis along with the fiscal note on HB 767.

As you know, we discussed the bill this past week in your office. I would be happy to discuss HB 767 and the amendments to SB 112 with you at your convenience.

Sincerely,



Julius J. Brecht
Director

JJB:aw
Enclosure

MEMORANDUM

State of Alaska

TO: Members of the Committee

DATE: February 22, 1980

FILE NO:

TELEPHONE NO:

FROM: Julius J. Brecht, Director
Division of Banking & Securities
Department of Commerce & Economic
Development

SUBJECT: Section-by-Section
Analysis of HB 767

This bill, at least in part, evolved out of discussions between Pat Dougherty (on contract for the Resources Committee to conduct a study of foreign investment in the Alaska seafood industry), the division staff, and myself. However, I have not had the opportunity to review and comment on the bill until now.

Much of the discussion of the intent of the bill centers on what constitutes "control" of a corporation sufficient to require reporting by an alien affiliate. Furthermore, there are jurisdictional questions as to whether the department can, as a practical matter, get corporation A doing business in Alaska to report on its affiliation with corporation B, located in some other state which is, in turn, affiliated with corporation C located in some other country. I have requested two opinions from the Department of Law in this regard, but have not as yet received them. Much of the analysis of whether or not the department can accomplish what the committee wants, i.e., disclosure of corporations C's involvement in A, using the example above, depends on those opinions. The opinions should be out within the next week or so.

Nevertheless, I do have the following specific comments regarding the provisions of the bill with the qualifications just discussed. The "Sec." number refers to the sections of the bill:

Sec. 1 (AS 10.05.250). This section makes a number of drafting style changes regarding the reorganization of a corporation, and, in addition, it requires a specific description of the nature of the affiliation between a surviving or controlling corporation and its alien affiliation. A similar requirement is imposed on domestic corporations at the time of incorporation (See, Sec. 3), foreign corporations in applying for a certificate of authority under AS 10.05 (See, Sec. 7), and on both domestic and foreign corporations at the time of submission of their corporate annual reports (See, Sec. 9). Presumably, one is to read the nature of the affiliation in the context of the definition of "affiliate" found at Sec. 14, however, there may be some difficulty in interpretation of this requirement on the part of the filer. See, Sec. 14 for further discussion.

Sec. 2 (AS 10.05.255(a)(3)). This provision requires that the articles of incorporation of a domestic corporation incorporating after the effective date of the bill must include reference to a code number identifying the nature of its business activity. A similar requirement is imposed by the bill on domestic and foreign corporations filing their annual corporate reports with the department (See, Sec. 8) and for applications for certificate of authority for foreign corporations wishing to do business in the State (See, Sec. 6). The proposed amendments submitted by the division to SB 112, include requiring that corporations furnish information on the "primary business activities" of the corporation in their biennial corporate reports. The division would very likely use the SIC code presently used by the Department of Revenue in issuing business licenses. However, I suggest that the provision on business activity not be specifically tied to a "code," i.e., I recommend that the approach taken in the amendments to SB 112 be used.

Sec. 3 (AS 10.05.255(a)(13)). This section requires that the articles of incorporation of a domestic corporation include a specific description of the nature of the affiliation between the corporation and its alien affiliates. See, Sec. 1.

Sec. 4 (AS 10.05.519(a)(1)). This section reduces the delinquency period from six to three months for purposes of the department to involuntarily dissolve a corporation. The amendments to SB 112 provide for a two-month period. That amendment is preferred.

Sec. 5 (AS 10.05.519(a)(6)). This section adds a new ground for the department to involuntarily dissolve a corporation and that being a misrepresentation of a material matter in an application, report, affidavit, or other document submitted under the chapter. It should be noted that similar language already applies to foreign corporations under AS 10.05.675(5). The provision of Sec. 519(a)(6) ties into AS 10.05.777 providing for interrogatories by the commissioner, and also will complement AS 10.05.783, providing that it is a misdemeanor to fail to answer truthfully such interrogatories. It should be noted that the amendments to SB 112 provide, in addition, that a domestic corporation may be involuntarily dissolved, if it is 30 days delinquent in filing a notice of change of an office, director, alien affiliate, or five percent shareholder.

Sec. 6 (AS 10.05.675(5)). This section requires that a foreign corporation, in applying for a certificate of authority to do business in Alaska, must give a code indicating the primary business activity of the corporation. See, Sec. 2 discussion. It should be noted that more than one code might apply to the operations of a corporation.

Sec. 15 (AS 10.05.825(20)). The definition of "person" is greatly expanded to include joint ventures, companies (i.e., unincorporated businesses), firms, societies, and estates. There may be some difficulty in applying this definition on a case-by-case basis. See, Sec. 14 for further discussion.

Sec. 16 (AS 10.05.825(22)). A new definition is provided for "alien" in an attempt to clean up the language of AS 10.05.702(8) and 825 (18). In addition, a definition of "state" is provided although I am not sure that it is needed.

Sec. 17. This section establishes the effective date of the bill as January 1, 1981. However, if the division is to be ready to process the additional corporate report data coming in at that time, additional personnel should be in place and familiar with the operation. I recommend that the effective date of the bill should be July 1, 1981.

In addition to the above comments, I would recommend that the definition of the "commissioner" be amended to mean "the commissioner of commerce and economic development or his designee." In this way the investigative responsibilities required by the bill can be handled directly by the division similar to the investigations conducted by the division in administering the Alaska Securities Act and the Alaska Uniform Lands Sales Practices Act.

Furthermore, at present, AS 10.05 does not prohibit an entity from holding itself out as a corporation when, in fact, it is not a domestic corporation or registered as a foreign corporation doing business in the state. The division has been made aware of at least one example where the term "Inc." is used by a business in Anchorage when, in fact, it is not registered under AS 10.05. This misrepresentation is not in the best interest of the Alaskan public. I recommend that appropriate language be added to make it unlawful for one to hold themselves out as incorporated when, in fact, they are not.

