

LEG. FINANCE - BILLS 1985 - 1986 2434

HB 544 cont. - HB 550 2434

Introduced: 2/5/86
Referred: Labor & Commerce
Judiciary and Finance

1 IN THE HOUSE

BY PHILLIPS

2

HOUSE BILL NO. 544

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act prohibiting the use of certain business names
7 and establishing remedies and penalties for viola-
8 tions."

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

10 * Section 1. AS 10.05.034 is amended by adding new subsections to read:

11 (b) When the commissioner has reason to believe that a person is
12 doing business under a name that is the same as, or deceptively simi-
13 lar to, the name of a domestic corporation or a foreign corporation
14 authorized to transact business in the state, or a name reserved or
15 registered under this title, the commissioner may bring an action in
16 the name of the state to enjoin the person from doing business under
17 the name.

18 (c) Before bringing an action under (b) of this section, the
19 commissioner shall give the person written notice of the intention to
20 seek an injunction unless the person stops doing business under the
21 name within 15 days after receiving the notice.

22 (d) A person who knowingly does business under a name that is
23 the same as, or deceptively similar to, the name of a domestic corpo-
24 ration or a foreign corporation authorized to transact business in the
25 state, or a name reserved or registered under this title, is guilty of
26 a violation.

27 * Sec. 2. AS 10.20.021 is amended by adding new subsections to read:

28 (b) When the commissioner has reason to believe that a person is
29 doing business under a name that is prohibited by (a)(2) of this

1 section, the commissioner may bring an action in the name of the state
2 to enjoin the person from doing business under the name.

3 (c) Before bringing an action under (b) of this section, the
4 commissioner shall give the person written notice of the intention to
5 seek an injunction unless the person stops doing business under the
6 prohibited name within 15 days after receiving the notice,

7 (d) A person who knowingly does business under a name that is
8 prohibited by (a)(2) of this section is guilty of a violation.

9 * Sec. 3. AS 10.35.040 is amended by adding new subsections to read:

10 (b) The commissioner may bring an action in the name of the
11 state to enjoin a person from doing business under a name that has
12 been reserved for the exclusive use of another person under this
13 chapter.

14 (c) Before bringing an action under (b) of this section, the
15 commissioner shall give the person who is wrongfully doing business
16 under the reserved name written notice of the intention to seek an
17 injunction unless the person stops doing business under the reserved
18 name within 15 days after receiving the notice.

19 (d) A person who knowingly does business under a name that has
20 been reserved for the exclusive use of another person under this
21 chapter is guilty of a violation.

22 * Sec. 4. AS 43.70.020(a) is amended to read:

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

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

5 * Sec. 5. AS 43.70.020 is amended by adding new subsections to read:

6 (e) The department may not issue a license to an applicant whose
7 business name is the same as, or deceptively similar to, the business
8 name of another person licensed under this section, unless the simi-
9 larity arises solely from the use of the applicant's legal name in the
10 business name.

11 (f) In this section, the name assumed by a foreign corporation
12 under AS 10.05.607 or AS 10.20.471 is the business name of the foreign
13 corporation.

Offered: 4/1/86
Referred: Finance

Original sponsor: Phillips

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 544 (Judiciary)
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 reenacted 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

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

13 * Sec. 6. AS 10.05.606 is amended to read:

14 Sec. 10.05.606. CORPORATE NAME OF FOREIGN CORPORATION. A certi-
15 ficate of authority may not be issued to a foreign corporation unless
16 the corporate name of the corporation

17 (1) contains the word "corporation," "company," "incor-
18 porated," or "limited," or an abbreviation of one of these words, or,
19 for use in the state, adds at the end of its name one of these words
20 or an abbreviation of one of them;

21 (2) does not contain a word or phrase that [WHICH] indi-
22 cates or implies that it is organized for a purpose other than the
23 purpose contained in its articles of incorporations or that it is
24 authorized or empowered to conduct the business of banking or insur-
25 ance;

26 (3) is available to the foreign corporation under AS 10.-
27 50.010 [NOT THE SAME AS, OR DECEPTIVELY SIMILAR TO, THE NAME OF A
28 DOMESTIC CORPORATION EXISTING UNDER THE LAWS OF THE STATE OR A FOREIGN
29 CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THE STATE, OR A NAME

1 THE EXCLUSIVE RIGHT TO WHICH IS RESERVED IN THE MANNER PROVIDED IN
2 THIS TITLE, OR THE NAME OF A CORPORATION WHICH HAS IN EFFECT A REGIS-
3 TRATION OF ITS NAME AS PROVIDED IN THIS CHAPTER].

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

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

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

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

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

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

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

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

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

22 Sec. 10.20.470. CORPORATE NAME OF FOREIGN CORPORATION. A certi-
23 ficate of authority may not be issued to a foreign corporation unless
24 the corporate name of the corporation

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

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

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

1 Sec. 10.20.471. ASSUMED CORPORATE NAME. When a foreign corpora-
2 tion, applying for a certificate of authority, has a name that is not
3 available under AS 10.50.010 [THE SAME AS OR DECEPTIVELY SIMILAR TO
4 THAT OF A CORPORATION OPERATING UNDER THIS CHAPTER], it shall

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

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

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

11 Sec. 10.35.020. APPLICATION TO RESERVE NAME. Reservation of a
12 business name is made by filing an application with the commissioner.
13 Upon finding that the name is available for business use, the commis-
14 sioner shall reserve it for the exclusive use of the applicant for a
15 period of 120 days. A name is not available to the applicant if the
16 applicant's name gives the impression that the business is incorporat-
17 ed or the name is prohibited by AS 10.50.010.

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

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

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

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

2 CHAPTER 50. BUSINESS NAMES.

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

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

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

15 (3) the name of the holder of a license issued by the
16 department under AS 08.01.010 or by a board listed in AS 08.01.010;

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

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

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

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

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

29 Sec. 10.50.200. DEFINITION. In this chapter, "department" means

1 the Department of Commerce and Economic Development.

