

SB

205

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

DATE: 3/15/91

FURTHER: Judiciary

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3/16/92

L&C Committee considered SB 205

Revising the nonprofit corporations code, the religious corporations code; amending Alaska Rules of Civil Procedure 3, 4, 8, 17, 19, 23.1, 24, 79 and 82, Alaska Rules of Evidence 803, Alaska Rules of Appellate Procedure 602 and 609; efd.

and recommended:

- replace with _____ cs SB 205 (L+C) same title
- attached amendment(s) new title
- _____ letter of intent adopted
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

ATTACHES NEW FISCAL NOTE(S):

- | | |
|---|--|
| Department(s)/Date: | Department(s)/Date: |
| <input type="checkbox"/> fiscal note(s) _____ | <input type="checkbox"/> zero fiscal note(s) _____ |
| _____ | _____ |
| _____ | _____ |
| <input type="checkbox"/> appropriation-no fiscal note | <input type="checkbox"/> Governor's bill w/fiscal note |

SIGNING DO PASS:

Shirley Craft

OTHER RECOMMENDATIONS:

James Ellis No Rec
Mike Halford NO REC

Ernie Pearce - No Rec
 Chair: Signature and Recommendation

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 205

Revision Date: _____

Department Affected: Commerce & Econ. Dev.

Title: Nonprofit Corporation Code Revision

BRU: Banking, Securities & Corporations

Component: Corporations

Sponsor: Rules by Legislative Council

Requestor: Senate Labor and Commerce

COMPONENT SERIAL NO.

1	2	3	3
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EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

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

Prepared By: Willis F. Kirkpatrick, Director

Phone: 465-2521

Division: Banking, Securities & Corporations

Date: 2-21-92

Approved by Commissioner: Glenn A. Olds

Agency: Department of Commerce & Economic Development

Date: _____

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

Page 1 of 2

FISCAL NOTE - SB 205

ANALYSIS:

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

SUMMARY OF EXPENDITURES - FY 93

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

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 219 ¹⁰⁰ 15B205

Revisor: Date: _____

Department Affected: Commerce & Econ. Dev.

Title: Nonprofit Corporation Code Revision

BRU: Banking, Securities & Corporations

Component: Corporations

Sponsor: Rules

Requestor: _____

COMPONENT SERIAL NO.	1	2	3	3
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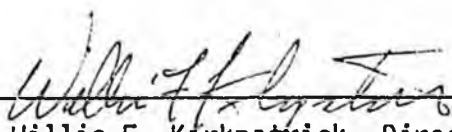
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4/4

Drue:

I've now spent a total of 8 or 10 hours on this project over the past few weeks...on the phone, playing telephone tag, waiting for people to return from vacation, talking to Parnell, Lehman, Finkelstein, Rooker, Clary, Christian Businessman's group, etc.

I'd now suggest we send out the attached letter...over your signature only...to the following people. (Bringing Finkelstein in would only add hours more of work. I'm happy to do it, if you want, but it's time-consuming stuff.)

Suggest we send to:

- . Bishop Hurley, Catholic Head
- . Rabbi Rosenfeld, Jewish Head
- . Jerry Prevo, Anchorage Baptist Temple
- . Alphonso Patterson, Abbott Loop Christian Center
- . ~~?????????. Anchorage Christian Center~~
- . Lew Rooker, Northern Light United Church ((Juneau)
- . Bill Council, attorney suggested by Rooker.

Please advise.

Don 4/4

*Sounds fine —
forget the A.C.C.
since you have
Abbott Loop.*

*↓
225 500/2000
09/01*

*P.O. 20 3/1/01
1/1000-1000*

*Erin —
Pls. see next
pg. for draft to
put in final.
B*

3/7

Drue:

According to Pat Parnell, the largest individual churches are:

- Abbott Loop Christian Center (2000 families)
- Anchorage Baptist Temple (1500 families)
- Anchorage Christian Center (700-1000 families)

In talking to Loren Lehman, Parnell and the Christian Businessman's Group in Anchorage, there's a long list of churches. I suggest we send to the Pastors of the above three plus Bishop Hurley (Catholic head) and Rabbi Rosenfeld (Jewish head).

