

LEG. FINANCE - BILLS 1985 - 1986 2433

HB 542 cont. - HB 544

ALASKA CONSTITUTION

Enforcement

SECTION 11. Any qualified voter may apply to the superior court to compel the governor, by mandamus or otherwise, to perform his reapportionment duties or to correct any error in redistricting or reapportionment. Application to compel the governor to perform his reapportionment duties must be filed within thirty days of the expiration of either of the two ninety-day periods specified in this article. Application to compel correction of any error in redistricting or reapportionment must be filed within thirty days following the proclamation. Original jurisdiction in these matters is hereby vested in the superior court. On appeal, the cause shall be reviewed by the supreme court upon the law and the facts.

Public Health
Public Welfare

with law, formulate policy and appoint the president of the university. He shall be the executive officer of the board.

SECTION 4. The legislature shall provide for the promotion and protection of public health.

SECTION 5. The legislature shall provide for public welfare.

ARTICLE VII

HEALTH, EDUCATION, AND WELFARE

Public Education

SECTION 1. The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

Statement of Policy

General Authority

Common Use

Sustained Yield

Facilities and Improvements

State Public Domain

State University

SECTION 2. The University of Alaska is hereby established as the state university and constituted a body corporate. It shall have title to all real and personal property now or hereafter set aside for or conveyed to it. Its property shall be administered and disposed of according to law.

Board of Regents

SECTION 3. The University of Alaska shall be governed by a board of regents. The regents shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The board shall, in accordance

ARTICLE VIII

NATURAL RESOURCES

SECTION 1. It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

SECTION 2. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

SECTION 3. Wherever occurring in the natural state, fish, wildlife, and waters are reserved to the people for common use.

SECTION 4. Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

SECTION 5. The legislature may provide for facilities, improvements, and services to assure greater utilization, development, reclamation, and settlement of lands, and to assure fuller utilization and development of the fisheries, wildlife, and waters.

SECTION 6. Lands and interests therein, including submerged and tidal lands, possessed or

Sec. 805. (a) Except as otherwise provided in subsection (d) of this section, one year after the date of enactment of this Act, the Secretary in consultation with the State shall establish —

- (1) at least six Alaska subsistence resource regions which, taken together, include all public lands. The number and boundaries of the regions shall be sufficient to assure that regional differences in subsistence uses are adequately accommodated;
- (2) such local advisory committees within each region as he finds necessary at such time as he may determine, after notice and hearing, that the existing State fish and game advisory committees do not adequately perform the functions of the local committee system set forth in paragraph (3)(D)(iv) of this subsection; and
- (3) a regional advisory council in each subsistence resource region.

Regional advisory council, authority.

Each regional advisory council shall be composed of residents of the region and shall have the following authority:

- (A) the review and evaluation of proposals for regulations, policies, management plans, and other matters relating to subsistence uses of fish and wildlife within the region;
- (B) the provision of a forum for the expression of opinions and recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife within the region;
- (C) the encouragement of local and regional participation pursuant to the provisions of this title in the decisionmaking process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses;
- (D) the preparation of an annual report to the Secretary which shall contain—

Annual report to Secretary.

- (i) an identification of current and anticipated subsistence uses of fish and wildlife populations within the region;
- (ii) an evaluation of current and anticipated subsistence needs for fish and wildlife populations within the region;
- (iii) a recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs; and
- (iv) recommendations concerning policies, standards, guidelines, and regulations to implement the strategy. The State fish and game advisory committees or such local advisory committees as the Secretary may establish pursuant to paragraph (2) of this subsection may provide advice to, and assist, the regional advisory councils in carrying out the functions set forth in this paragraph.

(b) The Secretary shall assign adequate qualified staff to the regional advisory councils and make timely distribution of all available relevant technical and scientific support data to the regional advisory councils and the State fish and game advisory committees or such local advisory committees as the Secretary may establish pursuant to paragraph (2) of subsection (a).

(c) The Secretary, in performing his monitoring responsibility pursuant to section 806 and in the exercise of his closure and other administrative authority over the public lands, shall consider the report and recommendations of the regional advisory councils concerning the taking of fish and wildlife on the public lands within their respective regions for subsistence uses. The Secretary may choose not to follow any recommendation which he determines is not supported

wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation is not adopted by the Secretary, he shall set forth the factual basis and the reasons for his decision.

(d) The Secretary shall not implement subsections (a), (b), and (c) of this section if within one year from the date of enactment of this Act, the State enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference, and participation specified in, sections 803, 804, and 805, such laws, unless and until repealed, shall supersede such sections insofar as such sections govern State responsibility pursuant to this title for the taking of fish and wildlife on the public lands for subsistence uses. Laws establishing a system of local advisory committees and regional advisory councils consistent with section 805 shall provide that the State rulemaking authority shall consider the advice and recommendations of the regional councils concerning the taking of fish and wildlife populations on public lands within their respective regions for subsistence uses. The regional councils may present recommendations, and the evidence upon which such recommendations are based, to the State rulemaking authority during the course of the administrative proceedings of such authority. The State rulemaking authority may choose not to follow any recommendation which it determines is not supported by substantial evidence presented during the course of its administrative proceedings, violates recognized principles of fish and wildlife conservation or would be detrimental to the satisfaction of rural subsistence needs. If a recommendation is not adopted by the State rulemaking authority, such authority shall set forth the factual basis and the reasons for its decision.

(e)(1) The Secretary shall reimburse the State, from funds appropriated to the Department of the Interior for such purposes, for reasonable costs relating to the establishment and operation of the regional advisory councils established by the State in accordance with subsection (d) and the operation of the State fish and game advisory committees so long as such committees are not superseded by the Secretary pursuant to paragraph (2) of subsection (a). Such reimbursement may not exceed 50 per centum of such costs in any fiscal year. Such costs shall be verified in a statement which the Secretary determines to be adequate and accurate. Sums paid under this subsection shall be in addition to any grants, payments, or other sums to which the State is entitled from appropriations to the Department of the Interior.

(2) Total payments to the State under this subsection shall not exceed the sum of \$5,000,000 in any one fiscal year. The Secretary shall advise the Congress at least once in every five years as to whether or not the maximum payments specified in this subsection are adequate to ensure the effectiveness of the program established by the State to provide the preference for subsistence uses of fish and wildlife set forth in section 804.

FEDERAL MONITORING

Sec. 806. The Secretary shall monitor the provisions by the State of the subsistence preference set forth in section 804 and shall advise the State and the Committee on Interior and Insular Affairs and on Merchant Marine and Fisheries of the House of Representatives and the Committees on Energy and Natural Resources and Environment and Public Works of the Senate annually and at such other times as

Implement

Reimburse to States

Report to Congress

Report to Presidential committees 16 USC 311

ANILCA

STATE OF ALASKA
THE LEGISLATURE

FOUCH Y STATE CAPITOL
BUREAU ALASKA 99511
707-465-3300

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 20, 1986

SUBJECT: Sustained yield of fish and game resources
(Work Order 14-1742)

TO: Representative Richard Shultz
Attn: Dave Stancliff

FROM: George Utermohle *GU*
Legislative Counsel

As per your request, the following is a review of what the framers of the Alaska Constitution meant when they drafted Article VIII, Section 4 relating to sustained yield of fish and wildlife.

The provisions of Article VIII of the Alaska Constitution were drafted by the Resources Committee of the Constitutional Convention. Committee Proposal 8/a prepared by the Resources Committee was introduced on January 16, 1956.

Forest, fish, wildlife, grasslands and other replenishable resources belonging to the State shall be administered, utilized and maintained on the sustained yield principle /1

The Committee Commentary on the sustained yield section described the Committee's understanding of the concept that it was proposing:

Sustained yield is recognized as a principle applicable to the administration of plant and animal life subject to the immediate authority of the State. This provision applies generally to wildlife and fisheries anywhere in the State and to the forests and other replenishable resources including grass which occurs on lands in the State public domain. This principle is qualified in terms of "the highest beneficial public use" in recognition of its not being in the public interest to preserve certain parasitic or predatory

organisms destructive of more beneficial plant and animal life. . . /2

The Resources Committee assumed that the meaning of sustained yield is understood by everyone and that it was not necessary to further define the term.

Burke Riley, as spokesman for the Resources Committee, summarized the Commentary on the Committee Proposal 8/a and elaborated somewhat as to how the Committee envisioned the sustained yield requirement would be implemented:

Section 3 states that replenishable resources shall be administered on the sustained yield principle. I won't go into that in detail here, beyond saying that, in our reference to sustained yield, we have in mind no narrow definition of "sustained yield," as is used, for example, in forestry, but the broad premise that insofar as possible a principle of sustained yield shall be used with respect to administration of those resources which are susceptible of sustained yield, and where it is desirable. For example, predators would not be maintained on a sustained yield basis. /3

The Committee's concept of sustained yield generated a question from a member as to how it would apply to fishery resources when exact information necessary for precise sustained yield management is not available.

PERATROVICH: I asked the question before, but before we took a recess, and I'm a little bit concerned on this sustained yield program as far as fisheries are concerned. Did the Committee go into detail on it as to how that would apply?

PRESIDENT EGAN: Mr. Smith.

SMITH: Mr. President, yes, the Committee discussed that very thoroughly, and as Mr. Riley pointed out, this term "sustained yield principle" was not intended to apply in the strict sense in which it does apply in the management of forestry land. The Committee realized full well that it would be impossible to determine the exact sustained yield in the fisheries; but the Committee felt that there was a definite indication that would be of value that, insofar as

possible, the fisheries should be maintained on the sustained yield principle.

PRESIDENT EGAN: Mr. Peratrovich.

PERATROVICH: Mr. Chairman, then it is the opinion of your Committee, sustained yield basic program will be left, as far as fisheries are concerned, to the state legislature? Am I correct in that?

RILEY: I would say yes, Mr. Peratrovich, and probably by the legislature delegated to the fisheries agency. In the course of our work on this article, we felt obliged to assemble a glossary insofar as possible; and, I might read what we have agreed on amongst ourselves as the meaning of the term employed in the article. "As to forests, timber volumes, rate of growth, and acreage of timber type can be determined with some degree of accuracy. For fish, for wildlife, and for some other replenishable resources, such as huckleberries, as an example, it is difficult or even impossible to measure accurately the factors by which a calculated sustained yield will be determined. Yet, the term 'sustained yield principle' is used in connection with the management of such resources. When so used in this article, it denotes conscious application insofar as practicable, of principles of management intended to sustain the yield of the resource being managed."

PERATROVICH: Well, that answers my question. . . . /4

The Resources Committee recognized the difficulty of defining "yield" and then managing the resource so that the yield is sustained. Forest management was used as an example of resource susceptible to exact management, while fish and wildlife were considered resources where exact calculations were almost impossible. The Resources Committee did not intend sustained yield to be a rigid concept requiring rigorous management of resources but only that replenishable resources be consciously managed with the intent that a yield be sustained.

The exchange between Frank Peratrovich and Mr. Riley clearly shows that Article VIII intended that the general concept of sustained yield management of replenishable resources be

included in the Constitution and that sustained yield management be implemented more fully by the legislature.

The concept of sustained yield management is generally applicable to replenishable resources, including fish and wildlife, but exceptions to sustained yield management were foreseen by the Constitutional drafters. Though the sustained yield section of Committee Proposal 8/a did not expressly mention that exceptions to sustained yield management were allowed, the Committee Commentary which accompanied the proposal allowed an implied exception for destruction of "parasitic or predatory organisms destructive of more beneficial plant and animal life" when it was in the public interest. /5

After the Resources Committee had an opportunity to reconsider the language of the sustained yield section, the Committee found that there was a need to expressly allow exceptions to sustained yield management. The Resources Committee requested on the floor of the Constitutional Convention that the sustained yield section be amended by adding at the end of the section, "subject to preferences among beneficial uses". Speaking for the Resources Committee, Mr. Riley explained the purpose of the amendment:

Originally, in one of our earlier editions of this article, that language, or language substantially resembling it, was included. The Committee itself had stricken the language thinking that it appeared elsewhere in enough places to cover our purpose. However, it has been brought to our attention by more than one specialist in the field that it has particular application to the sustained yield principle, and that without the language we have just suggested, that the sustained yield principle mentioned becomes somewhat meaningless and ineffective. /6

The amendment was adopted.

