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481

STATE OF ALASKA
THE LEGISLATURE

POUCH 4 - STATE CAPITOL
JUNEAU, ALASKA 99801
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 8, 1984

SUBJECT: Sectional analysis of SB 481

TO: Senator Jalmar Kerttula
President of the Senate

FROM: Edward H. Hein *EH*
Legislative Counsel

Section 1 allows a nonprofit cemetery to incorporate under AS 10.20 as an alternative to forming as a cemetery association.

Section 2 adds clean-up provisions necessitated by section 1.

Section 3 expands to which a cemetery's endowment fund may be put to include improvement of the grounds, buildings, and lots, and the repayment of debts.

Section 4 adds clean-up provisions necessitated by section 1.

Section 5 expands a nonprofit cemetery's authority borrow money to construct and repair buildings and mausoleums, to purchase or lease equipment, and other purposes. Such debts may be secured by mortgages on the cemetery's land, except those burial lots in which association members or corporate officers, trustees, or employees have more than a one-half interest.

Sections 6 - 11 add clean-up language necessitated by section 1.

Section 12 adds a definition of the term "cemetery lot" for purposes of AS 10.30.

Section 13 adds a definition of the term "cemetery lot" for purposes of the consumer protection statutes in AS 45.50.


EHH:ojb
J4/054

EVERLASTING

CARE

ENDOWED

MEMBER
NATIONAL ASSOCIATION OF CEMETERIES



Angelus Memorial Park

ALASKA'S FIRST MEMORIAL PARK CEMETERY

PHONE 344-1311
OFFICE HOURS:
10 A.M. TO 3 P.M.

January 23, 1964

CEMETERY
AND
OFFICE
ON KLATT ROAD

Senator, Jalmer M. Kerttula
Alaska State Legislature
Juneau, Alaska

Dear Mr. Kerttula:

The Board of Trustees of Angelus Memorial Park Association approved a motion to present to the Legislature, amendments to the Alaska Cemetery Statutes, pertaining to non-profit cemetery associations. A committee was appointed consisting of Mr. Alvah C. Buswell, Jr. and Mr. Robert F. Shary, who are board members and Mr. Sidney Abbott, park manager, to work on the proposed amendments of the present statutes.

The present Alaska non-profit cemetery statutes were patterned after the Oregon Statutes many years ago before Statehood and are badly out dated. The State of Oregon has since amended their Statutes, twice, and now Alaska needs to do the same, so that a non-profit cemetery can better serve the community. To our knowledge Angelus is the only non-profit cemetery in the state.

Enclosed are copies of Oregon Statutes that have been amended and a copy of our proposed revisions to the Alaska State Cemetery Statutes.

The association really needs these changes in order to grow, as it is now, we can not serve the community as a modern cemetery, because of the way the laws are written. The public wants all the services a cemetery is suppose to supply, such as, a columbarium for inurnment of cremated remains, mausoleum, niches and storage vault. Also we can not even build a much needed administration building. We now have to rent a very inadequate building for an office. The association has never had a maintenance building. The present laws prevent our growth.

The reason we included association and or corporation in our amendments is that Angelus intends to incorporate in order to help lessen the personal individual liability of the board members. Angelus board members are non-paid.

Sincerely,
Mr. Harry L. Wimmer
Vice-President, Board of Trustees

ANGELUS MEMCFIAL PARK ASSOCIATION

Enclosures

This material has also been sent to Representatives Joe Hayes and Randy Phillips.

ALASKA STATUTES

CHAPTER 30. Cemetery Associations

Sec. 10.30.070. Creation of irreducible fund. The association may by its bylaws provide that a stated percentage of the money realized from the sale of lots and donations (AND OTHER SOURCES OF REVENUE) constitutes an irreducible fund, which may be invested in the manner or loaned upon the securities the association or the trustees consider proper. The interest or income from the irreducible fund provided for in any bylaw or as much as may be necessary shall be devoted exclusively to the preservation and embellishment of the (CEMETERY) grounds, buildings and property of the association and or corporation and the lots and space in buildings or grounds sold to the members of the association and or corporation, or to the payment of the interest or principal of the debts authorized by the association for the purchase of land, equipment, erecting buildings and improvements. Where a bylaw has been enacted for the creation of an irreducible fund, (IT) the set amount or percentage stated in the bylaw, may not be amended except for the purpose of increasing the fund. (36-5-5 ACLA 19L