Pat 3/7
ok!
==

There is an assn of ministers in each major town - call Lew Rooker here at 586-3131 (Northern Light United Church) to ask how to get info out (suggestion)

called
" 3/31
called 4/2

to: Bill Council
tel. try.

Call De Prevo or Glen Clary for same in Auc.

called
- called 3/7/1
w.c.
- 4/2 called

1
Anch Baptist
people
333-6535

- Abbott loop
Albano Patterson
- First Baptist
- Muldown/Dewli

Alaska State Legislature

Senator Drue Pearce, Chair
Senator Tim Kelly
Senator Rick Halford
Senator Paul Fischer
Senator Al Adams



WHEELER BUREAU
P.O. BOX 5
JUNEAU ALASKA 99811
(907) 485-1971

3111 C STREET, SUITE 150
ANCHORAGE, ALASKA 99501
(907) 561-2010

SENATE SPECIAL COMMITTEE
ON OIL AND GAS

Methodist - (Parrish) ALL Saints
Episcopal

- Arch. Bop. Temple
- 1st Presb
- Grace Brethren Ch or Hoffman
- Faith Baptist
- Abbott Hoop River Center
- Warriors / Ch of S. C. of LDS DICK
TRAINI
H. SEMBY
- Central Lutheran
- Parkside Church
- Arch. River Center
- First Assembly of God
- Jehovah's Witness
- Muldoon Assembly of God
- Bishop Henley - W. N. Ch
- Rabbi Harvey Rosenfeld
(Cong. Beth Shalom - 7525 E.
p. 45)
- TRINITY PRES. HILLSIDE

W.C. - 2/2/72

STATE OF ALASKA

2/26

Drive -

I mentioned the attached idea (that draft) to David -
he suggests it go out to the "20 or so largest"
churches in Anchorage. (Maybe this wasn't such
a hot suggestion of mine!) What would you like
me to do.

8 or so?

B

DRAFT

draft of separate letters for DP by billy...Hurley, Prevo SB 205

Bishop Frank Hurley
Holy Family Cathedral
818 W. Fifth Avenue
Anchorage, AK 99501



and

Pastor Jerry Prevo
Anchorage Baptist Temple
6401 E. Northern Lights Blvd.
Anchorage, AK
February 24, 1992

Dear Bishop Hurley (Pastor Prevo):

Attached is a copy of Senate Bill 205, the nonprofit corporation code revision and religious corporation code revision. The identical bill has been introduced in the House as House Bill 219.

~~Earlier today,~~ We co-chaired the first meeting of the Legislature's Labor and Commerce Committees on the referenced bill. A number of issues were raised concerning religious corporations...and the various forms they may take. Hence, this letter.

If you or your attorneys would care to comment on the bill, we would be happy to hear from ~~them~~. Obviously, the bill is a huge one and very complex. We can understand if it takes you some time to comment. On the other hand, if the revision is to pass this session, we have to move the bill along to its other committees. However, if your comments come after the bill has moved from the committees we chair, be assured we will forward them to the appropriate committee for inclusion in their deliberations.

If we can be of help to you in any other way this session, please let us know.

Respectfully,

Drue Pearce, Senate Chair
Labor and Commerce Committee

David Finkelstein, House Chair
Labor and Commerce Committee

COPY

ALASKA CODE REVISION COMMISSION

COMMISSIONERS

JOHN W. ABBOTT-CHAIR
MARY HUGHES
CAROLYN E. JONES
ERIK J. LEROY
DICK MADSON
PATRICK M. RODEY
JUDGE (RET.) THOMAS B. STEWART
ROBIN L. TAYLOR

ALASKA STATE LEGISLATURE
P.O. BOX Y STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-2450

EXECUTIVE SECRETARY
TAMARA BRANDT COOK

March 3, 1992

The Honorable David Finkelstein
Representative
Alaska State Legislature
Chair, House Labor and Commerce
State Capitol
Juneau, AK 99801-1182

Re: Proposed Amendments to HB 219 and SB 205; The Nonprofit Corporation Code Revision.