In summary, the framers of the Constitution intended that all replenishable resources belonging to the state including fish and wildlife be managed according the principles of sustained yield as the term is generally understood. The legislature is responsible for implementing sustained yield management and for further clarifying the term, as necessary. Exceptions to sustained yield management of fish

Representative Richard Shultz
Page 5
February 20, 1986

and wildlife resources are permitted when the exception is
in the public interest.

GU:mkr
M3:052

FOOTNOTES

- /1 Committee Proposal 8/a, January 16, 1956, p. 2.
- /2 Commentary on Article on State Lands and Natural Resources, January 16, 1956, p. 1.
- /3 Proceedings of the Constitutional Convention, January 17, 1956, p. 2451.
- /4 Proceedings of the Constitutional Convention, January 17, 1956, p. 2456-57.
- /5 see footnote 2.
- /6 Proceedings of the Constitutional Convention, January 25, 1956, p. 3054.

Offered: 3/19/86
Referred: Finance

Original sponsor: Shultz

1 IN THE HOUSE BY THE RESOURCES COMMITTEE
2 CS FOR HOUSE BILL NO. 542 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL
6 For an Act entitled: "An Act relating to corrective management of threat-
7 ened stocks of game."

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

9 * Section 1. 'AS 16.05 is amended by adding a new section to read:

10 Sec. 16.05.265. MANAGEMENT OF THREATENED STOCKS OF GAME. (a)

11 The Board of Game shall adopt a corrective stock management plan at
12 its next regularly scheduled meeting when the board receives scien-
13 tific data compiled by the department that a stock is threatened and a
14 majority of the advisory committees in the game management unit where
15 the stock is located, after consultation with the coordinator for the
16 appropriate regional council, pass resolutions requesting the board
17 to adopt a corrective stock management plan.

18 (b) The Board of Game

19 (1) shall include in the corrective stock management plan
20 regulations for intensive management of the threatened stock and for
21 effective and expeditious corrective management of prey and natural
22 predator species of the threatened stock; and

23 (2) may include in the corrective stock management plan
24 guidelines or regulations for human utilization of the threatened
25 stock, for research on the population status and the ecology of the
26 threatened stock, for restoration of habitat, for public education
27 programs, for law enforcement programs, for designation of reserves,
28 ranges, and preserves, and for artificial rearing of the threatened
29 stock.

1 (c) The Board of Game shall review annually each corrective
2 stock management plan and shall

3 (1) receive scientific data compiled by the department on
4 the status of the threatened stock;

5 (2) evaluate the success of the corrective stock management
6 plan;

7 (3) continue, amend, or rescind the corrective stock man-
8 agement plan; and

9 (4) adopt regulations in accordance with the Administrative
10 Procedure Act (AS 44.62) necessary to achieve the corrective goals of
11 the corrective stock management plan.

12 (d) The commissioner shall implement corrective stock management
13 plans subject to priorities among plans and to the availability of
14 resources to the department.

15 (e) In this section

16 (1) "corrective stock management plan" means a document
17 that compiles information for the purpose of restoring a stock to
18 sustained-yield population levels, as determined by the department,
19 and the regulations adopted to implement the plan;

20 (2) "stock" means a population of a game species identi-
21 fied with a specific geographic area;

22 (3) "threatened" means the prospect for the continued human
23 utilization of the stock is jeopardized due to either

24 (A) reduction of the stock below sustained-yield
25 levels by disease, pollution, predation, or overutilization;

26 (B) overabundance of a game species leading to the
27 imminent

28 (i) depletion of the stock; or

29 (ii) destruction of habitat of the stock;

1 (C) destruction, modification, or reduction of habi-
2 tat; or

3 (D) other natural or man-made factors seriously af-
4 fecting the prospect of continued human utilization of the stock.

Introduced: 2/6/86
Referred: Resources and
Finance

1 IN THE HOUSE

BY SHULTZ

2

HOUSE BILL NO. 542

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to corrective management of threat-
7 ened stocks of game."

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

9 * Section 1. AS 16.05 is amended by adding a new section to read:

10 Sec. 16.05.265. MANAGEMENT OF THREATENED STOCKS OF GAME. (a)

11 The Board of Game shall adopt an interim corrective stock management
12 plan by emergency regulation under AS 44.62.250 and 44.62.260 when the
13 board receives scientific data compiled by the department that a stock
14 is threatened and a majority of the advisory committees in or adjacent
15 to the game management unit where the stock is located petitions the
16 board to adopt an interim corrective stock management plan.

17 (b) An interim corrective stock management plan expires after
18 120 days or when the Board of Game adopts a corrective stock manage-
19 ment plan, whichever occurs first.

20 (c) Within 120 days after adopting an interim corrective stock
21 management plan the Board of Game shall adopt a corrective stock
22 management plan in accordance with the Administrative Procedure Act
23 (AS 44.62).

24 (d) The Board of Game

25 (1) shall include in the corrective stock management plan
26 regulations for intensive management of the threatened stock and for
27 effective and expeditious corrective management of prey and natural
28 predator species of the threatened stock; and

29 (2) may include in the corrective stock management plan

1 guidelines or regulations for human utilization of the threatened
2 stock, for research on the population status and the ecology of the
3 threatened stock, for restoration of habitat, for public education
4 programs, for law enforcement programs, for designation of reserves,
5 ranges, and preserves, and for artificial rearing of the threatened
6 stock.

7 (e) The Board of Game shall review annually each corrective
8 stock management plan and shall

9 (1) receive scientific data compiled by the department on
10 the status of the threatened stock;

11 (2) evaluate the success of the corrective stock management
12 plan;

13 (3) continue, amend, or rescind the corrective stock man-
14 agement plan; and

15 (4) adopt regulations in accordance with the Administrative
16 Procedure Act (AS 44.62) necessary to achieve the corrective goals of
17 the corrective stock management plan.

18 (f) The commissioner shall implement interim corrective stock
19 management plans and corrective stock management plans subject to
20 priorities among plans and to the availability of resources to the
21 department.

22 (g) In this section

23 (1) "corrective stock management plan" means a document
24 that compiles information for the purpose of restoring a stock to
25 sustained-yield population levels, as determined by the department,
26 and the regulations adopted to implement the plan;

27 (2) "interim corrective stock management plan" means a
28 corrective stock management plan that provides for management and
29 conservation of a threatened stock while the Board of Game prepares

1 and adopts a corrective stock management plan;

2 (3) "stock" means a population of a game species identi-
3 fied with a specific geographic area;

4 (4) "threatened" means the prospect for the continued human
5 utilization of the stock is jeopardized due to either

6 (A) reduction of the stock below sustained-yield
7 levels by disease, pollution, predation, or overutilization;

8 (B) overabundance of a game species leading to the
9 imminent

10 (i) depletion of the stock; or

11 (ii) destruction of habitat of the stock;

12 (C) destruction, modification, or reduction of habi-
13 tat; or

14 (D) other natural or man-made factors seriously af-
15 fecting the prospect of continued human utilization of the stock.

HOUSE
COMMITTEE REPORT

3/17

(7)

Date referred: 2/5/86

FURTHER REFERRALS: FINANCE

DATE: March 13, 1986

HEALTH, EDUCATION AND
The SOCIAL SERVICES Committee has considered HB 543

"An Act ~~relating to~~ special education service agency."
Creating the

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with HS HB 543 (HRS) same title
- new title

and recommends do pass

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS: *first*

SIGNING OTHER RECOMMENDATIONS:

M. J. Gumbert
Mike Korman
Katie Murray
Vic Gaji *Adrian L. Taylor*
David W. Shuman
Alyce Herley

Bill [unclear] no use

Mike Korman
 Co-Chairman
[unclear]
 Co-Chair

Offered: 3/17/86
Referred: Finance

see note

and

Original sponsors: Duncan and Thompson

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 543 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act creating the special education service agen-
7 cy."

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

9 * Section 1. PURPOSE. It is the purpose of this Act to

10 (1) assist districts and rural educational attendance areas to
11 make more special education and related services available to exceptional
12 children, as that term is defined in AS 14.30.350(4);

13 (2) encourage cooperation between districts and education
14 agencies in making special educational programs and services available to
15 these children;

16 (3) ensure that qualified specialists are available to assist
17 districts in the provision of free appropriate public education services
18 for those exceptional children that are difficult to serve, without regard
19 to their location in the state.

20 * Sec. 2. AS 14.30 is amended by adding new sections to read:

21 ARTICLE 8. SPECIAL EDUCATION SERVICE AGENCY.

22 Sec. 14.30.600. AGENCY ESTABLISHED. There is established, as a
23 public organization, a special education service agency.

24 Sec. 14.30.610. GOVERNING BOARD. (a) The agency shall be gov-
25 erned by an 11 member board appointed by the state Board of Education.
26 The board consists of

27 (1) one member from the Governor's Council for the Handi-
28 capped and Gifted;

29 (2) one member from the Department of Education;

1 (3) five members who are special education teachers or
2 directors, school administrators, or higher education or teacher
3 training representatives;

4 (4) two members who are parents of children requiring
5 special education outreach services;

6 (5) one member from the Department of Health and Social
7 Services;

8 (6) one public member.

9 (b) The seven members appointed under (a)(3) - (4) of this
10 section shall be chosen with due regard to geographically balanced
11 representation of areas of the state and to representation of persons
12 with a variety of different special education needs.

13 Sec. 14.30.620. TERMS, VACANCIES, AND COMPENSATION. (a) The
14 term of office of a board member is three years.

15 (b) A vacancy occurring during a term of office shall be filled
16 in the same manner as the original appointment. A member appointed to
17 fill a vacancy serves for the unexpired term of the member the new
18 appointee succeeded.

19 (c) Board members receive no salary but are entitled to per diem
20 and travel expenses authorized by law for other boards and commis-
21 sions.

22 Sec. 14.30.630. BYLAWS. The board, in consultation with the
23 department and on the approval of a majority of the members of the
24 board, shall adopt and amend bylaws for the operation of the agency
25 and the board.

26 Sec. 14.30.640. EMPLOYEES. Employees of the agency are not in
27 the state service and are not subject to the State Personnel Act
28 (AS 39.25). However, employees of the agency shall be members of
29 either the Teachers' Retirement System (AS 14.25) or the Public

1 Employees' Retirement System (AS 39.35) and are subject to the
2 provisions of AS 14.20.550 - 14.20.610.

3 Sec. 14.30.650. POWERS AND DUTIES. (a) The board may

4 (1) receive and expend public and private funds to carry
5 out the purposes of the agency;

6 (2) contract with the department and other public or pri-
7 vate agencies for the provision of special education or related ser-
8 vices;

9 (3) do whatever is necessary to carry out the purposes of
10 AS 14.30.600 - 14.30.680.

11 (b) The board shall

12 (1) provide special education services including

13 (A) itinerant outreach services to deaf, deaf-blind,
14 mentally retarded, hearing impaired, blind and visually impaired,
15 orthopedically handicapped, other health-impaired, severely
16 emotionally disturbed, and multi-handicapped students;

17 (B) special education instructional support and train-
18 ing of local school district special education personnel; and

19 (C) other services the board determines to be appro-
20 priate to special education needs;

21 (2) hire an executive director and approve the employment
22 of personnel necessary to operate the agency;

23 (3) provide for an annual audit of the agency;

24 (4) provide the department with a three-year plan of opera-
25 tion including a description of the services to be offered by the
26 agency, the method by which the services will be evaluated, informa-
27 tion on the number of students and school district personnel to be
28 served, a schedule of funds available to the agency from all sources,
29 and other information that may be required by the department by

1 regulation;

2 (5) present an annual budget to the department.

3 Sec. 14.30.660. ELIGIBILITY FOR SERVICE. The services of the
4 agency shall be available to school districts that serve children
5 whose special education needs occur infrequently, who require special-
6 ized services not normally available in the school district, and who
7 cannot be easily served by local school district personnel because of
8 the low number of students in the district in need of the particular
9 service. The agency may provide services to exceptional children, as
10 that term is defined in AS 14.30.350.