I was told to put in caps
and brackets words to be
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new wording.

office

ALASKA STATUTES

CHAPTER 30. Cemetery Associations

Sec. 10.30.090. Debts of association and or corporation. A cemetery association and or corporation may (NOT) contract debts in anticipation of future receipts, (EXCEPT) for the (ORIGINAL) purchase of cemetery land and or for other cemetery purposes, the laying out and embellishment of the grounds and avenues of the cemetery, repairing their buildings, erection of new buildings, mausoleums, columbariums, and purchasing necessary equipment, for which debts the association may issue bonds or notes. The association may secure these debts by mortgage upon its lands, except lots which have been conveyed to the members of the Association, or by security interest in no more than 50% of the irreducible fund. (36-5-5 ACLA 1949).

ALASKA STATUTES

CHAPTER 30. Cemetery Associations.

Sec. 10.30.125 Definition of "Cemetery Lot", one or more than one adjoining, lot, plot, space, grave, nich, mausoleum crypt, vault, and columbarium, for the interment of human remains.

61.728 Procedure for revoking certificate of authority. ORS 57.735, relating to revocation of certificate of authority, is applicable to nonprofit corporations. [1963 c.492 §38 (enacted in lieu of 61.735)]

61.740 [Renumbered 61.984]

61.741 Application to corporation authorized to transact business in this state on December 31, 1959. Foreign corporations which are duly authorized to transact business in this state on December 31, 1959, for a purpose or purposes for which a corporation might secure such authority under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950, and from December 31, 1959, such corporations shall be subject to all the limitations, restrictions, liabilities and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this state under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950. 1959 c.580 §89.

61.745 Transacting business without certificate of authority. (1) No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state, until such corporation shall have obtained a certificate of authority. No action, suit or proceeding shall be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all its assets.

(2) The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state. [1959 c.580 §81]

CZMETERIES AND CREMATORIES

61.753 Lands of cemetery or crematory corporation; exemption from execution, taxation and condemnation. A nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains, may purchase or take, by gift or devise, and own and hold lands for the sole purpose of either a cemetery or a crematory and burial place for incinerate remains. Such lands shall be exempt from execution and taxation, and from any appropriation for public purposes, and lots or portions of state land and space in any buildings thereon may be sold, if intended to be used exclusively for burial purposes, and in no wise with a view to the profit of the members of such corporation. The land so held for cemetery purposes shall not exceed 600 acres, but if the land already held for such purpose by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 20 acres at any one time. The land so held for the purposes of a crematory and the burial of incinerate remains shall not exceed 30 acres, but if the land already held for such purpose by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 10 acres at any one time. [1959 c.580 §95]

61.760 Revenues; restrictions on uses thereof. (1) A nonprofit corporation organized or existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains may, by its bylaws, provide that a stated percentage of the money received from the sale of lots and burial space, cremation of bodies, donations, gifts or other sources of revenue shall constitute an irreducible fund. Any bylaw enacted for the creation of the irreducible fund cannot be amended to reduce the fund.

(2) The board of directors may direct the investment of the money in the irreducible fund, but all investments of money deposited in the fund on or after January 1, 1972, shall be in securities and amounts approved by the State Treasurer and published in a list pursuant to ORS 97.820. If a bank or trust company qualified to engage in the trust business is directed by the board of directors to invest the money in the irreducible fund,

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**SPECIAL PROVISIONS
RELATING TO ORS 97.010 TO
97.040, 97.110 TO 97.450, 97.510
TO 97.730, 97.810 TO 97.920 and
97.990**

97.010 Definitions for ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990. As used in ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990:

(1) "Human remains" or "remains" means the body of a deceased person in any stage of decomposition or after cremation.

(2) "Cemetery" means any place dedicated to and used, or intended to be used, for the permanent interment of human remains.

(3) "Burial park" means a tract of land for the burial of human remains in the ground used, or intended to be used, and dedicated for cemetery purposes.

(4) "Mausoleum" means a structure for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated for cemetery purposes.