Dear Chairman Finkelstein:

This letter will follow up on information being provided to you by the division of corporations concerning amendments to HB 219 and SB 205. I met with Mr. Monagle, the corporations supervisor, and we were able to agree on all of the recommended amendments contained in the letter from Commissioner Glenn Olds (which this letter references). Staff members for both the House and Senate Labor and Commerce Committees requested that the committees be provided with justification for one of the proposed amendments. That amendment would modify HB 10.21.852 by deleting subsections 7 and 8 (P. 123, lines 26-29, inclusive) from that section. While the Code Revision Commission is willing to acquiesce in the deletion of those two subsections, it is for the purpose of attempting to work out all of the language differences with the Division of Corporations. The provisions were placed in the draft bill because they serve a useful and needed purpose in the bill.

If the committees feel that the retention of subsections 7 and 8 will not impose an undue burden upon the Division of Corporations, they should be retained for the following

Letter to the Honorable
David Finkelstein
HB 219 and SB 205
Page 1 of 3

reasons. During public hearings held by the Alaska Code Revision Commission on the nonprofit corporation code, one of the frequent complaints was that small nonprofits did not have the funds or the manpower to meet the reporting requirements then set forth in the proposed bill. The Commission has sought to accommodate this inability on the part of small nonprofits by providing for the filing of only one document which will set forth a limited amount of financial information. This information would be included as a part of the information required by the Division of Corporation for the biennial report which is required to be filed by nonprofit corporations. As such, small nonprofits could satisfy their reporting obligations with the filing of one document. Nothing in § 852 would require cross-referencing or indexing. The biennial report would merely become the repository for certain minimal financial data so that any person with a relationship to the corporation would have access to this information without having to place an undue burden on the small nonprofit. No additional work would be required by the Division of Corporations once the form biennial report was adopted (the Division needs to only duplicate the language contained in § 852 and the form is complete). The Division of Corporations has no obligation under this section to do *anything* with the information other than to make sure that all of the information sections have been filled out. It has no obligation to independently *verify* the information that is provided or take any action of any nature on this information. In short, the inclusion of the information contained in subsections 7 and 8 will pose no additional burden upon the Division of Corporations. While the Division is free to create a database using this information, that is entirely discretionary with the division and is not required by the section.

The information required by and contained in § 852 will be located in the public records and in almost all instances, the biennial report will be the only place where such information can be obtained. Accordingly, it will serve a very useful purpose for disseminating information to those persons, members, contributors or creditors, who do business with Alaska nonprofit corporations. Balancing the burden (there are none) against the benefits (which are substantial), it seems that these two subsections should remain in the bill. Given the recent events concerning the national United Way organization, it cannot be disputed that financial information should be readily available to avoid the type of grossly disproportionate salaries that can occur and, in fact, did occur in the national United Way organization.

Turning to another point, it is my understanding that the Division of Corporations will not be requesting withdrawal or modification of the fiscal note submitted on its behalf. It is the Commission's position that there is no merit whatsoever to the request for additional funding based upon HB 219 and SB 205. An examination of the bill will quickly and easily reveal that the provisions for oversight and regulation are almost uniformly discretionary with the Division of Corporations. Those instances of obligations being imposed upon the Division are merely a continuation of statutory obligations *presently* in

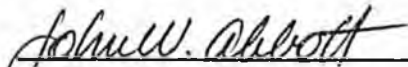
force and undertaken by the Division. HB 219 and SB 205 do not require that the Division adopt a pro-active posture in enforcement of the proposed codes. It seems to me that if the Division of Corporations wants to play a more active role in corporation enforcement matters, a position request for a person with an accounting should appear in its annual budget with support for the new position.

I believe that the Division will pursue its request in front of the Senate or House Judiciary Committee and will not be providing its justification for the fiscal note with the Senate or House Labor and Commerce Committees.

If I can provide you with any additional information, please contact me at (907) 346-1039 and I will get back to you as soon as possible. You can also use the same number as a FAX number if you wish.

Finally, thanks for the help with the bill. I hope that it finds acceptance with the committees and we can continue with our efforts to overhaul the Title 10 corporation chapters.