11 Sec. 14.30.670. FUNDING. Each fiscal year the department shall
12 recommend to the legislature an appropriate amount of funding for the
13 agency.

14 Sec. 14.30.680. DEFINITIONS. In AS 14.30.600 - 14.30.650,
15 unless the context otherwise requires,

16 (1) "agency" means the special education service agency;

17 (2) "board" means the governing board of the special educa-
18 tion service agency.

19 * Sec. 3. AS 14.25 is amended by adding a new section to read:

20 Sec. 14.25.047. PARTICIPATION BY SPECIAL EDUCATION AGENCY EN-
21 PLOYEES. An employee of the Special Education Agency may participate
22 in the retirement fund under this chapter if

23 (1) the employee possesses or is eligible to possess a
24 teacher certificate under AS 14.20.020; and

25 (2) the employee pays all retroactive contributions re-
26 quired to be made under this chapter.

27 * Sec. 4. AS 14.25.220(20) is amended to read:

28 (20) "membership service" means

29 (A) full or part-time service as a teacher in a public

1 school in the Territory or State of Alaska, or both, under the
2 supervision and control of the Territorial Board of Education or
3 the Department of Education or the school board of a city, re-
4 gional educational attendance area, or borough school district;

5 (B) full-time or part-time teaching at the University
6 of Alaska or a full-time administrative position at the Universi-
7 ty of Alaska which requires academic standing and which has been
8 approved for inclusion in the system by the administrator;

9 (C) any period during which the teacher receives a
10 disability benefit under this system or is on an approved sabbat-
11 ical leave granted in accordance with AS 14.20.310; [OR]

12 (D) continuous service as a state legislator when
13 performed by a state legislator who elects membership under
14 AS 14.25.040(b), subject to the requirements of AS 14.25.040(c);

15 OR

16 (E) full-time or part-time service as an employee of
17 the Special Education Agency, subject to the requirements of
18 AS 14.25.047;

19 * Sec. 5. AS 44.66.010(a) is amended by adding a new paragraph to read:

20 (13) Special Education Service Agency (AS 14.30.600) -- June
21 30, 1990.

22 * Sec. 6. Notwithstanding AS 14.30.620(a), enacted by sec. 2 of this
23 Act, the initial members of the governing board of the special education
24 service agency, four shall serve a term of four years, five shall serve a
25 term of three years, and two shall serve a term of two years. The initial
26 terms shall be assigned to initial board members by the state Board of
27 Education by lot.
28

Ford

Introduced: 2/5/86
Referred: Health, Education &
Social Services and Finance

1 IN THE HOUSE

BY DUNCAN

2 HOUSE BILL NO. 543

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act creating the special education service agen-
7 cy."

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

9 * Section 1. PURPOSE. It is the purpose of this Act to

10 (1) make special education and related services available to all
11 exceptional children, as that term is defined in AS 14.30.350(4);

12 (2) encourage cooperation in making special educational programs
13 and services available to these children;

14 (3) ensure that free appropriate public education services are
15 provided for all exceptional children in the state.

16 * Sec. 2. AS 14.30 is amended by adding new sections to read:

17 ARTICLE 8. SPECIAL EDUCATION SERVICE AGENCY.

18 Sec. 14.30.600. AGENCY ESTABLISHED. There is established, as a
19 public organization, a special education service agency.

20 Sec. 14.30.610. GOVERNING BOARD. (a) The agency shall be gov-
21 erned by an 11 member board appointed by the commissioner of education
22 with the approval of the state Board of Education. The board consists
23 of

24 (1) one member from the Governor's Council for the Handi-
25 capped and Gifted;

26 (2) one member from the Department of Education;

27 (3) five members who are special education teachers or
28 directors, school administrators, or higher education or teacher
29 training representatives;

1 (4) two members who are parents of children requiring
2 special education outreach services;

3 (5) one member from the Department of Health and Social
4 Services;

5 (6) one public member.

6 (b) The seven members appointed under (a)(3) - (4) of this
7 section shall be chosen with due regard to geographically balanced
8 representation of areas of the state and to representation of persons
9 with a variety of different special education needs.

10 Sec. 14.30.620. TERMS, VACANCIES, AND COMPENSATION. (a) The
11 term of office of a board member is three years.

12 (b) A vacancy occurring during a term of office shall be filled
13 in the same manner as the original appointment. A member appointed to
14 fill a vacancy serves for the unexpired term of the member the new
15 appointee succeeded.

16 (c) Board members receive no salary but are entitled to per diem
17 and travel expenses authorized by law for other boards and commis-
18 sions.

19 Sec. 14.30.630. BYLAWS. The board, in consultation with the
20 department and on the approval of a majority of the members of the
21 board, shall adopt and amend bylaws for the operation of the agency
22 and the board.

23 Sec. 14.30.640. EMPLOYEES. Employees of the agency are not in
24 the state service and are not subject to the State Personnel Act
25 (AS 39.25). However, employees of the agency shall be members of
26 either the Teachers' Retirement System (AS 14.25) or the Public Em-
27 ployees' Retirement System (AS 39.35).

28 Sec. 14.30.650. POWERS AND DUTIES. (a) The board may

29 (1) receive and expend public and private funds to carry

1 out the purposes of the agency;

2 (2) contract with the department and other public or pri-
3 vate agencies for the provision of special education or related ser-
4 vices;

5 (3) do whatever is necessary to carry out the purposes of
6 AS 14.30.600 - 14.30.680.

7 (b) The board shall

8 (1) provide special education services including

9 (A) itinerant outreach services to deaf, deaf-blind,
10 mentally retarded, hearing impaired, blind and visually impaired,
11 orthopedically handicapped, other health-impaired, severely
12 emotionally disturbed, and multi-handicapped students;

13 (B) special education instructional support and train-
14 ing of local school district special education personnel; and

15 (C) other services the board determines to be appro-
16 priate to special education needs;

17 (2) hire an executive director and approve the employment
18 of personnel necessary to operate the agency;

19 (3) provide for an annual audit of the agency;

20 (4) provide the department with a three-year plan of opera-
21 tion including a description of the services to be offered by the
22 agency, the method by which the services will be evaluated, informa-
23 tion on the number of students and school district personnel to be
24 served, a schedule of funds available to the agency from all sources,
25 and other information that may be required by the department by regu-
26 lation;

27 (5) present an annual budget to the department.

28 Sec. 14.30.660. ELIGIBILITY FOR SERVICE. The services of the
29 agency shall be available to school districts that serve children

1 whose special education needs occur infrequently, who require special-
2 ized services not normally available in the school district, and who
3 cannot be easily served by local school district personnel because of
4 the low number of students in the district in need of the particular
5 service. The agency may provide services to exceptional children, as
6 that term is defined in AS 14.30.350.

7 Sec. 14.30.670. FUNDING. Each fiscal year the department shall
8 allocate to the agency \$100 for each special education student in the
9 state in average daily membership or the equivalent of 2/10 of one
10 percent of the funds appropriated for special education for that
11 fiscal year, whichever is greater.

12 Sec. 14.30.680. DEFINITIONS. In AS 14.30.600 - 14.30.680,
13 unless the context otherwise requires,

14 (1) "agency" means the special education service agency;

15 (2) "board" means the governing board of the special educa-
16 tion service agency.

17 * Sec. 3. AS 14.25 is amended by adding a new section to read:

18 Sec. 14.25.047. PARTICIPATION BY SPECIAL EDUCATION AGENCY EM-
19 PLOYEES. An employee of the Special Education Agency may participate
20 in the retirement fund under this chapter if

21 (1) the employee possesses or is eligible to possess a
22 teacher certificate under AS 14.30.020; and

23 (2) the employee pays all retroactive contributions re-
24 quired to be made under this chapter.

25 * Sec. 4. AS 14.25.220(20) is amended to read:

26 (20) "membership service" means

27 (A) full or part-time service as a teacher in a public
28 school in the Territory or State of Alaska, or both, under the
29 supervision and control of the Territorial Board of Education or

1 the Department of Education or the school board of a city, re-
2 gional educational attendance area, or borough school district;

3 (B) full-time or part-time teaching at the University
4 of Alaska or a full-time administrative position at the Universi-
5 ty of Alaska which requires academic standing and which has been
6 approved for inclusion in the system by the administrator;

7 (C) any period during which the teacher receives a
8 disability benefit under this system or is on an approved sabbat-
9 tical leave granted in accordance with AS 14.20.310; [OR]

10 (D) continuous service as a state legislator when
11 performed by a state legislator who elects membership under
12 AS 14.25.040(b), subject to the requirements of AS 14.25.040(c);
13 or

14 (E) full-time or part-time service as an employee of
15 the Special Education Agency subject to the requirements of
16 AS 14.25.047;

17 * Sec. 5. Notwithstanding AS 14.30.620(a), enacted by sec. 2 of this
18 Act, the initial members of the governing board of the special education
19 service agency, four shall serve a term of four years, five shall serve a
20 term of three years, and two shall serve a term of two years. The initial
21 terms shall be assigned to initial board members by the commissioner of
22 education by lot.

CC
2/17

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS HB 543 (HESS)
 Title : ...Special Education Service
Agency...
 Sponsor : Duncan
 Requestor : House HESS
 Date of Request : 3/13/86

FISCAL DETAIL

Agency Affected : Education
 BRU : K-12 Support
 Components : Schools for the
Handicapped

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

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

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Steve Hole Phone : 2800
 Division : Commissioner's Office Date : 3/14/86
 Approved by Commissioner : Marshall Lind Date : 3/14/86
 Agency : Education

Distribution (by Agency preparing fiscal note):

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

ALASKA STATE LEGISLATURE

14th Legislature SECOND Session

HOUSE BILL NO. 543...

By DUNCAN.....

"An Act creating the special education service agency."

special education

Introduced in the House ... 2/5..., 1986

HISTORY IN THE HOUSE

19 86 Read first time and referred to Committee on

Feb 5 HESS AND FINANCE

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

Concurred in Senate amendment thus adopting:
VOTE

Failed to concur in Senate amendment; asked Senate to recede
VOTE

Senate receded from amendment
VOTE

Senate failed to recede from amendment
VOTE

CC appointed by House

CC appointed by Senate

CC adopted by House
VOTE

CC adopted by Senate
VOTE

To enrolling
Reported correctly enrolled
Sent to Governor

..... by Governor

Filed with Lt. Governor

Chapter No.

Offered: 3/17/86
Referred: Finance

Original sponsors: Duncan and Thompson

1 IN THE HOUSE BY THE HEALTH, EDUCATION AND
2 CS FOR HOUSE BILL NO. 543 (HESS)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL
6 For an Act entitled: "An Act creating the special education service agency."
7

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

9 * Section 1. PURPOSE. It is the purpose of this Act to
10 (1) assist districts and rural educational attendance areas to
11 make more special education and related services available to exceptional
12 children, as that term is defined in AS 14.30.350(4);
13 (2) encourage cooperation between districts and education
14 agencies in making special educational programs and services available to
15 these children;
16 (3) ensure that qualified specialists are available to assist
17 districts in the provision of free appropriate public education services
18 for those exceptional children that are difficult to serve, without regard
19 to their location in the state.

20 * Sec. 2. AS 14.30 is amended by adding new sections to read:

21 ARTICLE 8. SPECIAL EDUCATION SERVICE AGENCY.

22 Sec. 14.30.600. AGENCY ESTABLISHED. There is established, as a
23 public organization, a special education service agency.

24 Sec. 14.30.610. GOVERNING BOARD. (a) The agency shall be gov-
25 erned by an 11 member board appointed by the state Board of Education.
26 The board consists of

27 (1) one member from the Governor's Council for the Handi-
28 capped and Gifted;

29 (2) one member from the Department of Education;

1 (3) five members who are special education teachers or
2 directors, school administrators, or higher education or teacher
3 training representatives;

4 (4) two members who are parents of children requiring
5 special education outreach services;

6 (5) one member from the Department of Health and Social
7 Services;

8 (6) one public member.

9 (b) The seven members appointed under (a)(3) - (4) of this
10 section shall be chosen with due regard to geographically balanced
11 representation of areas of the state and to representation of persons
12 with a variety of different special education needs.