(5) "Crematory" means a structure containing a retort for the reduction of bodies of deceased persons to cremated remains.

(6) "Columbarium" means a structure or room containing niches for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated for cemetery purposes.

(7) "Interment" means the disposition of human remains by cremation, inurnment, entombment or burial.

(8) "Cremation" means the reduction of a body of a deceased person to cremated remains in a crematory.

(9) "Inurnment" means placing cremated remains in an urn and depositing it in a niche.

(10) "Entombment" means the placement of human remains in a crypt or vault.

(11) "Burial" means the placement of human remains in a grave.

(12) "Grave" means a space of ground in a burial park used, or intended to be used, for burial of the remains of one person.

(13) "Crypt" or "vault" means a space in a mausoleum of sufficient size used, or intended to be used, to entomb uncremated human remains.

(14) "Niche" is a recess in a columbarium used, or intended to be used, for the interment

of the cremated remains of one or more persons.

(15) "Cemetery authority" includes cemetery corporation, association, corporation sole or other person or persons owning or controlling cemetery lands or property.

(16) "Cemetery association" means any corporation or association authorized by its articles to conduct any or all the businesses of a cemetery, but does not include a corporation sole or a charitable, eleemosynary association or corporation.

(17) "Cemetery business," "cemetery businesses" and "cemetery purposes" are used interchangeably and mean any business and purpose requisite or incident to, or necessary for establishing, maintaining, operating, improving or conducting a cemetery, interring human remains, and the care, preservation and embellishment of cemetery property.

(18) "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association.

(19) "Lot," "plot" or "burial space" means space in a cemetery owned by one or more individuals, an association or fraternal or other organization and used, or intended to be used, for the permanent interment therein of the remains of one or more deceased persons. Such terms include and apply with like effect to one, or more than one, adjoining grave, crypt, vault or niche.

(20) The term "plot owner" or "owner" means any person in whose name a burial plot stands as owner of the right of sepulture therein in the office of the cemetery authority, or who holds from such cemetery authority a conveyance of the right of sepulture or a certificate of ownership of the right of sepulture in a particular lot, plot or space.

(21) "Endowment care" means the general care and maintenance of developed portions of a cemetery and memorials erected thereon financed from the income of a trust fund established and maintained pursuant to the provisions of ORS 97.810 to 97.860. Endowment care cemeteries owned by a city or a county may supplement their general care and maintenance trust funds from general revenues.

(22) "Special care" is any care in excess of endowed care in accordance with the specific directions of any donor of funds for such purposes. (Amended by 1955 c 545 §1; 1965 c 296 §1)

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the bank or trust company shall be governed by the provisions of ORS 128.057 and shall not be required to invest the money according to the list approved by the State Treasurer. An officer of the corporation shall file with the Secretary of State on or before April 15 of each year a verified statement in duplicate containing the same information pertaining to the irreducible fund as provided in ORS 97.810 (2) regarding endowment care funds. The Secretary of State may require the corporation to file, as often as he considers it to be necessary, a detailed report of the conditions and assets of the irreducible fund.

(3) The interest or income arising from the irreducible fund provided for in this section or by any bylaws, or so much thereof as is necessary, shall be devoted exclusively to the preservation and embellishment of the grounds, buildings and property of the corporation and the lots and space in buildings or grounds sold to the members of the corporation, or to the payment of the interest or principal of the debts authorized by subsection (5) of this section for the purchase of land, erecting buildings, and improvements. Any surplus thereof not needed or used for such purposes shall be invested as provided in this section and shall become part of the irreducible fund.

(4) After paying for the land and the erection of the original buildings and improvements thereon, all the future receipts and income of the corporation subject to the provisions in this section relating to the creation of an irreducible fund, whether from the sale of lots and burial space, cremation of bodies, donations, gifts and other sources, shall be applied exclusively to laying out, preserving, protecting, embellishing and beautifying the cemetery or the crematory and grounds thereof, and the avenues leading thereto, and to the erection of such buildings and improvements as may be necessary or convenient for cemetery or crematory purposes, and to pay the necessary expenses of the corporation.