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

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

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

8 (a) For the privilege of engaging in a business in the state, a
9 person shall first apply, on [UPON] forms prescribed by the commis-
10 sioner of revenue, and obtain a license, and pay the license fee
11 provided for in AS 43.70.030. A license issued to a firm for a par-
12 ticular line of business covers all its operations in the state in the
13 line of business regardless of the number of its establishments. A
14 license issued under this subsection must [SHALL] include

- 15 (1) the name and address of the licensee;
- 16 (2) the line of business to be conducted; [AND]
- 17 (3) the year for which the license is issued; and
- 18 (4) the business name of the licensee.

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

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

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

29 (e) Unless the similarity arises solely from the use of the

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

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

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

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

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

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

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

15 Sec. 43.70.025. REVIEW OF DENIAL OF BUSINESS LICENSE. (a) If
16 the commissioner denies a person a business license under AS 43.70.-
17 020(e), the person may appeal the denial by filing a notice of appeal
18 with the commissioner within 30 days of the denial.

19 (b) The commissioner shall establish by regulation the proce-
20 dures for an appeal under (a) of this section.

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

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

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

26 * Sec. 21. (a) AS 08.02.030(u), added by sec. 1 of this Act, does not
27 apply to the renewal of a license that is otherwise eligible for renewal,
28 and that was issued by the Department of Commerce and Economic Development
29 under AS 08.01.010, or by a board listed under AS 08.01.010, before the

1 effective date of this Act.

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

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

COMMITTEE REPORT

SENATE

FURTHER:

5/11/86

Date _____

Mr. President

The Committee on FINANCE considered CSHB 544(FIN) relating to business licenses and the use of business names.

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for _____
- new title _____
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Chairman

Chairman recommendation

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

4/21/86

Date 5/11/86

Mr. President

The Committee on JUDICIARY considered CSHB 544(Fin)
relating to business licenses and the use of business names.

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt ^{SENATE} CS for HB 544 (JUDICIARY)
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

Tom Kelly
Zinger

MEMBERS HAVING
OTHER RECOMMENDATIONS

Paul R. Kelly
Chairman
DO PASS
Chairman recommendation

Offered: 5/11/86
Referred: Finance

Original sponsor: Phillips

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 544 (Judiciary)

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 08.01.050 is amended by adding a new subsection to
10 read:

11 (d) At the time of issuing a license under this chapter, the
12 department shall inform the licensee that

13 (1) to protect the name of the business, the licensee must
14 register the name under AS 10.05.033 if the business is a corporation,
15 or under AS 10.35.040 if the business is not a corporation; and

16 (2) to transact business in the state the licensee must
17 first obtain a business license under AS 43.70.020.

18 * Sec. 2. AS 10.05.036 is amended by adding a new subsection to read:

19 (b) At the time of registering a corporate name under this
20 section, the department shall inform the registrant that in order to
21 transact business in the state the registrant must first obtain a
22 business license under AS 43.70.020.

23 * Sec. 3. AS 10.35.050 is amended by adding a new subsection to read:

24 (b) At the time of registering a name under this section, the
25 department shall inform the registrant that in order to transact
26 business in the state the registrant must first obtain a business
27 license under AS 43.70.020.

28 * Sec. 4. AS 43.05.230 is amended by adding a new subsection to read:

29 (h) The department may release information received or collected
S

1 by the department under AS 43.70 that is related to the legal or
2 business names of licensees to the Department of Commerce and Economic
3 Development for use in carrying out its statutory responsibilities.

4 * Sec. 5. AS 43.70.020(a) is amended to read:

5 (a) For the privilege of engaging in a business in the state, a
6 person shall first apply, on [UPON] forms prescribed by the commis-
7 sioner of revenue, and obtain a license, and pay the license fee
8 provided for in AS 43.70.030. A license issued to a firm for a par-
9 ticular line of business covers all its operations in the state in the
10 line of business regardless of the number of its establishments. A
11 license issued under this subsection must [SHALL] include

- 12 (1) the name and address of the licensee;
- 13 (2) the line of business to be conducted; [AND]
- 14 (3) the year for which the license is issued; and
- 15 (4) the business name to be used by the licensee.

16 * Sec. 6. AS 43.70.020(b) is repealed and reenacted to read:

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

25 * Sec. 7. AS 43.70.020 is amended by adding a new subsection to read:

26 (a) At the time of application for a business license under this
27 section, the department shall inform a licensee that to protect the
28 name of the business, the licensee must register the name under
29 AS 10.05.033 if the business is a corporation, or under AS 10.35.040

1 if the business is not a corporation.

2 * Sec. 8. AS 43.70.030(a) is amended to read:

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

6 * Sec. 9. AS 43.70.020(c) and 43.70.030(d) are repealed.

7 * Sec. 10. The Department of Revenue shall establish procedures for the
8 transition from the issuance of business licenses under AS 43.70 on an
9 annual, calendar-year basis to the basis established by AS 43.70.020(b), as
10 amended by sec. 6 of this Act.
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Rasmussen

Offered: 4/14/86
Referred: Rules

*2. First Final }
1. 3rd draft } Sept 11/85*

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 reenacted 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

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

13 * Sec. 6. AS 10.05.606 is amended to read:

14 Sec. 10.05.606. CORPORATE NAME OF FOREIGN CORPORATION. A certi-
15 ficate of authority may not be issued to a foreign corporation unless
16 the corporate name of the corporation

17 (1) contains the word "corporation," "company," "incor-
18 porated," or "limited," or an abbreviation of one of these words, or,
19 for use in the state, adds at the end of its name one of these words
20 or an abbreviation of one of them;

21 (2) does not contain a word or phrase that [WHICH] indi-
22 cates or implies that it is organized for a purpose other than the
23 purpose contained in its articles of incorporations or that it is
24 authorized or empowered to conduct the business of banking or insur-
25 ance;

26 (3) is available to the foreign corporation under AS 10.-
27 50.010 [NOT THE SAME AS, OR DECEPTIVELY SIMILAR TO, THE NAME OF A
28 DOMESTIC CORPORATION EXISTING UNDER THE LAWS OF THE STATE OR A FOREIGN
29 CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THE STATE, OR A NAME

1 THE EXCLUSIVE RIGHT TO WHICH IS RESERVED IN THE MANNER PROVIDED IN
2 THIS TITLE, OR THE NAME OF A CORPORATION WHICH HAS IN EFFECT A REGIS-
3 TRATION OF ITS NAME AS PROVIDED IN THIS CHAPTER].