13 Sec. 14.30.620. TERMS, VACANCIES, AND COMPENSATION. (a) The
14 term of office of a board member is three years.

15 (b) A vacancy occurring during a term of office shall be filled
16 in the same manner as the original appointment. A member appointed to
17 fill a vacancy serves for the unexpired term of the member the new
18 appointee succeeded.

19 (c) Board members receive no salary but are entitled to per diem
20 and travel expenses authorized by law for other boards and commis-
21 sions.

22 Sec. 14.30.630. BYLAWS. The board, in consultation with the
23 department and on the approval of a majority of the members of the
24 board, shall adopt and amend bylaws for the operation of the agency
25 and the board.

26 Sec. 14.30.640. EMPLOYEES. Employees of the agency are not in
27 the state service and are not subject to the State Personnel Act
28 (AS 39.25). However, employees of the agency shall be members of
29 either the Teachers' Retirement System (AS 14.25) or the Public

1 Employees' Retirement System (AS 39.35) and are subject to the
2 provisions of AS 14.20.550 - 14.20.610.

3 Sec. 14.30.650. POWERS AND DUTIES. (a) The board may

4 (1) receive and expend public and private funds to carry
5 out the purposes of the agency;

6 (2) contract with the department and other public or pri-
7 vate agencies for the provision of special education or related ser-
8 vices;

9 (3) do whatever is necessary to carry out the purposes of
10 AS 14.30.600 - 14.30.680.

11 (b) The board shall

12 (1) provide special education services including

13 (A) itinerant outreach services to deaf, deaf-blind,
14 mentally retarded, hearing impaired, blind and visually impaired,
15 orthopedically handicapped, other health-impaired, severely
16 emotionally disturbed, and multi-handicapped students;

17 (B) special education instructional support and train-
18 ing of local school district special education personnel; and

19 (C) other services the board determines to be appro-
20 priate to special education needs;

21 (2) hire an executive director and approve the employment
22 of personnel necessary to operate the agency;

23 (3) provide for an annual audit of the agency;

24 (4) provide the department with a three-year plan of opera-
25 tion including a description of the services to be offered by the
26 agency, the method by which the services will be evaluated, informa-
27 tion on the number of students and school district personnel to be
28 served, a schedule of funds available to the agency from all sources,
29 and other information that may be required by the department by

1 regulation;

2 (5) present an annual budget to the department.

3 Sec. 14.30.660. ELIGIBILITY FOR SERVICE. The services of the
4 agency shall be available to school districts that serve children
5 whose special education needs occur infrequently, who require special-
6 ized services not normally available in the school district, and who
7 cannot be easily served by local school district personnel because of
8 the low number of students in the district in need of the particular
9 service. The agency may provide services to exceptional children, as
10 that term is defined in AS 14.30.350.

11 Sec. 14.30.670. FUNDING. Each fiscal year the department shall
12 recommend to the legislature an appropriate amount of funding for the
13 agency.

14 Sec. 14.30.680. DEFINITIONS. In AS 14.30.600 - 14.30.680,
15 unless the context otherwise requires,

16 (1) "agency" means the special education service agency;

17 (2) "board" means the governing board of the special educa-
18 tion service agency.

19 * Sec. 3. AS 14.25 is amended by adding a new section to read:

20 Sec. 14.25.047. PARTICIPATION BY SPECIAL EDUCATION AGENCY EM-
21 PLOYEES. An employee of the Special Education Agency may participate
22 in the retirement fund under this chapter if

23 (1) the employee possesses or is eligible to possess a
24 teacher certificate under AS 14.20.020; and

25 (2) the employee pays all retroactive contributions re-
26 quired to be made under this chapter.

27 * Sec. 4. AS 14.25.220(20) is amended to read:

28 (20) "membership service" means

29 (A) full or part-time service as a teacher in a public

1 school in the Territory or State of Alaska, or both, under the
2 supervision and control of the Territorial Board of Education or
3 the Department of Education or the school board of a city, re-
4 gional educational attendance area, or borough school district;

5 (B) full-time or part-time teaching at the University
6 of Alaska or a full-time administrative position at the Universi-
7 ty of Alaska which requires academic standing and which has been
8 approved for inclusion in the system by the administrator;

9 (C) any period during which the teacher receives a
10 disability benefit under this system or is on an approved sabbat-
11 ical leave granted in accordance with AS 14.20.310; [OR]

12 (D, continuous service as a state legislator when
13 performed by a state legislator who elects membership under
14 AS 14.25.040(b), subject to the requirements of AS 14.25.040(c);
15 or

16 (E) full-time or part-time service as an employee of
17 the Special Education Agency, subject to the requirements of
18 AS 14.25.047;

19 * Sec. 5. AS 44.66.010(a) is amended by adding a new paragraph to read:

20 (13) Special Education Service Agency (AS 14.30.600) -- June
21 30, 1990.

22 * Sec. 6. Notwithstanding AS 14.30.620(a), enacted by sec. 2 of this
23 Act, the initial members of the governing board of the special education
24 service agency, four shall serve a term of four years, five shall serve a
25 term of three years, and two shall serve a term of two years. The initial
26 terms shall be assigned to initial board members by the state Board of
27 Education by lot.

Introduced: 2/5/86
Referred: Health, Education &
Social Services and Finance

1 IN THE HOUSE

BY DUNCAN

2

HOUSE BILL NO. 543

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act creating the special education service agen-
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13 and services available to these children;

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15 provided for all exceptional children in the state.

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25 capped and Gifted;

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29 training representatives;

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2 special education outreach services;

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4 Services;

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9 ical leave granted in accordance with AS 14.20.310; [OR]

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11 performed by a state legislator who elects membership under
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13 or

14 (E) full-time or part-time service as an employee of
15 the Special Education Agency subject to the requirements of
16 AS 14.25.047;

17 * Sec. 5. Notwithstanding AS 14.30.620(a), enacted by sec. 2 of this
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19 service agency, four shall serve a term of four years, five shall serve a
20 term of three years, and two shall serve a term of two years. The initial
21 terms shall be assigned to initial board members by the commissioner of
22 education by lot.

HOUSE
COMMITTEE REPORT

(11)

Date referred: 4/1/86

FURTHER REFERRALS:

DATE: 4-11-86

The FINANCE Committee has considered HB 544

"An Act prohibiting the use of certain business names and establishing remedies and penalties for violations."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS HB 544 (Fin) same title
- new title

and recommends Do Pass

further referral to the _____ Committee

and attaches:

- letter of intent
- first fiscal note
- new fiscal note 2 dated 4/9/86 (8.3) 4/9/86 (4.1)
- zero fiscal note 4/9/86 - 1 ea.

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Robert P. Adams
San City
Mike Szymanski
Ronald J. ...
...
Fat Fouchant
...

Robert P. Adams
 Chairman

CORRECTION

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

HOUSE
COMMITTEE REPORT

(11)

Date referred: 4/1/86

FURTHER REFERRALS:

DATE: 4-11-86

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- letter of intent
- first fiscal note
- new fiscal note 2 dated 4/9/86 (8.3) 4/9/86 (4.1)
- zero fiscal note 4/9/86 - 1 ea.

SIGNING DO PASS:

Robert P. Gable
Sam C. ...
Mike ...
Ronald ...
...
Fat ...
...

SIGNING OTHER RECOMMENDATIONS:

Robert P. Gable
Chairman

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 4/09/86

REQUEST

Bill/Resolution No: CSHB 544 (JUD)
 Title: An Act prohibiting the use of certain business names and establishing remedies and penalties for violations
 Sponsor: Phillips
 Requestor: Judiciary
 Date of Request: February 28, 1986

FISCAL DETAIL

Agency Affected: Revenue
 BRU: Public Services
 Components: Public Services Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	5.3	5.6	5.8	6.1	6.4
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	3.0	0	0	0	0
LAND & STRUCTURES	-	-	-	-	-	-
GRANTS/CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	8.3	5.6	5.8	6.1	6.4

CAPITAL	-	-	-	-	-	-
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REVENUE	-	-	-	-	-	-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-	8.3	5.6	5.8	6.1	6.4
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Prepared by: *Sally Smith*
 Division: Public Services

Phone: 465-2392
 Date: April 9, 1986

Approved by: *Shirley H. Yundale*
 Commissioner: _____
 Agency: Revenue

Date: 4/9/86

Distribution (by Agency preparing fiscal note):

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

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 544

Assumptions:

1. The provisions of CSHB 544 will not be applied retroactively.
2. The implementaion of CSHB 544 will begin with calendar year 1987
3. Available at Service Centers and by mail.
4. All appeal hearings will be held in Juneau.
5. Current staff levels are sufficient to carry out the provisions of CSHB 544.

Program Summary

The Public Services Division of the Department of Revenue currently examines approximately 74,000 Business License applications on an annual basis. Of these 74,000, about 21,000 are new applications. Anniversary date submission of business licenses, coupled with biennial filing requirements, eliminates the requirement for additional staff. However, another computer terminal will help eliminate backlog problems.

Appeal hearings are to be conducted exclusively in Juneau. We estimate approximately 35 hearings per annum at a cost of 150 per hearing.

Note:

No data processing or associated costs are required by the Department of Revenue if the Department of Commerce and Economic Development stores their four occupational licensing files on the Department of Administration's IBM computer. All related files--Department of Revenue's Business License files, Department of Commerce and Economic Development's Corporation and Occupational Licensing files--would be on the IBM computer and directly accessible from Juneau, Anchorage and Fairbanks.

Two possible impacts of passage involve a delay in issuance of business licenses of one to three weeks and the possibility of large numbers of appeals based on firms or individuals who disagree with the Department's findings.

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date: _____

REQUEST

Bill/Resolution No.: CSHB 544 (JUD)
 Title: An Act prohibiting the use of
 certain business names and establishing
 remedies and penalties for violations.
 Sponsor: Phillips
 Requester: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Economic Development
 BRU: Banking, Securities and
 Corporations
 Components: _____

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

See attached analysis.

Prepared by: JoAnn Schultz *JoAnn Schultz*
 Division: Banking, Securities and Corporations

Phone: 465-2570
 Date: April 9, 1986

Approved by Commissioner: *Norm S. Hornsby*
 Agency: Commerce and Economic Development

Date: April 9, 1986

Distribution (by Agency preparing fiscal note):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 544 (Jud)

The initial fiscal note submitted March 3, 1986 provided for Wang terminals to allow the Corporations Section to access the business license files of the Department of Revenue and the licensing files of the Division of Occupational Licensing. The information accessed would have been on-line and current.

The attached fiscal note is based on the assumption that the Division of Occupational Licensing will put its files on the IBM mainframe once a week. The Department of Revenue also puts its business license file on the IBM mainframe on a weekly basis. With all the files residing on the IBM mainframe, the Corporations Section will be able to access the information utilizing its existing IBM terminals.

The cost to accomplish the purpose of HB 544 has been decreased. However, the timeliness of reply and accuracy of information has been sacrificed. The information which will be accessed will be at least a week old, other than the Corporations Section files, which are on-line. The amount of time involved in searching three files for the same or deceptively similar names will also be increased. It is estimated a single search could take a minimum of ten to fifteen minutes. The time involved would make it impractical to continue allowing name availability searches by telephone. An increase in error rate is also predictable for the same reasons.

The fiscal note does not reflect any cost for an appeal process provided for in Section 10.50.030(b). The assumption has been made that the Director of the Division of Banking, Securities, and Corporations will conduct an informal review of the denial and issue a decision.

JS/ss0201Z
040986a

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date: _____

REQUEST

Bill/Resolution No.: CSHB 544 (JUD)
 Title: An Act relating to business licenses and the use of business names;
 Sponsor: Rep. Phillips
 Requester: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Economic Dev.
 BRU: Occupational Licensing
 Components: _____

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
TRAVEL		-0-	-0-	-0-	-0-	-0-
CONTRACTUAL		4.1	3.9	3.9	3.9	3.9
SUPPLIES		-0-	-0-	-0-	-0-	-0-
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES		-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		4.1	3.9	3.9	3.9	3.9

CAPITAL						
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REVENUE		-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of dollars)

GENERAL FUND		4.1	3.9	3.9	3.9	3.9
FEDERAL FUNDS						
OTHEF						
TOTAL		4.1	3.9	3.9	3.9	3.9

POSITIONS:

FULLTIME		-0-	-0-	-0-	-0-	-0-
PARTTIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary.