My comments on this bill have been necessarily brief. Several similar provisions are also found in the amendments to SB 112. It is my hope that the provisions of the two bills can be made compatible. I stand ready to discuss the bill at the convenience of the committee.

JJB/sa5/2

FISCAL NOTE

REQUEST

Bill/Resolution No. HB 767

Title Act Relating to Disclosing Alien Affiliates

Requested by Resources Committee

Date _____

II. FISCAL DETAIL

Agency Affected Commerce & Economic Development

Program Category Affected Consumer Protection

BRU, Program, or Subprogram(s) Affected Banking, Securities, Corporations

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81 *	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES		37.0	74.0	75.0	75.0	76.0
200 TRAVEL		5.0	10.0	10.0	10.0	10.0
300 CONTRACTUAL		15.0	8.0	9.0	10.0	11.0
400 COMMODITIES		2.0	2.0	2.0	2.0	2.0
500 EQUIPMENT		5.0	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		64.0	94.0	96.0	97.0	99.0

FUNDING (Thousands of Dollars)

	FY 80	FY 81 *	FY 82	FY 83	FY 84	FY 85
GENERAL FUND		64.0	94.0	96.0	97.0	99.0
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 80	FY 81 *	FY 82	FY 83	FY 84	FY 85
FULL TIME		3	3	3	3	3
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The above figures are based on a number of assumptions: 1) that approximately 10% of the business corporations or 1000 corporations have foreign affiliates (the division is aware of approximately 500 that have filed alien affiliate information, however, because of the confusion raised by the language of AS 10.05.702(8) and 10.05.825(18) there may be at least another 500 corporations that should file); 2) that the division could send out letters of inquiry to corporations on file that have not filed alien affiliate information either on a selective basis or to all of them asking specific questions about alien affiliation; 3) that the division could in addition review the filings of upwards of 100 to 200 corporations with some amount of detail; 4) that in addition the division could investigate in more detail and pursue upwards of 20 corporations that either resist or otherwise require comprehensive investigative effort to gain the information required by the bill; 5) that a clear definition of "control" can be devised in the best interest of the reporting corporations and the division in conducting investigations;

IV. DATE 2/22/80

PREPARED BY Julius J. Brecht, Director

AGENCY Division of Banking & Securities

PHONE 465-2521

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

6) that the Department of Law can provide the legal support necessary to pursue discovery of corporate records located outside of the state and can demonstrate in actions brought in courts in other states that ^{there} exists sufficient control between the corporation doing business in Alaska and an affiliate once, twice, or more removed doing business in another country; 7) that the Department of Law would be responsible for its own expenses in supporting the division on the investigations.

The implementation of the program under the above assumptions would require a trained investigator, and two administrative/clerical people to process the filings and aid in investigations. The travel budget would be primarily for the investigator but also include allowances for witness travel for enforcement actions. The contractual budget includes provision for redesign and printing of forms and data processing revisions, maintenance, and operation of the on line data system with alien affiliate and other information required by the bill. The commodities/equipment budget would include necessities for the three new employees including a micro fiche reader.

- * It should be pointed out that the division recommends that the bill become effective on July 1, 1980 rather than January 1, 1981. See, bill analysis. However, this fiscal note has been prepared using the January effective date.

STATE OF ALASKA
Inter-Department Route Slip

TO:
MAIL STATION NUMBER 3100

DEPARTMENT House of Representatives

ATTENTION House Resources Comm.

- | | |
|--|--|
| <input type="checkbox"/> Approval | <input type="checkbox"/> Note & Return |
| <input type="checkbox"/> Signature | <input type="checkbox"/> Initial & Return |
| <input type="checkbox"/> Comment | <input type="checkbox"/> Return As Requested |
| <input type="checkbox"/> Contact Me | <input type="checkbox"/> Return For Approval |
| <input type="checkbox"/> Prepare Reply | <input type="checkbox"/> Necessary Action |
| <input type="checkbox"/> For Your File | <input type="checkbox"/> Your Information |

Remarks:

H-13 767

FROM:
MAIL STATION NUMBER 0800

DEPARTMENT Commerce + Econ. Dev.

BY D. Cook DATE 2/26/80

02-002 (REV. 10/73)

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

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Bill/Resolution No. HB 767

Title Act Relating to Disclosing Alien Affiliates

Requested by Resources Committee

Date _____

II. FISCAL DETAIL

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(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

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PREPARED BY Julius J. Brecht Director

AGENCY Division of Banking & Securities

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Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

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(9)

COMMITTEE REPORT

HOUSE

2/14/80

FURTHER:

Date: _____

Mr. Speaker:

The Committee on RESOURCES has had HB 767

"An Act relating to the disclosure of alien affiliates in Alaska businesses; and providing for an effective date."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

ALASKA STATE LEGISLATURE

ELEVENTH Legislature SECOND... Session

HOUSE BILL NO. 767

By THE RESOURCES COMMITTEE

7403
2/14/80

"An Act relating to the disclosure of alien affiliates in Alaska businesses; and providing for an effective date."

Alien affiliates

introduced in the House 2/14, 1980

HISTORY IN THE HOUSE

1980

Feb. 14

Read first time and referred to Committee on Resources

Reported back with recommendation that

Read second time and

Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed
Signed by Speaker
Sent to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19

Read first time and referred to Committee on

Reported back with recommendation that

Read second time and

Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed
Signed by President
Returned to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19

Received from Senate

Reported correctly enrolled

Sent to Governor

..... By Governor

Filed with Lt. Governor

Chapter No.