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

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

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

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

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

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

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

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

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

22 Sec. 10.20.470. CORPORATE NAME OF FOREIGN CORPORATION. A certi-
23 ficate of authority may not be issued to a foreign corporation unless
24 the corporate name of the corporation

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

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

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

1 Sec. 10.20.471. ASSUMED CORPORATE NAME. When a foreign corpora-
2 tion, applying for a certificate of authority, has a name that is not
3 available under AS 10.50.010 [THE SAME AS OR DECEPTIVELY SIMILAR TO
4 THAT OF A CORPORATION OPERATING UNDER THIS CHAPTER], it shall

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

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

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

11 Sec. 10.35.020. APPLICATION TO RESERVE NAME. Reservation of a
12 business name is made by filing an application with the commissioner.
13 Upon finding that the name is available for business use, the commis-
14 sioner shall reserve it for the exclusive use of the applicant for a
15 period of 120 days. A name is not available to the applicant if the
16 applicant's name gives the impression that the business is incorporat-
17 ed or the name is prohibited by AS 10.50.010.

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

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

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

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

2 CHAPTER 50. BUSINESS NAMES.

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

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

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

15 (3) the name of the holder of a license issued by the
16 department under AS 08.01.010 or by a board listed in AS 08.01.010;

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

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

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

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

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

29 Sec. 10.50.200. DEFINITION. In this chapter, "department" means

1 the Department of Commerce and Economic Development.

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

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

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

8 (a) For the privilege of engaging in a business in the state, a
9 person shall first apply, on [UPON] forms prescribed by the commis-
10 sioner of revenue, and obtain a license, and pay the license fee
11 provided for in AS 43.70.030. A license issued to a firm for a par-
12 ticular line of business covers all its operations in the state in the
13 line of business regardless of the number of its establishments. A
14 license issued under this subsection must [SHALL] include

- 15 (1) the name and address of the licensee;
16 (2) the line of business to be conducted; [AND]
17 (3) the year for which the license is issued; and
18 (4) the business name of the licensee.

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

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

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

29 (e) Unless the similarity arises solely from the use of the

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

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

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

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

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

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

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

15 Sec. 43.70.025. REVIEW OF DENIAL OF BUSINESS LICENSE. (a) If
16 the commissioner denies a person a business license under AS 43.70.-
17 020(e), the person may appeal the denial by filing a notice of appeal
18 with the commissioner within 30 days of the denial.

19 (b) The commissioner shall establish by regulation the proce-
20 dures for an appeal under (a) of this section.

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

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

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

26 * Sec. 21. (a) AS 08.02.030(a), added by sec. 1 of this Act, does not
27 apply to the renewal of a license that is otherwise eligible for renewal,
28 and that was issued by the Department of Commerce and Economic Development
29 under AS 08.01.010, or by a board listed under AS 08.01.010, before the

1 effective date of this Act.

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

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

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

2 Fiscal Notes
1 zero w/analysis
St. Supplement # 115

ALASKA STATE LEGISLATURE

14th Legislature SECOND Session

HOUSE BILL NO. 544

By PHILLIPS

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

CSHB, (Fin) BY FINANCE

introduced: 4/14/86
referred: Rules

"An Act relating to business licenses and the use of business names."

business names

Introduced in the House 2/5....., 19.86

HISTORY IN THE HOUSE

19 86	Feb 5	Read first time and referred to Committee on L&C, JUDICIARY AND FINANCE
	Mar 5	Reported back with recommendation that L&C - 27R, 17R until Judiciary done 17R pending am. to Judiciary
	Apr 1	Judiciary - CS/Rep. 5dp 27R
	Apr 14	Finance - CS/Rep. 7dp
	Apr 18	Read second time and
	Apr 18	Read third time and
	Apr 18	PASS ed Effective Date Yeas 33 Yeas Nays 0 Nays Absent 2 Absent Excused 5 Excused
		Reconsideration PASS Effective Date Yeas Yeas Nays Nays Absent Absent Excused Excused
		Reported correctly engrossed Signed by Speaker Sent to Senate
		<i>Bernard Pastern</i> CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

1986	4/21	Read first time and referred to Committee on
	5/11	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.

HB 545

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 545
 Title : An Act relating to the oil production tax
 Sponsor : House Finance Committee
 Requestor : House Finance Committee
 Date of Request : 2-3-86

FISCAL DETAIL

Agency Affected : _____
 BRU : _____
 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						

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

REVENUE		450	155,720	143,140	155,310	138,410
---------	--	-----	---------	---------	---------	---------

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached.

Prepared by : *Charles L. Lopez*
 Division : Research

Phone : 276-5361
 Date : 2-6-86

Approved by Commissioner : *Henry G. Stedahl*
 Agency : Revenue

Date : 2/12/86

Distribution (by Agency preparing fiscal note):

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

This bill would change the oil production tax by altering the formula for calculating the Economic Limit Factor (ELF) and making the calculated value of ELF apply to the tax rate in all instances. The change in the formula results in a value for ELF which is higher or lower than currently calculated depending on whether an oil field produced more or less than 80,436 bbls-day. Applying the calculated value of ELF in all instances results in a lower effective tax rate for fields producing less than 80,436 bbl-day, and for fields which have an ELF equal or greater than .7 and which will have been in production less than ten years upon the effective date of the bill. The effective tax rate will increase for those fields which produce more than 80,436 bbl/day, and which have been in production more than ten years.

Under current law, the ELF is set to 1.0 when a field has been in production less than 10 years and has a calculated ELF greater than or equal to .7, otherwise the calculated ELF applies.

Prudhoe Bay, because of its immense size and productivity is in this category of oil fields. Prudhoe Bay began production in 1977 so under current law the production tax rate is scheduled to fall in FY 1988 since an ELF less than 1.0 will be applied to the nominal tax rate. This bill would apply an ELF much greater than that calculated under the current formula. So as a result the tax rate on Prudhoe Bay will decrease only a small amount in FY 1988 and beyond, so that tax revenues for Prudhoe Bay will increase over the current projections.