The bill amends Alaska Statutes 08., AS 10., and AS 43., to prohibit businesses from using deceptively similar names once a name is already used by an entity licensed or registered under one of the three statutes mentioned.

Business licensing files as well as the Corporations files are stored on the

Prepared by: Jennifer Strickler, Management Analyst Phone: 465-2144
 Division: Occupational Licensing Date: 4-9-86

Approved by Commissioner: Don H. Tompkins Date: 4-9-86
 Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 544 (JUD.)

IBM Mainframe. The Occupational Licensing files are currently stored on a Wang VS 80 System. Since the bill prohibits use of deceptively similar names, it would be necessary for the Business Licensing Section in the Department of Revenue, the Corporations Section in the Department of Commerce & Economic Development, and the Division of Occupational Licensing in the same agency, to have access to each of the three files in order to carry out the intent of the legislation.

After extensive consideration of all possible networking options, the least expensive method discovered is to place all relevant Occupational Licensing files on the IBM mainframe for access by the Department of Revenue, Business Licensing, and the Corporations Section of the Department of Commerce & Economic Development.

The expenditures listed will allow four IBM lines to be purchased and attached to the department's Wang VS 100. Installment costs in the first year will total \$.2. The remaining \$3.9 consists of monthly charges of \$82.00 per month for each line, to attach and use the IBM system.

Programming would be accomplished in-house by available personnel therefore programming costs would be absorbed in the agency's operating budget. In addition, staff would need to be trained to do the searches for "deceptively similar" names consistent with whatever procedures are developed in common by the three agencies. Hearings may be prompted by divisions against applicants' use of names, especially because rational people may well disagree on what constitutes deceptive similarity. The division currently plans to absorb these costs.

Additional Comments

Even if the bill is funded, carrying out the intent of the legislation in preventing deceptively similar names from being used will be an exceptionally slow process, and will result in delays in our licensing process. Each inquiry must be made to three different files, and because of the concern for deceptive similarity, each inquiry would need to be made as many times as there would be potentially similar names. For example, a proposed business name such as Southeast Alaska Trucking would have to be checked by making multiple inquiries to each of the three files under names such as those below:

- South East Trucking
- Southeast Trucking
- S E Trucking
- S E Alaska Trucking
- S E AK Trucking
- S E Alaskan Trucking

and so on. This amounts to an extensive manual search of each file as no software exists which can do the search for deceptive similarity. We estimate between 10 - 30 minutes for each review of the files, if the review is to be effective, especially since there has been no uniformity of data entry amongst the three agencies, resulting in a variety of abbreviations and other spellings.

It is important to note that this proposed networking plan is not foolproof. There will be delays between the time the public makes phone inquiries and are actually issued licenses, and business license and occupational licensing files will be updated on approximately a weekly basis. Thus, licenses

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 544 (JUD.)

under deceptively similar names may be mistakenly issued. To ensure that this cannot occur, a joint interactive data base would have to be developed for use by the three agencies at considerable expense.

Original sponsor: Phillips

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 544 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to business licenses and the use of
7 business names."

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

9 * Section 1. AS 08.02 is amended by adding a new section to read:

10 Sec. 08.02.030. DENIAL OF LICENSE FOR USE OF CERTAIN NAMES. (a)

11 Unless the similarity arises solely from the use of the legal name of
12 a natural person who is the applicant for the license or involved in
13 the operation of the applicant if the applicant is not a natural
14 person, the department or a board listed in AS 08.01.010 may not issue
15 a license to a person whose business name is the same as, or decep-
16 tively similar to

17 (1) the name of a corporation incorporated under the laws
18 of the state;

19 (2) the name under which a foreign corporation has been
20 authorized to transact business in the state;

21 (3) a name reserved or registered under AS 10; or

22 (4) the name of a licensee under AS 43.70.

23 (b) A person who knowingly does business under a name that is
24 not available to the person under (a) of this section is guilty of a
25 violation.

26 * Sec. 2. AS 10.05.021(a) is repealed and reenacted to read:

27 (a) The corporate name must contain the word "corporation,"
28 "company," "incorporated" or "limited," or an abbreviation of one of
29 these words. The corporate name may not contain a word or phrase that

1 indicates or implies that the corporation is organized for a purpose
2 other than the purpose contained in the articles of incorporation, and
3 must be available to the corporation under AS 10.50.010.

4 * Sec. 3. AS 10.05.033 is repealed and re enacted to read:

5 Sec. 10.05.033. REGISTRATION OF CORPORATE NAME. A corporation
6 organized and existing under the laws of a state or territory of the
7 United States may register its corporate name if the name is available
8 to the corporation under AS 10.50.010.

9 * Sec. 4. AS 10.05.519(c) is amended to read:

10 (c) When a corporation has given cause for involuntary dissolu-
11 tion and has failed to correct the neglect, omission or delinquency as
12 provided in this section, the commissioner shall dissolve the corpora-
13 tion by issuing a certificate of involuntary dissolution containing a
14 statement that the corporation has been dissolved, the date, and the
15 reason for which it was dissolved. The original certificate of disso-
16 lution shall be placed in the department files and a copy of it mailed
17 to the corporation at its registered office or in care of one of its
18 principal officers or directors, at the last known address of the
19 officer or director, as shown by the records of the commissioner.
20 Upon the issuance of the certificate of involuntary dissolution, the
21 existence of the corporation shall cease, except as otherwise provided
22 in this section, and its name shall be available to and may be adopted
23 by another person [CORPORATION] no less than six months after the
24 dissolution.

25 * Sec. 5. AS 10.05.519(d) is amended to read:

26 (d) A corporation dissolved by the commissioner under the pro-
27 visions of this section may be reinstated by the commissioner at any
28 time within two years from the date of the certificate of involuntary
29 dissolution whenever it is established to the satisfaction of the

commissioner that in fact there was no cause for the dissolution, or whenever the neglect or delinquency resulting in dissolution has been corrected and payment made of double the amount delinquent along with the amount the corporation would have paid had it not been dissolved during the two-year period. Reinstatement may not be authorized if the name of the corporation to be reinstated is not available to the corporation under AS 10.50.010 [THE SAME OR A DECEPTIVELY SIMILAR CORPORATE, RESERVED OR REGISTERED NAME IS CURRENTLY ON FILE WITH THE COMMISSIONER], unless the corporation being reinstated contemporaneously amends its articles of incorporation to change its name to a name that is available under AS 10.50.010 [CONFORM WITH THE PROVISIONS OF THIS CHAPTER].

* Sec. 5. AS 10.25.606 is amended to read:

Sec. 10.25.606. CORPORATE NAME OF FOREIGN CORPORATION. A certificate of authority may not be issued to a foreign corporation unless the corporate name of the corporation

(1) contains the word "corporation," "company," "incorporated," or "limited," or an abbreviation of one of these words, or, for use in the state, adds at the end of its name one of these words or an abbreviation of one of them;

(2) does not contain a word or phrase that [VFICU] indicates or implies that it is organized for a purpose other than the purpose contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance;

(3) is available to the foreign corporation under AS 10.50.010 [NOT THE SAME AS, OR DECEPTIVELY SIMILAR TO, THE NAME OF A DOMESTIC CORPORATION EXISTING UNDER THE LAWS OF THE STATE OR A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THE STATE, OR A NAME

THE EXCLUSIVE RIGHT TO WHICH IS RESERVED IN THE MANNER PROVIDED IN THIS TITLE, OR THE NAME OF A CORPORATION WHICH HAS IN EFFECT A REGISTRATION OF ITS NAME AS PROVIDED IN THIS CHAPTER).

* Sec. 7. AS 10.05.607 is amended to read:

Sec. 10.05.607. ASSUMED CORPORATE NAME. When a foreign corporation, applying for a certificate of authority, has a name that is not available under AS 10.50.010 [THE SAME AS OR DECEPTIVELY SIMILAR TO THAT OF A CORPORATION REGISTERED UNDER THIS CHAPTER], it shall

(1) select a name under which it elects to do business in the state; and

(2) clearly identify on all advertising, contracts and other legal documents its true corporate name as well as its assumed name.

* Sec. 8. AS 10.20.021 is repealed and reenacted to read:

Sec. 10.20.021. CORPORATE NAME. The corporate name may not

(1) contain a word or phrase that indicates or implies that the corporation is organized for a purpose other than one or more of the purposes contained in the corporation's articles of incorporation;

(2) be a name that is prohibited to the corporation under AS 10.50.010.

* Sec. 9. AS 10.20.470 is repealed and reenacted to read:

Sec. 10.20.470. CORPORATE NAME OF FOREIGN CORPORATION. A certificate of authority may not be issued to a foreign corporation unless the corporate name of the corporation

(1) does not contain a word or phrase which indicates or implies that it is organized for any purpose other than the purpose contained in its articles of incorporation;

(2) is available to the corporation under AS 10.50.010.

* Sec. 10. AS 10.20.471 is amended to read:

Sec. 10.20.471. ASSUMED CORPORATE NAME. When a foreign corporation, applying for a certificate of authority, has a name that is not available under AS 10.50.010 (THE SAME AS OR DECEPTIVELY SIMILAR TO THAT OF A CORPORATION OPERATING UNDER THIS CHAPTER), it shall

(1) select a name under which it elects to do business in the state;

(2) clearly identify on all advertising, contracts and other legal documents its true corporate name as well as its assumed name.

* Sec. 11. AS 10.35.020 is repealed and reenacted to read:

Sec. 10.35.020. APPLICATION TO RESERVE NAME. Reservation of a business name is made by filing an application with the commissioner. Upon finding that the name is available for business use, the commissioner shall reserve it for the exclusive use of the applicant for a period of 120 days. A name is not available to the applicant if the applicant's name gives the impression that the business is incorporated or the name is prohibited by AS 10.50.010.

* Sec. 12. AS 10.35.040 is amended to read:

Sec. 10.35.040. REGISTRATION OF NAME. (a) A person conducting a business may register its name if the name is available to the person under AS 10.50.010 (NOT THE SAME AS, OR DECEPTIVELY SIMILAR TO, THE NAME OF A DOMESTIC CORPORATION OR A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THE STATE, OR A NAME RESERVED OR REGISTERED UNDER THIS TITLE).

(b) Registration of the name gives the exclusive right to the use of the name and the person who has registered the name may enjoin the use of the same name or a deceptively similar name and has a cause of action for damages against a person (ANYONE) who uses the same name or a deceptively similar name.

* Sec. 13. AS 10 is amended by adding a new chapter to read:

CHAPTER 50. BUSINESS NAMES.

Sec. 10.50.010. DENIAL OF CERTIFICATE OR AUTHORIZATION. Unless the similarity arises solely from the use of the legal name of a natural person who is the applicant or involved in the operation of the applicant if the applicant is not a natural person, the department may not issue a certificate of incorporation or an authorization to transact business in the state, or reserve or register a corporate or business name under this title, for a person whose proposed corporate name is the same as, or deceptively similar to

(1) the name of a corporation incorporated under the laws of the state;

(2) the name under which a foreign corporation has been authorized to transact business in the state;

(3) the name of the holder of a license issued by the department under AS 03.01.010 or by a board listed in AS 03.01.010;

(4) a name reserved or registered under this title; or

(5) the name of a licensee under AS 43.70.

Sec. 10.50.020. REVIEW OF DENIAL. (a) If the department denies a certificate of incorporation or an authorization to transact business in the state or declines to reserve or register a name, the applicant may appeal the department's action by filing a notice of appeal with the department within 30 days of the denial.

(b) The department shall establish by regulation the procedures for an appeal under (a) of this section.

Sec. 10.50.030. PENALTY. A person who knowingly does business under a name that is not available to the person under AS 10.50.010 is guilty of a violation.

Sec. 10.50.040. DEFINITION. In this chapter, "department" means

the Department of Commerce and Economic Development.