(5) No debts shall be contracted by such corporation in anticipation of any future receipts, except for originally purchasing the lands authorized to be purchased by it, laying out and embellishing the grounds and avenues, erecting buildings and vaults on such land, and improving them for the purposes of the corporation. The corporation may issue bonds or notes for debts so contracted and may secure them by way of mortgage upon any of its lands, buildings, property and improvements excepting lots or space conveyed to the

members. [1969 c.580 §96; 1971 c.225 §11]

61.765 Selling land unsuited for burials. If in the board of directors' opinion, any portion of the lands of a nonprofit corporation organized and existing solely for the purposes of either owning or operating a cemetery or the cremation of dead bodies and the burial and care of incinerate remains is unsuitable for burial purposes or other purposes of the corporation, the board of directors may sell such portion and apply the proceeds to the general purposes of such corporation in the same proportion and manner as provided by ORS 31.005 to 31.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950. [1959 c.580 §97]

61.770 Burial lots or space; use, exemption from taxation, execution and liens; lien for purchase price of gravestone. Burial lots or space for burial of incinerate remains in buildings or grounds sold by a nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains shall be for the sole purpose of interment or deposit and safekeeping of incinerate remains. Such lots or space shall be exempt from taxation, execution, attachment or other lien or process, if used as intended by the purchaser thereof from such corporation, or his assigns or representatives, exclusively for burial purposes, and in no wise with a view to profit. The vendor of any gravestone, however, shall not be prevented from having and enforcing a lien thereon for all or part of its purchase price. If a suit is brought to enforce such a lien, the decree therein is enforceable thereafter; and, for the purpose of enabling the lien to be had and enforced, the gravestone shall be deemed personal property and may be severed and removed, under execution and order of sale, from the lot where it is situated and may be sold in the same manner as any other personal property. [1969 c.580 §98]

61.775 Recording plan; power to improve and regulate grounds. A nonprofit corporation organized and existing solely for the purposes of owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains shall cause a plan of its land and grounds and of the lots laid out by it and of the niches or burial space in the buildings erected thereon to be made and recorded in the county in which such grounds and land are located, such lots or

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HEALTH AND SAFETY CODE

DIVISION 7. DEAD BODIES

PART 1. GENERAL PROVISIONS

CHAPTER 1. DEFINITIONS

7000. The definitions in this chapter apply to this division and to divisions 8 and 9 of this code.

7001. "Human remains" or "remains" means the body of a deceased person, and includes the body in any stage of decomposition and cremated remains.

7002. "Cremated remains" means human remains after incineration and necessary processing under Section 7054.1 in a crematory.

7003. "Cemetery" means any one, or a combination of more than one, of the following, in a place used, or intended to be used, and dedicated, for cemetery purposes:

- (a) A burial park, for earth interments.
- (b) A mausoleum, for crypt or vault interments.
- (c) A crematory, or a crematory and columbarium, for cinerary interments.

7004. "Burial park" means a tract of land for the burial of human remains in the ground, used or intended to be used, and dedicated, for cemetery purposes.

7005. Except in Part 5 of Division 8 of this code, "mausoleum" means structure or building for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated, for cemetery purposes.

7006. "Crematory" means a building or structure containing one or more furnaces for the reduction of bodies of deceased persons to cremated remains.

7007. Except in Part 5 of Division 8 of this code, "columbarium" means structure, room, or other space in a building or structure containing niches for inurnment of cremated human remains in a place used, or intended to be used, and dedicated, for cemetery purposes.

7008. "Crematory and columbarium" means a building or structure containing both a crematory and columbarium.

7009. "Interment" means the disposition of human remains by inurnment, entombment, or burial in a cemetery or, in the case of cremated remains, by inurnment, entombment, burial, or burial at sea as provided in Section 7117.

7010. "Cremation" means the reduction of the body of a deceased person to cremated remains in a crematory and the placement of the cremated remains in a grave, vault or niche or burial at sea as provided in Section 7117 of this code.

7011. "Inurnment" means placing cremated remains in an urn and placing it in a niche.

7012. "Entombment" means the placement of human remains in a crypt or vault.

7013. "Burial" means the placement of human remains in a grave.

7014. "Grave" means a space of ground in a burial park, used, or intended to be used, for burial.

7015. "Crypt" or "vault" means a space in a mausoleum of sufficient size, used or intended to be used, to entomb uncremated human remains.