The revenue impacts estimated in this fiscal note are for the 30% case. The effect of this bill was analyzed using the Petroleum revenue model. The product effect is based on the change in the average expected production from the North Slope oil fields using the economic feasibility subroutine of that model. The actual realized production impact could be much larger or smaller if assumptions other than tax rates were changed, i.e. price, however, several issues are suggested by these results. The first is that the effect of the tax on feasibility given the Petroleum Revenue December oil price assumption does not appear large since Prudhoe Bay produces 45 million bbls every month. Second, the major impacts on production would occur in Prudhoe Bay, Kuparuk and West Sak Sands. This occurs because of the impact on enhanced recovery for Prudhoe and Kuparuk and because of the marginal economic and production characteristics of West Sak (significant production but a very large number of wells).

Production Effect

FY 1987 - FY 2000

Field	Average Expected Production Effect
Prudhoe Bay	-22.37 million bbls.
Kuparuk	-15.72 million bbls.
Milne Pt.	3.3 million bbls.
Endicott	-1.45 million bbls.
Lisburne	-.67 million bbls.
West Sak	-15.97 million bbls.
Other Onshore	6.85 million bbls.
Other Offshore	.47 million bbls.
TOTAL	-45.56 million bbls.

*Enhanced Recovery Effect

Brodley

Introduced: 2/5/86
Referred: Finance

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 HOUSE BILL NO. 545

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 the oil production tax; and
7 providing for an effective date."

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

9 * Section 1. AS 43.55.013(b) is amended to read:

10 (b) (1) The economic limit factor for oil production of a lease
11 or property shall be computed according to the following formula:

$$\frac{(1 - [PEL/TP]) \exp \{ (37,000,000 \times WD) / [PEL \times TP / \text{Days}] \}}{(1 - [PEL/TP]) \exp \{ (460 \times WD) / PEL \}}$$

14 where: PEL = the monthly production rate at the economic limit;

15 TP = the total production during the month for
16 which the tax is to be paid;

17 WD = the total number of well days in the
18 month for which the tax is to be paid; [AND]

19 Days = the number of days in the month for which
20 the tax is to be paid; and

21 where "exp" indicates that the expression following it is an exponent.

22 (2) IF, FOR ANY MONTH DURING THE FIRST 10 YEARS FOLLOWING
23 THE COMMENCEMENT OF COMMERCIAL OIL PRODUCTION OF A LEASE OR PROPERTY,
24 THE ECONOMIC LIMIT FACTOR FOR OIL PRODUCTION OF THAT LEASE OR PROPERTY
25 COMPUTED UNDER (1) OF THIS SUBSECTION IS 0.7 OR LESS, THEN THAT FACTOR
26 SHALL BE APPLIED.

27 (3) IF, FOR ANY MONTH DURING THE FIRST 10 YEARS FOLLOWING
28 THE COMMENCEMENT OF COMMERCIAL OIL PRODUCTION OF A LEASE OR PROPERTY,
29 THE ECONOMIC LIMIT FACTOR FOR OIL PRODUCTION OF THAT LEASE OR PROPERTY

1 COMPUTED UNDER (1) OF THIS SUBSECTION IS GREATER THAN 0.7, THEN THE
2 ECONOMIC LIMIT FACTOR IS ONE.

3 (4) THE ECONOMIC LIMIT FACTOR FOR OIL PRODUCTION OF A LEASE
4 OR PROPERTY AFTER THE FIRST 10 YEARS FOLLOWING THE COMMENCEMENT OF
5 COMMERCIAL OIL PRODUCTION SHALL BE COMPUTED AND APPLIED UNDER (1) OF
6 THIS SUBSECTION.]

7 * Sec. 7. This Act takes effect July 1, 1987.
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102545

ALASKA STATE LEGISLATURE

..14th. Legislature .SECOND Session

HOUSE ..BILL..... NO. .545...

By ..THE FINANCE COMMITTEE....

"An Act relating to the oil production tax; and providing for an effective date."

~~oil production tax~~

Introduced in the House .2/5....., 19. 86

HISTORY IN THE HOUSE

19 86

Feb 5

Read first time and referred to Committee on

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.

MEMORANDUM

State of Alaska

TO: The Honorable Bill Sheffield
Governor

DATE: February 13, 1986

FILE NO: 86F-482

TELEPHONE NO: 465-3568

FROM: Tom Chester ^{TC} Principal Analyst
Division of Strategic Planning
Office of Management and Budget

SUBJECT: Oil Shares

Attached is an updated and revised oil shares analysis. It contains no substantive changes from the one you received dated January 9, 1986.

TC/dmc

Attachment

cc: Representative Sam Cotten
Alaska State Legislature

Ray Gillespie, Chief of Staff
Jim Ayers, Director, Legislative Relations
Office of the Governor

Vince Wright, Chief, Research Section
Department of Revenue

**STATE, FEDERAL AND INDUSTRY SHARES OF ALASKA OIL RESOURCE
INCOME: ACTUAL FOR FISCAL '82-'84, ESTIMATED FOR FISCAL '85**
(millions of dollars except as noted)

Fiscal year	[1] Total Revenue	[2] State Royalty	[3] Sever. Conser. tax	[4] Total Prop. tax	[5] Total Oper. Costs	[6] Total Deprec.	[7] Total Acquis. Costs	[8] Windfall Profits Tax
1982	\$16,456	\$1,553	\$1,581	\$276	\$940	\$602	\$1	\$2,018
1983	\$15,470	\$1,448	\$1,494	\$307	\$1,101	\$780	\$1	\$1,018
1984	\$14,955	\$1,409	\$1,393	\$358	\$1,259	\$998	\$1	\$412
1985	\$15,136	\$1,390	\$1,389	\$397	\$1,449	\$1,093	\$1	\$70