* Sec. 14. AS 43.05.230 is amended by adding a new subsection to read:

(b) The department may release information received or collected by the department under AS 43.70 that is related to the legal or business names of licensees to the Department of Commerce and Economic Development for use in carrying out its statutory responsibilities.

* Sec. 15. AS 43.70.020(a) is amended to read:

(a) For the privilege of engaging in a business in the state, a person shall first apply, on [UPON] forms prescribed by the commissioner of revenue, and obtain a license, and pay the license fee provided for in AS 43.70.030. A license issued to a firm for a particular line of business covers all its operations in the state in the line of business regardless of the number of its establishments. A license issued under this subsection must include

- (1) the name and address of the licensee;
- (2) the line of business to be conducted; AND
- (3) the year in which the license is issued; and
- (4) the business name of the licensee.

* Sec. 16. AS 43.70.020(b) is repealed and reworded to read:

(b) A license issued under this section is valid for two years after the date of issuance, unless the licensee also holds a license issued by the Department of Commerce and Economic Development under AS 08.01.010 or by a board listed in AS 08.01.010, in which case the license issued under this section is valid for the same length of time as the other license. A licensee under this section shall apply for renewal of the license and pay the renewal fee before the date the license expires.

* Sec. 17. AS 43.70.020 is amended by adding a new subsection to read:

(c) Unless the similarity arises solely from the use of the

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legal name of a natural person who is the applicant for the license or involved in the operation of the applicant if the applicant is not a natural person, the department may not issue a license under this section to a person whose legal or business name is the same as, or deceptively similar to

(1) the name of a domestic corporation in the state;

(2) the name under which a foreign corporation has been authorized to transact business in the state;

(3) the name of the holder of a license issued by the Department of Commerce and Economic Development under AS 08.01.010 or by a board listed in AS 08.01.010;

(4) a name reserved or registered under AS 10; or

(5) the name of a licensee under this chapter.

* Sec. 18. AS 43.70 is amended by adding a new section to read:

43.70.025. REVIEW OF DENIAL OF BUSINESS LICENSE. (a) If the commissioner denies a person a business license under AS 43.70.020(a), the person may appeal the denial by filing a notice of appeal with the commissioner within 30 days of the denial.

(b) The commissioner shall establish by regulation the procedures for an appeal under (a) of this section.

* Sec. 19. AS 43.70.030(a) is amended to read:

(a) The license fee for each business is \$25 for each year of the period for which the license is issued or portion of a year. The renewal fee is the same amount as the license fee.

* Sec. 20. AS 43.70.020(c) and 43.70.030(d) are repealed.

* Sec. 21. (a) AS 08.01.030(a), added by sec. 1 of this Act, does not apply to the renewal of a license that is otherwise eligible for renewal, and that was issued by the Department of Commerce and Economic Development under AS 08.01.010, or by a board listed under AS 08.01.010, before the

effective date of this Act.

(b) AS 10.35.040(a), as amended by sec. 12 of this Act, does not apply to the renewal under AS 10.35.070 of a business name registration in existence on the date this Act takes effect.

(c) AS 43.70.020(e), added by sec. 17 of this Act, does not apply to the renewal of a business license that was issued or renewed for 1986 and that is otherwise eligible for renewal.

* Sec. 22. The Department of Revenue shall establish procedures for the transition from the issuance of business licenses under AS 43.70 on an annual, calendar-year basis to the basis established by AS 43.70.020(b), as amended by sec. 16 of this Act.

Bannister ✓

A M E N D M E N T

Offered in the HOUSE

TO: CSHB 544(Jud)

Szymanski
By ~~_____~~

Page 9, following line 7, add a new bill section to read:

"* Sec. 22. The Department of Revenue shall establish procedures for the transition from the issuance of business licenses under AS 43.70 on an annual, calendar-year basis to the basis established by AS 43.70.020(b), as amended by sec. 16 of this Act."

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 3, 1986

SUBJECT: Sectional analysis of CSHB 544 (Jud)
TO: Representative Randy Phillips
FROM: Theresa L. Bannister *TB*
Legislative Counsel

Section 1 prohibits the Department of Commerce and Economic Development or a board listed under AS 08.01.010 from issuing an occupational license to an applicant whose name is the same as, or deceptively similar to the names of certain other persons or entities, unless the applicant's name meets certain other criteria. Establishes a penalty for a person's knowing business use of a name that is unavailable to the person.

Section 2 requires the name of a corporation to be available to the corporation under Sec. 10.50.010 of sec. 13 of this bill.

Section 3 allows a corporation to register its name if the name is available to it under Sec. 10.50.010 of sec. 13 of this bill.

Section 4 makes the name of an involuntarily dissolved corporation available to another person.

Section 5 prohibits reinstatement of an involuntarily dissolved corporation if its name is not available to the corporation under Sec. 10.50.010 of sec. 13 of this bill, unless the corporation changes its name to one that is available.

Section 6 prohibits the issuance of a certificate of authority to a foreign corporation whose name is not available under Sec. 10.50.010 of sec. 13 of this bill.

Section 7 requires a foreign corporation to select another name if its name is not available to it under Sec. 10.50.010 of sec. 13 of this bill.

Section 8 requires the name of a nonprofit corporation to be available to the corporation under Sec. 10.50.010 of sec. 13 of this bill.

Section 9 prohibits the issuance of a certificate of authority to a nonprofit foreign corporation whose name is not available to the corporation under Sec. 10.50.010 of sec. 13 of this bill.

Section 10 requires a nonprofit foreign corporation to select an assumed name for doing business in the state if its name is not available under Sec. 10.50.010 of sec. 13 of this bill.

Section 11 prevents an applicant from reserving a business name that is not available to the applicant under Sec. 10.50.020 in sec. 13 of this bill.

Section 12 allows a person to register a business name if the name is available under Sec. 10.50.020 in sec. 13 of this bill.

Sec. 10.50.010 of sec. 13 prohibits the department of Commerce and Economic Development from issuing under AS 10 a certificate of incorporation or an authorization to transact business in the state, or from reserving or registering a name under AS 10, if the name of the applicant is the same as or deceptively similar to the names of certain other persons or entities, unless the applicant's name meets certain other criteria.

Sec. 10.50.020 of sec. 13 provides a right of review for a person who has been denied a certificate or authorization, or the reservation or registration of a name, under Sec. 10.50.010. Directs the department to establish by regulation the procedures for the review.

Sec. 10.50.030 of sec. 13 establishes a penalty for a person's knowing business use of a name that is not available to the person under Sec. 10.50.010.

Sec. 10.50.200 of sec. 13 defines "department" for the new chapter.

Representative Phillips
Page 3
April 3, 1986

Section 14 allows the department of Revenue to release certain information on the legal or business names of holders of business licenses to the Department of Commerce and Economic Development.

Section 15 requires a business license to include the business name of the applicant.

Section 16 makes a business license good for two years from the date it is issued, except that the business license of a person who is licensed by the Department of Commerce under AS 08.01.010 or by a board listed in AS 08.01.010, is valid for the same length of time as the occupational license. Requires licensee to renew before the license expires.

Section 17 prohibits the Department of Revenue from issuing a business license to an applicant whose name is the same or deceptively similar to the names of certain other persons or entities, unless the applicant's name meets certain other criteria.

Section 18 provides a right of review for a person whose application for a business license has been denied for non-availability of the name. Directs the commissioner to establish by regulation procedures for the review.

Section 19 states that the business license fee is payable for each year or portion of a year for which the license is issued. Clarifies that renewal fee is the same as the initial fee.

Section 20 repeals certain business license subsections.

Section 21(a) makes the name restrictions established by sec. 7 of this bill inapplicable to the renewal of certain occupational licenses.

Section 21(b) makes the name restrictions established by sec. 12 of this bill inapplicable to the renewal of certain business name registrations.

Section 21(c) makes the business license name prohibition added by sec. 17 of this bill inapplicable to certain business licenses issued or renewed for 1986.

TLB:mkr
m4/065

NORTHLAND ENTERPRISES

February 11, 1986

Randy Phillips
State Representative
P.O. Box V
Juneau, AK 99811

Dear Randy,

Please accept my apology in the delay of my response to you regarding HB 544.

I have reviewed the bill as you have requested, and do indeed feel that it will perform exactly what is needed. Without belaboring the details of difficulty backgrounding our experiences, I will summarize as follows;

To date, I have been forced three times to contest other persons or businesses use of our registered and licensed business name "Northland Enterprises". To reiterate, in each case our discovery of their infringement was incidental.

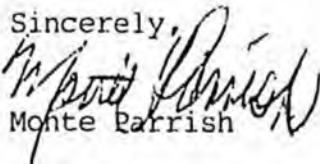
Threats of litigation seem to have had varying degrees of effect in dissuading those companies. One even held a legally issued business license with the same name as our company, another was intent on obtaining a license and ignoring us until we demonstrated that it would constitute an infringement on our registration of the name (as no Alaska law prohibits duplicate licensing).

We had the surprise and misfortune of being considered an associate of one of those companies by their different creditors, for which we were threatened with being penalized for their many delinquencies. As a result, I fear our company suffering consequential implications (which I have no doubt has occurred) if and when these or other companies default and/or otherwise cause an infraction on the reputation we are trying to earn.

I am convinced that this type of situation will plague other Alaskan businesses in the future if left unchecked.

I am very appreciative of your assistance to the business community by the proposal of HB 544 to close a loophole in business ethics that presently allows duplicate business names and licenses.

Sincerely,


Monte Parrish

EM

EQUIPMENT MANAGEMENT
IN WASHINGTON

By EPHRAIM KAHN
Washington Editor

Minority contracting fraud probes being stressed by Department of Transportation

Secretary Elizabeth Hanford Dole of the Department of Transportation has told Inspector General Joseph P. Welsch to "mount an offensive against minority fronts with the same determination and vigor that have assured our success in efforts against bid-rigging." The Inspector General is working in conjunction with the Department of Justice. Sec. Dole recently told the National Minority Supplier Development Council that she expects significant results in the investigation and prosecution of minority fronts.

In fiscal 1985, disadvantaged businesses received over \$1.7 billion from Federal Highway Administration and Urban Mass Transit Administration projects. Both these agencies are actively supporting investigations of possible fraud. The probes will be directed toward prosecuting non-disadvantaged prime contractors who are abusing the program.

Inspector General Welsch said "some schemes involve the voluntary participation of minority 'fronts,' while some involve participation by legitimate disadvantaged businesses who are used as

'brokers' for 'pass-through' subcontracts to non-disadvantaged firms. Others use the name of disadvantaged businesses without their knowledge or consent. The number of schemes and variations is limited only by the ingenuity of the operator."

He added that criminal violations have included false statements, false claims, perjury, mail fraud, wire fraud, conspiracy, antitrust violations, extortion, and others. "Because of the potential for abuses in this multi-billion dollar program, the Fraud Section of the Criminal Division, the Department of Justice, is taking measures to insure that all substantive criminal violations receive full prosecutive consideration," Welsch added. He requests anyone with knowledge of fraud in this program to call the toll-free Hotline at 800-424-9071 (755-1855 in the Washington, D.C. area). Callers may be anonymous and may request that their identity be protected.

Improved prompt pay laws will be sought by coalition this year

The Coalition for State Prompt Pay, a group of 26 trade associations including several in the construction industry, will try to persuade the nine states that don't have prompt pay laws to pass them in 1986 and to convince the legislatures of 41 states that have these laws to improve them.

At this point, 41 states and the District of Columbia have laws that require government agencies to pay contractors promptly or to pay interest penalties when payment is late. Six states (Missouri, New Mexico, North Dakota, Ohio, Tennessee, and Texas) and the District of Columbia adopted new prompt pay laws in 1985. In addition, California, Florida, Hawaii, Minnesota, Montana, and Virginia enacted strengthening amendments to their existing prompt pay laws.

The federal prompt pay law, which requires that contractors be paid within 30 days and that interest be paid on overdue amounts, was passed in 1982. The state laws are similar to the federal law. The Coalition reports that enactment of the federal law resulted in a substantial increase in the number of on-time payments to contractors.

Coalition director Kenton Pattie noted that Congress recently has held hearings on improving the federal prompt pay law, and that the construc-

tion industry has expressed particular concern about lateness in progress payments. Some federal agencies fail to pay interest on progress payments, and they also fail to make progress payments on time, contending that the prompt pay law does not apply to payments made in advance of completion of the contract.