7016. "Niche" means a space in a columbarium used, or intended to be

used, for inurnment of cremated human remains.

7017. "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains.

7018. "Cemetery authority" includes cemetery association, corporation sole, or other person owning or controlling cemetery lands or property.

7019. "Cemetery corporation," "cemetery association," or "cemetery corporation or association" mean any corporation now or hereafter organized which is or may be authorized by its articles to conduct any one or more or all of the businesses of a cemetery, but do not mean or include a corporation sole.

7020. "Cemetery business," "cemetery businesses," and "cemetery purposes" are used interchangeably and mean any and all business and purposes requisite to, necessary for, or incident to, establishing, maintaining, operating, improving, or conducting a cemetery, interring human remains, and the care, preservation, and embellishment of cemetery property, including, but not limited to, any activity or business designed for the benefit, service, convenience, education, or spiritual uplift of property owners or persons visiting the cemetery.

7021. "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association.

7022. "Lot," "plot," or "interment plot" means space in a cemetery, used or intended to be used for the interment of human remains. Such terms include and apply to one or more than one adjoining graves, one or more than one adjoining crypts or vaults, or one or more than one adjoining niches.

7023. "Plot owner," "owner," or "lot proprietor" means any person in whose name an interment plot stands of record as owner, in the office of a cemetery authority.

7024. "Permit for Disposition of Human Remains" includes "burial permit" and is a permit, issued pursuant to law, for the interment, disinterment, removal, reinterment or transportation of human remains.

DIVISION 8. CEMETERIES

PART 1. GENERAL PROVISIONS

CHAPTER 1. CEMETERY DEFINED

8100. Six or more human bodies being buried at one place constitute the place a cemetery.

CHAPTER 2. VANDALISM

8101. (a) Every person is guilty of a misdemeanor and punishable by a fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not exceeding one year, or by both, who maliciously does any of the following:

- (1) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down, or removes any tomb, monument, memorial, or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any inclosure for the protection of a cemetery or any property in a cemetery.
- (2) Obliterates any grave, vault, niche, or crypt.
- (3) Destroys, cuts, breaks or injures any building, statuary, ornamentation, tree, shrub, or plant within the limits of a cemetery.

Alaska State Legislature



Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

May 19, 1984

To: Rep. John Cowdery
Chairman/ Labor and Commerce

From: Rep. Joe Hayes *JH*
Speaker

Re: HB 481

HB 481 relating to cemetery associations is being referred to your committee today. This bill is almost identical to the House Labor and Commerce version of HB 569 which you passed earlier this session.

I would appreciate your quick action on SB 481.

Thanks.

MAY 22, 1984

TO: JOHN

FROM: KEN

RE: SB 481 RELATING TO CEMETARY ASSOCIATIONS

SB 481 IS DESIGNED TO UPGRADE STATUTES WHICH COVER CEMETARY ASSOCIATIONS, NON-PROFIT CEMETARY CORPORATIONS AND CEMETARY LOTS. THIS BILL IS ALMOST IDENTICAL TO HB 569 WHICH THIS COMMITTEE PASSED EARLIER THIS SESSION. HB 569 HAS ALSO BEEN PASSED ON THE FLOOR. IT IS MY UNDERSTANDING THAT THE STATUTES GOVERNING CEMETARY OPERATIONS HAVE NOT BEEN REVISED SINCE THEY WERE ORIGINALLY ADOPTED IN 1949 DURING TERRITORIAL DAYS. THE BILL WOULD GIVE THOSE OPERATING IN THE INDUSTRY MORE FLEXIBILITY IN DEALING WITH CONSUMERS IN TODAY'S MARKET.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: February 14, 1984

REQUEST

Bill/Resolution No.: SB 481
Title: An Act relating to Cemetery Associations
Sponsor: Senator Kerttula
Requestor: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce and Economic Dev.
Program Category Affected: Consumer Protection
BRU, Program or Subprogram(s) Affected: Banking, Securities and Corporations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
CAPITAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
REVENUE	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Willis F. Kirkpatrick, Director Phone: 465-2521
Division: Banking, Securities and Corporations Date: 2/14/84

Approved by Commissioner: Richard A. Lyon Date: 2/21/84
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

FISCAL NOTE

12/1/83