Fiscal Year	[9] Uncap. Interest Expense	[10] Explore. Costs	[11] Admin. Costs	[12] Other Deduc.	[13] Total Deduc.	[14] State Taxable Net Income	[15] Corp. Petrol Income Tax	[16] Federal Taxable Income
1982	\$721	\$191	\$236	\$149	\$7,916	\$8,539	\$669	\$7,870
1983	\$676	\$204	\$252	\$142	\$7,023	\$8,446	\$236	\$8,210
1984	\$614	\$219	\$265	\$136	\$6,666	\$8,289	\$265	\$8,024
1985	\$566	\$234	\$278	\$130	\$6,594	\$8,542	\$169	\$8,373

Fiscal Year	[17] Federal Corp. Income Tax	[18] Oil Industry Alaska Profits	[19] Total Federal Tax	[20] Total State Tax & Royalty	[21] [22] [23] ----Share of Oil Income----		
					State	Federal	Industry
1982	\$2,142	\$5,728	\$4,160	\$4,079	29%	30%	41%
1983	\$2,131	\$6,079	\$3,149	\$3,485	27%	25%	48%
1984	\$2,368	\$5,656	\$2,780	\$3,425	29%	23%	48%
1985	\$2,433	\$5,940	\$2,503	\$3,345	28%	21%	50%

SOURCES AND FORMULAS --

Column [1]: Vincent Wright, chief of research, to Mary Nordale, Commissioner of Revenue, Memorandum of October 31, 1985, Table 3.

Columns [2] & [3]: January 1986 DOR Revenue Sources, p. 39.

Columns [4] to [14]: Vincent Wright, loc. cit.

Column [15]: Revenue Sources, p. 39.

Column [16]: column [14] - column [15].

Column [17]: column [16] * (production-weighted average tax rate -- 1982 = .279; 1983 = .274; 1984 = .294; 1985 = .294). Company effective rates for '82-84 from R. McIntire and R. Folen, "Corporate Income Taxes in the Reagan Years," Oct. 1984, pp. 32-36; '85 estimated by OMB.

Column [18]: column [16] - column [17].

Column [19]: column [8] + column [17].

Column [20]: sum of columns [2], [3], [4], and [15].

Column [21]: (column [18])/(sum of columns [18], [19], and [20]).

Column [22]: (column [19])/(sum of columns [18], [19], and [20]).

Column [23]: (column [20])/(sum of columns [18], [19], and [20]).

Office of Management and Budget
Division of Strategic Planning
revised February 13, 1986

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH 5
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

February 25, 1986

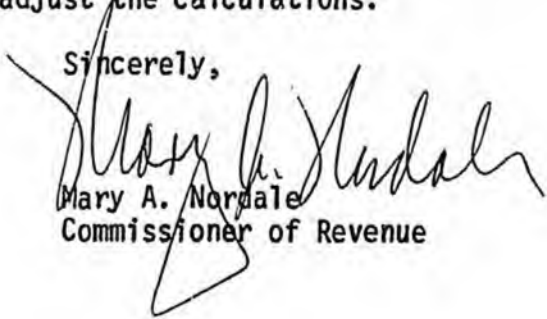
Mr. Larry M. Smedley
Exxon Company, U.S.A.
P.O. box 6601
Anchorage, AK 99502-0601

Dear Mr. Smedley:

This will acknowledge your letter of February 20. The Department of Revenue has attempted to quantify possible production diminution. That other factors, not possible to quantify through data available to the department, may affect production is a matter best addressed by those in whose possession the decision-making authority exists.

I would urge those who believe the department's analysis to be in error to furnish the House Committee on Finance and, thus, the Department of Revenue the necessary information to adjust the calculations.

Sincerely,



Mary A. Nordale
Commissioner of Revenue

MAN:m11

cc: Members, House Finance Committee

EXXON COMPANY, U.S.A.

P.O. BOX 6601 • ANCHORAGE, ALASKA 99502-0601 (907) 561-5331

ALASKA OPERATIONS
WESTERN DIVISION

LARRY M. SMEDLEY
AREA MANAGER

February 20, 1986

Commissioner Mary A. Nordale
Alaska Department of Revenue
Pouch S
Juneau, Alaska 99811

Dear Commissioner Nordale:

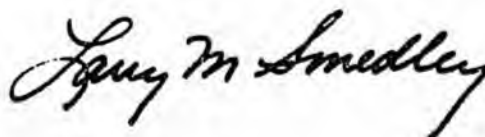
This is in reference to the Alaska Department of Revenue's fiscal note on H.B. 545 which was released at last Friday's House Finance Committee hearing. As I indicated during the hearing, the finding in the fiscal note that H.B. 545 would result in a production loss of only 22 million barrels at Prudhoe Bay significantly understates the potential impact of the bill.

As we pointed out during the hearing, H.B. 545 will significantly increase severance taxes on production from major fields in Alaska by a modification in the economic limit factor. This change in the ELF would have a negative impact on marginal project development in these fields. At Prudhoe Bay alone, over 10 billion barrels will be left unrecovered under the current production plan. Although no one knows how much of this remaining oil can be recovered through sophisticated recovery techniques which are continually being developed and refined, a very significant volume is at risk. Future additional recovery projects will be very costly and marginal economically. Additional costs such as the proposed tax increase will place such marginal projects in jeopardy.

While the fiscal note recognized a negative production impact of H.B. 545 on the planned enhanced oil recovery project at Prudhoe Bay, the barrel calculation is not correct. Moreover, the fiscal note did not consider other additional recovery projects at Prudhoe Bay which would be affected. For example, drilling wells on closer spacing and in thinner oil columns and other projects involving new technologies would also be adversely impacted by H.B. 545. Because of these deficiencies, the Department of Revenue's estimates should be considered only a qualitative indicator of the adverse impact of H.B. 545 on future oil recovery. Mr. Logsdon suggested this via teleconference during the hearing.

In order to avoid further confusion regarding this matter, I urge you to write a supplementary note to the House Finance Committee pointing out the limitations of the fiscal note on H.B. 545. I would be happy to discuss this with you in greater detail at your convenience.

Sincerely,



LMS/THG3/342:vh
cc: House Finance Committee

Introduced: 2/5/86
Referred: Finance

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 HOUSE BILL NO. 545

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 the oil production tax; and
7 providing for an effective date."