Very truly yours,



JOHN W. ABBOTT
Chair

cc: The Honorable Drue Pearce
Mike Monagle

A M E N D M E N T

OFFERED IN THE SENATE

BY THE SENATE LABOR & COMMERCE COMMITTEE

TO: SB 205

Page 5, line 3:

Delete "deceptively similar to"

Insert "undistinguishable on the records of the department from"

Page 6, line 29:

Delete "deceptively similar to"

Insert "undistinguishable on the records of the department from"

Page 7, line 1:

Delete "DECEPTIVELY SIMILAR"

Insert "UNDISTINGUISHABLE"

Page 7, line 5:

Delete "deceptively similar"

Insert "name that is undistinguishable on the records of the department from the corporate"

Page 7, line 6:

Delete "deceptively similar"

Insert "name that is undistinguishable on the records of the department from the corporate"

Page 10, following line 19:

Insert a new subsection to read:

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

Reletter the following subsections accordingly.

Page 85, lines 28-29:

Delete "same or a deceptively similar corporate, reserved, or registered name is"

Insert "corporation's name is the same as, or undistinguishable on the records of the department from, a corporate, reserved, or registered name"

Page 103, lines 10-11:

Delete "same or a deceptively similar corporate, reserved, or registered name is"

Insert "corporation's name is the same as, or undistinguishable on the records of the department from, a corporate, reserved, or registered name"

Page 116, line 18:

Delete "is the same name as, or deceptively similar to"

Insert "is not the same name as, or undistinguishable on the records of the department from"

Page 140, line 9:

Delete "deceptively similar to"

Insert "undistinguishable on the records of the department from"

Page 141, line 3:

Delete "deceptively similar to"

Insert "undistinguishable on the records of the department from"

Page 141, line 6:

Delete "DECEPTIVELY SIMILAR"

Insert "UNDISTINGUISHABLE"

Page 141, line 10:

Delete "deceptively similar"

Insert "name that is undistinguishable on the records of the department from the corporate"

Page 141, line 11:

Delete "deceptively similar"

Insert "a name that is undistinguishable on the records of the department from the corporate"

Page 163, line 16:

Delete "deceptively similar to"

Insert "undistinguishable on the records of the department from"

SB 205 and HB 219: Nonprofit Corporation Code Revision

The Department of Commerce and Economic Development has been asked to comment on SB 205 and HB 219. While the department is aware that abuses may be present in fund raising activities of nonprofit corporations, it would be difficult to convert a filing office activity of the department into that of an enforcement agency.

In Section 10.21.190(5), the Commissioner is listed as the person who would take action in "breach of charitable trust." Often the State is seen as an agency with resources and is expected to represent all of the public's needs.

In both Sections 10.21.195(b) and (c) and 10.21.198, the Commissioner has defined responsibility in certain cases where nonprofit corporations' assets are distributed. This broad delegation of responsibility to safeguard interest of the public further embroils the department in corporate affairs.

Section 10.21.415 and Section 10.21.420 involve the department as a regulatory agency to take action in certain circumstances.

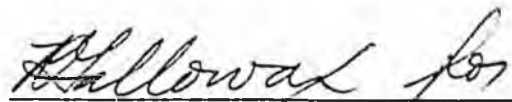
Sections 10.21.500-10.21.503 require the Commissioner to make certain findings in cases of consolidation and mergers in a manner which is regulatory and restrictive in nature.

Section 10.21.563 provides that, in some instances where there are inadequate assets to pay a receiver, the court may appoint the Commissioner. This could place a financial burden upon the department.

The department has no objection of filing sufficient information provided by corporations that would disclose accountability of revenue and expenditures of nonprofit corporations. This information could then be readily available to all interested parties upon inquiry.

It will be difficult, however, and expensive to convert the functions of the Corporations Section staff from administrators of records to that of enforcement agents or reactive watchmen of nonprofit corporations.

The department would be more than pleased to work with committee members and the Alaska Code Revision Commission in addressing the concerns addressed herein and a few other minor administrative details that should be considered to provide greater efficiency in the administration of the act.



Glenn A. Olds, Commissioner

Date: 2-21-92