The construction industry is trying to get that changed. Pattie said the Coalition—which has at least 15 construction-related associations in its membership—will try to have the federal statute amended in 1986 to state clearly that progress payments are subject to the prompt payment act and that they should be made within the 30 days prescribed for paying other bills. Pattie notes, however, that some people have said this would be bad—or at least a mixed blessing—for construction because agencies might decide to slow payments that they are now making in less than 30 days, as well as progress payments, timing them to arrive on or about the thirtieth day. This could result in delaying payments to those contractors who have been getting their money before the day that interest payments would start to accrue.

(Continued on page 10)

NAME AVAILABILITY PROCEDURE GUIDELINES

A name availability search or check is performed for all new names and all changes of names for corporations and other legal entities registered with the division. By law, a name cannot be accepted that is the same as or deceptively similar to one of record. Mail availabilities have priority over everything else in the Information Center, except phone inquiries. Procedures will not cover every situation. The ultimate test of "deceptive similarity" is: will the general public be confused, either intentionally or unintentionally, about the new applicant and names on files. The guidelines for "deceptive similarity" are listed below. The process is essentially the same for all legal entities. The general guidelines are covered in Paragraphs A to Y.

ALL OPINIONS REGARDING NAME AVAILABILITY ARE MERELY ADVISORY AND ARE NOT FINAL, UNLESS AND UNTIL A PROPER LEGAL INSTRUMENT EMPLOYING THE NAME HAS BEEN STAMPED FILED BY OUR OFFICE.

A PRELIMINARY NAME AVAILABILITY SEARCH BY TELEPHONE IS NOT A GUARANTY: IT IS NOT A RESERVATION. IT IS A QUICK SEARCH, AND ALL TESTS FOR NAME AVAILABILITY (INCLUDING THE SAME AS, DECEPTIVELY SIMILAR, REVERSALS, ABBREVIATIONS, PHONETIC COMPARISON, ETC.) ARE NOT ACCOMPLISHED IN A BRIEF TELEPHONE INQUIRY. THEREFORE, THE CUSTOMER SHOULD BE ADVISED AS FOLLOWS: "THIS DOES NOT RESERVE THE NAME. IT WILL BE CHECKED AGAIN WHEN THE DOCUMENTS AND FEES ARE RECEIVED IN OUR OFFICE. YOU SHOULD NOT USE THE NAME UNTIL YOU RECEIVE YOUR COPY STAMPED FILED."

In determining name availability, proposed corporate names are not compared to trademarks registered in Alaska.

A. Every check results in one of the following decisions:

1. Name is available;
2. Name is available with consent of the entity having a similar name;
3. Name is available with additional terminology;
4. Name is not available; or
5. Name is available with the addition of one or more words and consent of the entity on file.

B. Same Name:

The same name cannot be accepted.

C. Word Endings:

Each word of the name should be examined for different word endings. The following tests are used to determine if a name is deceptively similar to another of record.

D. Noise words:

1. "Noise" words, such as "of," "for," "in," "an," "and," "the," "to," "too" and "at," are not considered descriptive words and should be ignored. Institute of Health...also check Institute for Health. These are considered identical names.

ABC Company	Johnson-Harris, Inc.
AB and C Company	Johnson and Haris, Inc.
A and BC Company	
AB Company	Alaska-Hawaii
A and B Company	Alaska and Hawaii

2. "A" is considered.

"A" is considered when it is at the beginning of a name. "A" is often used by a business entity to get its name listed first in the Yellow Pages, e.g., "A-Creative Coachworks," "A Design & Builders." Therefore, when checking a name, e.g., "A-Cut Above," check under "A" as a word, as well as under the word "Cut" and "Kut."

E. Abbreviations:

1. Check abbreviations if applicable:

Brothers Bros.	Builders Bldrs.	Junior Jr.	Los Angeles L.A.
Management Mgt.	Manufacturing Mfg.	Metropolitan Metro	Mister Mr.
Mount or Mountain Mt.		Alaska AK	Plumbing Plbg.
Robert Robt.	Saint St.	Television TV	United States U.S.
William Wm.			

F. Acronyms/Initials:

1. Check acronyms as separate names. Only one, not both, are acceptable. Case law in other states sets forth that a business may have only one name per business.

EXAMPLE: "International Customer Exchange (ICE)." We would accept "International Customer Exchange" or ICE," if available, but both cannot be the corporate name.

2. Initials.

Initials that either spell a word or can be pronounced as a word are checked as a word and are considered identical, i.e., "F.I.T.T.E.R.S." and "Fitters."

G. Hyphenated Words:

Hyphenated words, two words or one word, i.e., "Tri-City," "Tri City" and "TriCity" are considered identical and are filed as one word.

H. Spaces and Special Characters:

1. Spaces and special characters, periods, commas, apostrophes, etc., are not considered.
2. Capitalization is ignored, e.g., "JOHN'S TOWING" is considered the same as "John's Towing."

I. Corporate Endings/Special Corporate Words:

1. Corp., Inc., Ltd.

Common corporate endings are considered synonymous and are not considered when checking name availability. One of these must appear in a corporate name:

Corporation or Corp.
Company or Co.
Incorporated or Inc.
Limited or Ltd.

2. The corporate name may not contain the word "city," "borough" or "village" or otherwise imply that the corporation is a municipality.

3. Special Corporate Provisions

- a. Professional corporations require "Corporation" or "Incorporated" or the abbreviation "Corp." and "Inc." or the words "A Professional Corporation" in their corporate name.
- b. The word "Cooperative" or "COOP" or "CO-OP" can only be used in the name of a cooperative corporation.

EXCEPTION: The word "COOP" can be used in a name such as "Chicken Coop Tavern."

J. Reverse Name:

1. Names should be reversed and checked backward, such as:

Bill-Marr	Harris-Johnson Company
Bil-Mar	Johnson-Harris Company
Mar-Bil	
Bill-Mar	

Host of America	Paris-Boutique
American Hosts	Botique of Paris

Alaska Fishermen's Association
Association of Fishermen of Alaska

EXCEPTION: Initials do not need to be reversed:
A and B Company is available against
B and A Company

2. All names should be checked forward, backward and for combinations, such as:

Alaska Fishermen's Association
Alaska Association of Fishermen
Fishermen's Association of Alaska
Association of Fishermen of Alaska
Association of Alaska Fishermen
Associated Fishermen of Alaska
Fishermen's Association, Alaska Chapter

K. Personal Names:

A personal name by itself is allowed with a corporate designation if the name is available.

L. First names, initials and nicknames:

1. The following names are available against each other:
 - a. "James Smith Construction Company" is available against "Smith Construction Company."
 - b. "Jim Smith Construction Company" is available against the above two names with consent from "James Smith Construction Co."
 - c. "J. Smith Construction Company" is available against the above names with consent of "James Smith Construction Co." and "Jim Smith Construction Co."
 - d. "J. A. Smith Construction Company" is available against all the above.

2. The following names should be checked against each other:

- a. "Don" and "Donald."
- b. "Doug" and "Douglas."

The above are short forms of specific words. "Don" may be considered an abbreviation of "Donald."

3. In general, the first two words of a proposed name cannot be identical without consent. "Anchorage Service & Supply, Inc." needs consent from "Anchorage Service, Inc."

M. Words Requiring Other Boards' or Commissions' Approval:

Certain words cannot be filed without referring the registrant to other boards, i.e., Certified Accountant, Architect, Bank Trust, Savings Bank, Engineer, Underwriter, Bonding Company.

1. Accounting Any of the following words, or abbreviations, used in a name must be referred to the Board of Accountancy for clearance. Check their availability and refer the customer to the Board of Accountancy.

Certified Accountant, A.A.
Chartered Accountant, C.A.
Enrolled Accountant, E.A.
Licensed Accountant, L.A.
Registered Accountant, R.A.
Public Accountant, P.A.
Certified Public Accountant, CPA

2. Architect, Architecture, Engineer, Engineering and Land Surveyors. These terms cannot be used without the approval of the Board of Architect, Engineers and Land Surveyors. If a corporation is using such term, it must be filed as a professional corporation.

3. Banking Division Referrals. The following names cannot be used unless they have been cleared by the Banking Division. If names include these terms, check the name and refer the customer to the Banking Division. "Trust" may be used if the entity is a business trust.

bank	bankers	banking	Premium Finance. Co.
savings bank	savings	trust	trustee
trusteed	trust company	loan company	savings & loan

4. Insurance Agencies. The following words cannot be used by Insurance Agencies:

adviser	advisers	bonding company
Broker or brokers	brokerage	counselor or counselors
consultant	consultants	exchange
insurance company	insurance group	insuror
reciprocal	underwriter	

The terms "Company," "Inc.," "Corp." or "Corporation" will be accepted in a name availability check, provided it is preceded by descriptive words, i.e., "Insurance Service Company." The words "Insurance Company" without intervening descriptive words will not be accepted.

If any questions arise concerning names used in the above terms, refer the customer or name to the Division of Insurance.

5. Water Districts. If a proposed name includes the term "Water District" or "Water Company," the Public Utilities Commission must be contacted prior to filing.

N. Government Implication

The name cannot be similar to a governmental entity, e.g., "Franklin's Bureau of Investigation," or "Childrens Services, Inc." would not be acceptable.

O. Abusive Words:

Abusive words are not accepted.

P. Foreign Language Words:

Since we do not have the skill to translate foreign language words to their English equivalent, we do not normally cross check them except when a word or term is widely used or known.

EXAMPLE: "De" and "Del," rather than "of," may be used in some Spanish names.

Martinez de Mexico...Martinez of Mexico

Asociacion...Association

Usually a foreign language title is distinctive enough and we need not be too concerned to determine its English counterpart.

Q. Contracted Words, Coined Words and Coined Phrases:

1. Use special care when checking contracted words and "coined" words or phrases. Contracted words or terms may be a contraction or a combination of two or more words, i.e., "Comptrol" may be a contraction of "Computer" and "Control," as may be

"Compcn." In these instances, "Comptrol" and "Compcn" may require the consent of "Computer Control" or may need additional descriptive terminology.

The original or first corporation to use a contracted or coined word is sometimes jealous and protective of his "invented" word and may attempt to prevent others using the word. Therefore, it is wise to be cautious when checking these names.

Each name must be approved or disapproved on an individual basis and any questionable names should be approved by a supervisor. The more frequently a word is used, the less unique it becomes and additional names would probably be approved more readily. However, if there are only one or two corporations on file which use an unusual or contracted word, consent may be required.

For its first four letters, "Xerox" may have used "xero," a combining form meaning dry, added "x" and "invested" a now very well-known word. Anyone else wishing to use "Xerox" in their corporate name would probably need consent.

R. Key, Descriptive, Nondescriptive and Generic Words:

1. Each word in a corporate title must be checked. Some words in the title may have more weight or meaning than others, but the name should always be considered as a whole.
 - a. The first word in a title is usually considered a "key" word. For example, in "Pacific Company," "Pacific" is the key word. In "Pacific Communications Company," "Pacific" is the first key word and "Communications" is the second and descriptive key word. "Company" is merely an ending or nondescriptive word. In "Pacific Communications Enterprises Company," the words "Pacific" and "Communications" are still the key words in the titles and "Enterprises" merely adds verbage to the name. Therefore, if we have "Pacific Communications Company" on file and someone wanted the proposed name "Pacific Communications Enterprises," we would not accept the name without consent because "Enterprises" does not further qualify the title.

EXCEPTION: If we have many corporations with the same beginning, i.e., "Pacific Communications Associates," "Pacific Communications Development Company," "Pacific Communications Radio Co.," "Pacific Communications Industries," etc.

- b. Descriptive words may sometimes be nondescriptive words and nondescriptive words may sometimes be considered "key" or descriptive words.

We would not accept "Pacific Communications Enterprises" against "Pacific Communications Company," but would find no conflict between "Pacific Enterprises" and "Pacific Company." In "Pacific Enterprises," the word "Enterprises" becomes a major or "key" word in the title. We would not accept "Pacific Communications Enterprises" against "Pacific Communications Associates," but would accept "Pacific Enterprises" against "Pacific Associates." In these instances, you remove the descriptive qualifying word "Communications" and "upgrade" the nondescriptive words "Enterprises" and "Associates" to "key" words.