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

9 * Section 1. AS 43.55.013(b) is amended to read:

10 (b) [(1)] The economic limit factor for oil production of a lease
11 or property shall be computed according to the following formula:

12
$$\frac{(1 - [PEL/TP]) \exp ([37,000,000 \times WD] / [PEL \times TP / \text{Days}])}{[(1 - [PEL/TP]) \text{EXP} ([460 \times WD] / PEL)]}$$

13 where: PEL = the monthly production rate at the economic limit;

14 TP = the total production during the month for
15 which the tax is to be paid;

16 WD = the total number of well days in the
17 month for which the tax is to be paid; [AND]

18 Days = the number of days in the month for which
19 the tax is to be paid; and

20 where "exp" indicates that the expression following it is an exponent.

21 [(2) IF, FOR ANY MONTH DURING THE FIRST 10 YEARS FOLLOWING
22 THE COMMENCEMENT OF COMMERCIAL OIL PRODUCTION OF A LEASE OR PROPERTY,
23 THE ECONOMIC LIMIT FACTOR FOR OIL PRODUCTION OF THAT LEASE OR PROPERTY
24 COMPUTED UNDER (1) OF THIS SUBSECTION IS 0.7 OR LESS, THEN THAT FACTOR
25 SHALL BE APPLIED.

26 [(3) IF, FOR ANY MONTH DURING THE FIRST 10 YEARS FOLLOWING
27 THE COMMENCEMENT OF COMMERCIAL OIL PRODUCTION OF A LEASE OR PROPERTY,
28 THE ECONOMIC LIMIT FACTOR FOR OIL PRODUCTION OF THAT LEASE OR PROPERTY
29

1 COMPUTED UNDER (1) OF THIS SUBSECTION IS GREATER THAN 0.7, THEN THE
2 ECONOMIC LIMIT FACTOR IS ONE.

3 (4) THE ECONOMIC LIMIT FACTOR FOR OIL PRODUCTION OF A LEASE
4 OR PROPERTY AFTER THE FIRST 10 YEARS FOLLOWING THE COMMENCEMENT OF
5 COMMERCIAL OIL PRODUCTION SHALL BE COMPUTED AND APPLIED UNDER (1) OF
6 THIS SUBSECTION.]

7 * Sec. 2. This Act takes effect July 1, 1987.

**HOUSE
COMMITTEE REPORT**

(11)

Date referred: 4/9/86

FURTHER REFERRALS:

DATE: 4-15-86

The FINANCE Committee has considered HB 546
"An Act relating to the taxation of Native corporations."

and recommends:

- do pass
 - do not pass
 - do pass with attached amendment(s)
 - no recommendation
 - replace with CS HB 546 (CIRA) same title
 new title
- and recommends no recommendation

further referral to the _____ Committee

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

SIGNING DO PASS:

Albert B. Lohs
John [unclear]
Jim Duca
Ronald [unclear]

SIGNING OTHER RECOMMENDATIONS:

Mike [unclear] No Rec.
Paul [unclear] No Rec.
Karl [unclear] NO REC.
[unclear] No Recommendation
[unclear] No Rec.
Jim [unclear] No Rec.

Albert B. Lohs
Chairman

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date 3/24/86

REQUEST
Bill/Resolution No: ^{OS} HB 546 ^(C+RA)
Title: Taxation of Native Corporations

FISCAL DETAIL
Agency Affected: Department of Revenue
BRU: Audit

Sponsor: Fuller
Requestor: (H) C & RA
Date of Request: March 24, 1986

Components:
Audit Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400 SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
800 MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Please see attached.

Prepared By: Steven E. Kettel
Division: Audit Division

Phone: 465-2343
Date: March 24, 1986

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 3/25/86

Distribution (by Agency preparing fiscal note):

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

Offered: 4/9/86
Referred: Finance

Original sponsor: Fuller

1 IN THE HOUSE BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 546 (C&RA)

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 the capital and the taxation of
7 Native corporations."

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

9 * Section 1. AS 10.05.005(a) is amended to read:

10 (a) A corporation organized under 43 U.S.C. 1601 - 1628 (Alaska
11 Native Claims Settlement Act), except a village corporation which may
12 be incorporated under either this chapter or AS 10.20, shall be incor-
13 porated under and is subject to this chapter, except

14 (1) each corporation shall issue without further considera-
15 tion the number of shares of common stock necessary to comply with the
16 requirements of the Alaska Native Claims Settlement Act and all stock
17 so issued is considered fully paid and nonassessable when issued;

18 (2) unless otherwise provided in the articles of incorpora-
19 tion approved by the secretary of the interior,

20 (A) the capital is considered the consideration for
21 the initial issuance of shares; and

22 (B) the capital of a corporation organized under 43
23 U.S.C. 1601 - 1628 includes

24 (i) the land or interests in it conveyed to the
25 corporation by the United States under the federal Act,
26 except that which is required to be conveyed under 43 U.S.C.
27 1613(c)(1), (3), and (4), entered at its fair value to the
28 corporation upon receiving the conveyance of it; and

29 (ii) the money, when received under 43 U.S.C.

1 1605, 1606(i), and 1608, that [WHICH] is retained by the
2 corporation and that [WHICH] is not immediately distributed
3 or required to be distributed under 43 U.S.C. 1606(j).

4 * Sec. 2. AS 43.20.031 is amended by adding a new subsection to read:

5 (j) The department shall apply the exception contained in sec.
6 60(b)(5) of P.L. 98-369 (Deficit Reduction Act of 1984) to a consoli-
7 dated return filed by a Native corporation under this chapter. In
8 this subsection, "Native corporation" means a corporation organized
9 under 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement Act).

Fiscal Note
HB 546

Analysis:

This bill has two provisions affecting Native corporations organized under the Alaska Native Claims Settlement Act. (ANCSA).

- I. Section I amends AS 10.05.005(a) to allow Native corporations to treat as a contribution to capital all distributions made to it under section 1606(i) of ANCSA. These distributions, commonly referred to as "(7)(i)" distributions are currently required to be reported in each recipient corporation's income for tax purposes. This legislation will therefore change the character of the distribution.

It is not possible to estimate the revenue impact this bill will have. Revenue loss would depend upon the Regional and Village corporations' overall profitability and, of course, upon the continued availability of distributable income from the sale of non-renewable resources from Native lands.

- II. Section II of the bill gives Native corporations special treatment under Alaska tax law, identical to that bestowed upon them at the federal level. As Alaska corporate tax law currently adopts the special federal provisions which this bill attempts to recognize, section II of the bill is entirely unnecessary. The intent of this section is apparently to leave no doubt that the special privilege allowed by federal income tax law is also allowed at the State level.

IRC Section 1504(a) was amended in 1984 to tighten up the rules which allow corporations with large net operating losses to, in effect "sell" those tax losses to profitable non-Native corporations. The amendment specifically exempts Native corporations organized under ANCSA from the provision, thereby allowing them to continue to utilize their net tax losses in business ventures with profitable corporations.

Although it is not possible to estimate the impact this federal provision has on Alaska state revenues, several inferences can be made:

1. Native corporations will more quickly utilize their losses and become subject to Alaska tax;
2. Non-native corporations acquiring these losses will benefit by paying less federal and state income tax, thus freeing up more capital for additional investment in the state;
3. Corporations organized and doing business outside Alaska may also acquire the net operating losses to shelter their federal taxable income. If they are not doing business in Alaska, no revenue impact would result.

CS HB 546 (C+RA)

Section 1

The first section of the bill amends state law to define the 7(i) revenues received by Native Regional Corporations as contributions to a corporation's capital. The reason for this change is to ensure that the intent of ANCSA to equally distribute the earnings from resource development revenues among all Alaska Native Corporations is met; under current law this is not possible due to manner ^{the} in which the depletion allowance for resource extraction is computed.

Native corporations which own the resources and retain 30% of the income therefrom are able to shelter this income from taxation through the use of a depletion allowance. However, the corporate recipients of the remaining 70%, because they are not owners of the resources, are not eligible for the same favorable tax treatment; this subverts the concept of equality upon which the 7(i) provision of ANCSA is based. By defining these payments as contributions to capital, rather than income, balance is restored.

Section 2

Section 2 has been added to the legislation to make state law consistent with federal law. Because state tax regulations reference the internal revenue code, it may not be technically necessary to include this provision, but we have done so on the advice of Mr. Beattie of Peat Marwick.

The provision allows Native corporations to file consolidated tax returns for their subsidiary businesses. Since 1928 American corporations have been able to file consolidated tax returns for their subsidiaries, thus sheltering the earnings of their profitable subsidiaries with the losses of their poor performers; the losses generated were able to be "sold " to other profitable concerns in order to reduce the purchasers' tax liability.

This practice increased dramatically in 1981 with the passage of more liberal depreciation requirements. In 1984 Congress substantially limited this practice through the creation of more onerous ownership requirements for subsidiaries whose losses companies claimed for tax purposes. Alaska Native corporations were exempted from this provision due to their inability to sell stock to generate additional capital.



Peat, Marwick, Mitchell & Co.
Certified Public Accountants
Alaska Mutual Bank Building
601 West 5th Avenue, Suite 700
Anchorage, Alaska 99501

March 22, 1986

MAR 31 RECD

Representative Jack Fuller
Pouch V
Juneau, Alaska 99611

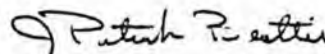
Dear Representative Fuller:

Attached is a memorandum regarding the explanation behind the proposed changes to the corporate statutes and the revenue statutes for Alaska native corporations. Hopefully, this will be of help to you as you progress on the bill. Please call me if you have any questions.

Thank you for your help in this matter.

Very truly yours,

PEAT, MARWICK, MITCHELL & CO.


J. Patrick Beattie, Partner

JPB:SKH

March 22, 1986

Memorandum for Record:

Alaska Native Legislation

A House bill has been proposed by Representative Jack Fuller regarding two items relating to the taxation of native corporations. The purpose of this memorandum is to provide an explanation for those items and a discussion behind the purpose of the legislation.

Sec. 2 of the bill

The first item proposed is the change to revenue statute AS 43.20.031 which recognizes the Federal consolidated exception allowable to Alaska native corporations. The purpose behind this amendment is to ensure that Alaska taxation follows Federal with regard to native consolidated loss transactions. The exceptions provided in the Federal legislation allow Alaska native corporations to file consolidated returns under the rules in existence prior to the changes of the Tax Reform Act of 1984. The revenue statutes for Alaska already indicate that they recognize Federal consolidated filings and the purpose behind the legislation is to merely emphasize the fact that the State will also recognize the Federal exception.

The net effect of the recognition and the transactions, which are anticipated to be entered into by native corporations in the current year, should be minimal to Alaska taxation. The reason for this is the fact that the majority of income that would be sheltered for Federal purposes would, in all probability, come from outside the State of Alaska and not have been subject to taxation otherwise. The utilization of this income to offset the Alaska loss carryforwards will have the effect of accelerating revenue payments to the State of Alaska once the losses are utilized.

Sec. 1 of the bill

The second piece of legislation is a bit more complicated than the first part. However, the second part merely is a reversion back to the law for corporate structure that existed prior to 1981. This is the capital formation provision that treated Section 7(i) receipts by a native corporation as contributed capital. The provision was changed in 1981 because of a concern that native corporations could not make distributions of 7(i) to their shareholders since it was considered, for State law purposes, to be contributed capital. If this is still a concern, it is recommended that it be addressed by simply allowing native corporations to distribute contributed capital to the extent of 7(i).

The rationalization behind the desired change is founded in the overall intent of ANCSA. When the historical land claim settlement was reached, the Federal government recognized in Section 21(c) of the Act the need to provide for an exemption from taxation on the overall settlement. To the extent moneys and land were received by native corporations, they were not subject to any Federal or State taxation. The mechanics of this were to provide a basis allowance equal to fair market value on the receipt of any land. The problem then came with regard to the provisions enacted by Section 7(i) of the Act which provided for a revenue sharing allocation among the various corporations, giving recognition to the fact that there could be substantial variances in the value of resources received in a particular region.