2. In name checks, we consider generic words similar to nondescriptive. They differ because of their more frequent use. They include common words such as "United," "General" and "Universal"; geographical words such as "Northwest"; type of business words as "Computer" and "Marketing"; and numbers such as "First" are generic and cannot, by themselves, be protected.

The name must be considered as a whole. The removal or addition of a word may change the context of the name as a whole.

S. Adjectives:

Sometimes a title may have a qualifying or descriptive word that is not necessarily a "key" word, but, rather, acts as an adjective, describing a specific type and sometimes preceded by a descriptive key word.

EXAMPLE: "Northwest Investment Company" or "Northwest Diversified Investment Company." The word "Diversified" in the second title describes a certain type of investment.

"Northwest Investment Company" or "Northwest Land Investment Company," again, the word "Land" in the second title describes the type of investment. In each of the above instances, the basic key words are the same: "Northwest Investment." In each case, consent should be required, especially if the type of investment Northwest Investment Company is making is unknown.

Sometimes the addition of an adjective may change the title so that it would not require consent; or two titles may have the same key words but different adjectives.

EXAMPLE: "Arrowhead Money Management, Inc." or "Arrowhead Property Management, Inc."

In the above instance, the meaning is different, making each name distinctive enough to allow both titles.

T. Checking the Name as a Whole:

Always consider the name as a whole, even though certain words are or are not normally available against each other. Placing them in con-
text changes the condition of the words.

This is one of the most important aspects in checking corporate names...DO NOT TAKE A WORD OUT OF CONTEXT.

EXAMPLE: WRONG: Is "associates" available against "enterprises"?

RIGHT: Is "Martin Plumbing Associates" available against
"Martin Plumbing Enterprises"? (No or with consent)

RIGHT: Is "Martin Associates, Inc." available against
"Martin Enterprises, Inc."? (Yes, it is)

U. Two-Name Check:

Insure that the applicant is not attempting to file two distinct names as one, i.e., "Lakeside Hotel and Roundup Room Lounge." Under certain conditions two names may be accepted, however, only the first name is protected. The applicant is informed that the name is filed alphabetically and is not cross-referenced.

V. Places:

In checking names followed by a city or location, it may require the consent of the other entity, if one is on file, i.e., "Bootleggers of Bend" or "Bootleggers, Inc."

W. Nationally Known and Generally Known Words:

1. Franchises

Many corporations have franchised operations, i.e., "Culligan Soft-Water"; "Coca-Cola"; "McDonalds"; "Kentucky Fried Chicken," etc.

Normally a consent is required from the "parent" corporation. If the parent corporation is on file, always require additional terminology from the new applicant in addition to the consent from parent corporation. Check with the supervisor to determine whether consent should be required.

2. Nationally Known and Generally Known Words: Applicants submitting names that appear similar to nationally known names should be warned of possible infringement of Federal Trade Names or Service Marks.

EXAMPLES: "Leggs Panti's," "Smith Bros. Pharmacy," or "Martinizing" would be acceptable under Alaska law, however, the applicant should be aware of potential infringement. These areas require management approval.

X. Fewer Words:

A name with fewer words or a shortened form of a name is generally not accepted without consent or additional terminology in front of a name. For example, if "Wasilla Interior Design" is on file and "Wasilla Design" is requested, additional terminology or consent may be required. Check with the supervisor.

Y. Synonymous Words and Combined Terms:

Check words with similar meanings or terms which have become accepted through usage as "belonging" together. This will not make the request "unavailable," but may require consent.

Airline	Auto
Airways	Automobile
	Car
Builders	Drug Store
Construction	Pharmacy
Contractors	RX Pharmacy
General Contractors	Prescription Pharmacy
General Construction	
Home Builders	
Farm	Gas
Ranch	Oil
	Petroleum
Mail	Mart
Postal	Market
Maintenance	Productions
Building Maintenance	Picture
Janitorial	Film
	Motion Pictures
Tennis Club	Title
Swim and Tennis Club	Title Insurance
	Escrow and Title
Trucking	Van and Storage
Transport	Van Lines
	Transfer and Storage
	Moving

You may not always feel a conflict exists between many of the above. It depends many times on the context in which the word is used, the position of the word in the title and other words used in the title that may require consent.

EXAMPLE: Consent must be obtained from existing corporation "Quality Title Service" for a new name "Escrow and Title Service." However, we would probably accept "Title Service Company" and "Escrow and Title Service Company" together.

HB 544: "An Act prohibiting the use of certain business names and establishing remedies and penalties for violations."

The Department of Commerce and Economic Development supports the concept of duplicate name avoidance of HB 544. It is the understanding of the department that the intent of HB 544 is to avoid the issuance of a business license under a name which is the same as or deceptively similar to a name already licensed.

Currently, agencies which license do so independently of each other in many respects. For example, businesses do not apply for all needed licenses at the same point in time; licensing in one agency is not necessarily conditional on licensing in another agency; and there is a lack of statutory authority to enforce prohibitions related to the use of similar names. For these reasons, the department feels it would be necessary to develop an interactive, common data base to ensure that the same or deceptively similar names are not licensed.

Statutory authority will need to be granted to the Department of Commerce and Economic Development to allow the administrators of Title 10 and Title 8 to deny an application based on a business license application under Title 43 and conversely granting authority to the Department of Revenue under Title 10.

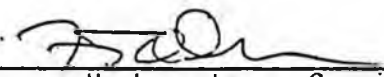
Corporation's files are now maintained on the IBM mainframe. The Division of Occupational Licensing and the Department of Revenue Business License Section maintain their files on a Wang system. It will be necessary to seek a uniform data base to accomplish the goal of avoiding the acceptance of filings which are the same or deceptively similar.

The department does, however, have concerns with Sections 1, 2, and 3 of HB 544, as originally drafted, which authorized the Commissioner of the Department of Commerce and Economic Development to seek injunctive relief. To seek such an injunction is presently in, and presumably would continue to be vested in, the person who has registered a corporate name (AS 10.05.034) or who has registered a business name (AS 10.35.040). If the department is granted injunctive authority under HB 544 to enjoin a person from doing business under the same or deceptively similar name, it would only be able to address conflicts which are a result of a filing under Title 10. Disputes resulting from business name conflicts have traditionally been settled through private litigation. States have generally refrained from intervening in such private business concerns.

It is noted that the Corporations Section has on file approximately 25,000 names, while the Department of Revenue has approximately 65,000 business names on file and the Division of Occupational Licensing has approximately 26,000 names.

The department would propose an amendment to Title 8, the Central Licensing Act, which would provide a means of reducing the instances of the use of the same or deceptively similar name. The proposed amendment is attached.

The department also suggests that Title 10 be clarified by amendment to provide specific private rights of action to a person who is granted a Certificate of Incorporation or a Certificate of Authority. Currently, injunctive relief may be sought by a person who has registered a corporate name under AS 10.05.034 or who has registered a business name under AS 10.35.040. No similar specific authority exists for corporations formed under Title 10. Suggested amendments to Title 10 are attached.


Loren H. Lounsbury, Commissioner
Department of Commerce & Economic
Development

3/3/86
Date

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

DIVISION OF BANKING, SECURITIES & CORPORATIONS

POUCH D
JUNEAU, ALASKA 99811

*Banking & Securities (907) 465-2521
Corporations Section (907) 465-2530*

ANCHORAGE

Corporation Information (907) 563-2163

March 11, 1986

The Honorable Randy Phillips
State House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Representative Phillips:

Re: Suggested Changes Required to Statutes
to Facilitate the Intent of HB 544

In an effort to determine what statutory changes would be required to facilitate the intent of HB 544, an interdepartmental meeting was held March 4, 1986. In attendance were Sally Smith and Dan Anderson, Public Services Division, Department of Revenue; Nancy Dunn, Division of Occupational Licensing; and JoAnn Schultz, Corporations Section, Department of Commerce and Economic Development.

The following areas of concern have been identified as requiring statutory amendments if an effective effort is to be made to avoid duplicity of names.

Title 43 is administered by the Department of Revenue, Title 10 by the Corporations Section, and Title 8 by the Division of Occupational Licensing, Department of Commerce and Economic Development.

CONFIDENTIALITY

Title 43 would require a change to the provisions which state that the information on the business license is available to the public, but that a portion of the information contained in the application is confidential.

Title 10, no confidentiality problem. All information is public.

Title 8, no confidentiality problem. All computer-accessed information is public in nature.

Honorable Randy Phillips

-2-

March 11, 1986

AUTHORITY TO DENY

Title 43 would require amendment to provide authority to deny an application based on a filing under Titles 8, 10, and 43.

Title 10 would require amendment to provide authority to deny an application based on a filing under Titles 8 and 43. The Corporations Section currently has statutory authority to deny an application based on filings within its own files.

Title 8 would require amendment to provide authority to deny an application based on a filing under Titles 8, 10, and 43. Currently, Occupational Licensing denies applications on the basis of "deceptively similar" names only through 12 AAC 21.030, in the case of construction contractors who are sole proprietors or partnerships. Otherwise, an application can be denied only because it is incomplete based on statutes and regulations, not because of any check for "deceptive similarity" in names.

APPEAL PROCESS

If an application is denied, an appeal process should be provided for in all the titles. Consideration may be given to a consolidated appeal process established in one of the Departments.

For budgetary purposes, the Corporations Section would prefer the appeal process to be modeled after AS 10.05.789, which provides for the superior court to try the matter de novo. AS 10.20.655 and .670 also provide for appeal process for nonprofits. AS 10.35, business names, has no appeal provision.

Revenue would suggest an appeal procedure similar to the Gaming appeals provisions of 15 AAC.

No amendments are necessary in Title 8. All Occupational Licensing statutes under AS 08.01 makes reference to AS 44.62, the Administrative Procedure Act. An appeal process in any of the licensing areas is subject to AS 44.62.370.

RENEWAL DATE

To lessen the impact during the business license renewal period, the Department of Revenue would suggest amending AS 43.70 to provide for renewal on the anniversary date. Thus, allowing time to review applications for duplicity of name.

Corporations Section is not impacted by renewal dates. Its filings are fairly consistent throughout the year--an average of 213 corporations registering per month and 172 names being registered or reserved per month. These figures do not take into consideration the number of rejections based on unavailability of the name submitted.

No amendments are necessary under Title 8. Licenses are subject to annual, biennial, or quadriennial license renewals as specified in the individual licensing statutes, and are renewed on a date set by the department. Because of the volume of renewals to be processed, a specific renewal date allows processing to be handled more efficiently.

DISTINGUISHABLE ON THE RECORD

It is suggested that consideration be given to the use of a standard of "distinguishable upon the record" rather than "deceptively similar" upon which to base rejection of an application. Enclosed is an excerpt from the Model Business Corporation Act which discusses "distinguishable upon the record."

The last suggestion is not required to accomplish the intent of HB 544. However, the other recommendations are required before any effective effort may be made to avoid duplicity of names.

OTHER CONSIDERATIONS

1. It has come to our attention that the City Cab, Inc. cab drivers are all licensed individually under the business name of City Cab, Inc. There may be other instances where a corporation or business has the individuals involved in the business licensed individually under the same business name.
2. Alaska is a very large state. Is there potential for conflict if there is a business name used in a different locality? Many communities may have an Uptown Cafe or Downtown Cafe, a Frontier Bar, an Alaska Tavern, etc.
3. Currently, the Corporations Section is able to respond by telephone on the availability of a name. If it is necessary to search 70,000 records rather than 25,000 using different files, it may become necessary to eliminate this service to the public. Revenue would encounter a similar situation.

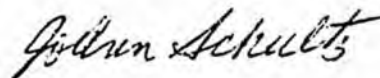
Honorable Randy Phillips

-4-

March 11, 1986

In conclusion, upon completion of the sponsor substitute for HB 544, we would be pleased to review the bill prior to its hearing in House Judiciary.

Sincerely,



JoAnn Schultz
Supervisor
Corporations Section

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