Memorandum for Record
Alaska Native Legislation
March 22, 1986

2

The overall intent, as indicated in the basis provision, was to allow for the receipt of land and the conversion of its resources to be exempt from taxation. While this is a fairly straight-forward concept, the accounting problems which surfaced as a result of the revenue sharing provision created substantial difficulties. A regional corporation which receives land and extracts subsurface estate is obligated to share the subsurface estate with other regions. If the receipt of the subsurface estate by the other regions under Section 7(i) were taxable, it would defeat the intent of the overall settlement itself. However, the tax rules and regulations regarding depletion did not directly allow for a receiving corporation to be entitled to an outright basis deduction. Therefore, in order to implement the intent of ANCSA, the easiest method appears to be having the amounts received under Section 7(i) as contributed capital and thus eliminate the need for complex calculations and substantial disagreements.

Accordingly, it was recommended that the statutes be revised back to their previous form so that for State law purposes, amounts received under Section 7(i) will be considered contributed capital and exempt in accordance with the intent of ANCSA. As native corporations currently are paying extremely little amounts of taxation to the State due to their net operating loss carryovers, this provision is not anticipated to have a substantial revenue effect, if any, to the State.

J. Patrick Becker

Offered: 4/9/86
Referred: Finance

Original sponsor: Fuller

1 IN THE HOUSE
2
3 CS FOR HOUSE BILL NO. 546 (C&RA)
4 IN THE LEGISLATURE OF THE STATE OF ALASKA
5 FOURTEENTH LEGISLATURE - SECOND SESSION
6 A BILL
7 For an Act entitled: "An Act relating to the capital and the taxation of
8 Native corporations."
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
10 * Section 1. AS 10.05.005(a) is amended to read:
11 (a) A corporation organized under 43 U.S.C. 1601 - 1628 (Alaska
12 Native Claims Settlement Act), except a village corporation which may
13 be incorporated under either this chapter or AS 10.20, shall be incor-
14 porated under and is subject to this chapter, except
15 (1) each corporation shall issue without further considera-
16 tion the number of shares of common stock necessary to comply with the
17 requirements of the Alaska Native Claims Settlement Act and all stock
18 so issued is considered fully paid and nonassessable when issued;
19 (2) unless otherwise provided in the articles of incorpora-
20 tion approved by the secretary of the interior,
21 (A) the capital is considered the consideration for
22 the initial issuance of shares; and
23 (B) the capital of a corporation organized under 43
24 U.S.C. 1601 - 1628 includes
25 (i) the land or interests in it conveyed to the
26 corporation by the United States under the federal Act,
27 except that which is required to be conveyed under 43 U.S.C.
28 1613(c)(1), (3), and (4), entered at its fair value to the
29 corporation upon receiving the conveyance of it; and
30 (ii) the money, when received under 43 U.S.C.

1 1605, 1606(i), and 1608, that [WHICH] is retained by the
2 corporation and that [WHICH] is not immediately distributed
3 or required to be distributed under 43 U.S.C. 1606(j).

4 * Sec. 2. AS 43.20.031 is amended by adding a new subsection to read:

5 (j) The department shall apply the exception contained in sec.
6 60(b)(5) of P.L. 98-369 (Deficit Reduction Act of 1984) to a consoli-
7 dated return filed by a Native corporation under this chapter. In
8 this subsection, "Native corporation" means a corporation organized
9 under 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement Act).

Introduced: 2/5/86
Referred: Community & Regional
Affairs and Finance

1 IN THE HOUSE

BY FULLER

2

HOUSE BILL NO. 546

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 the taxation of Native corpora-
7 tions."

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

9 * Section 1. AS 10.05.005(a) is amended to read:

10 (a) A corporation organized under 43 U.S.C. 1601 - 1628 (Alaska
11 Native Claims Settlement Act), except a village corporation which may
12 be incorporated under either this chapter or AS 10.20, shall be incor-
13 porated under and is subject to this chapter, except

14 (1) each corporation shall issue without further considera-
15 tion the number of shares of common stock necessary to comply with the
16 requirements of the Alaska Native Claims Settlement Act and all stock
17 so issued is considered fully paid and nonassessable when issued;

18 (2) unless otherwise provided in the articles of incorpora-
19 tion approved by the secretary of the interior,

20 (A) the capital is considered the consideration for
21 the initial issuance of shares; and

22 (B) the capital of a corporation organized under 43
23 U.S.C. 1601 - 1628 includes

24 (i) the land or interests in it conveyed to the
25 corporation by the United States under the federal Act,
26 except that which is required to be conveyed under 43 U.S.C.
27 1613(c)(1), (3), and (4), entered at its fair value to the
28 corporation upon receiving the conveyance of it; and

29 (ii) the money, when received under 43 U.S.C.

1 1605, 1606(i), and 1608, that [WHICH] is retained by the
2 corporation and that [WHICH] is not immediately distributed
3 or required to be distributed under 43 U.S.C. 1606(j).

4 * Sec. 2. AS 43.20.031 is amended by adding a new subsection to read:

5 (j) The department shall apply the exception contained in sec.
6 60(b)(5) of P.L. 98-369 (Tax Reform Act of 1984) to a consolidated
7 return filed by a Native corporation under this chapter. In this
8 subsection, "Native corporation" means a corporation organized under
9 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement Act).

COMMITTEE REPORT

(11)

Date referred: 4/17/86

FURTHER REFERRALS:

DATE: 4-29-86

The FINANCE Committee has considered HB 550

"An Act extending the termination date of the Alcoholic Beverage Control Board; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS HB 550 (SA) 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 New 4-28-86

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

C. Adams
John ...
Ronald L. ...
For ...
Kirk Kelly - DO PASS
Steve ...
...
...

...

C. Adams
Chairman

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS HB 550 (SA)
 Title : Extend ABC Board

Sponsor : House Judiciary Committee
 Requestor : House Finance Committee
 Date of Request : 4/28/86

FISCAL DETAIL

Agency Affected : Revenue
 BRU : _____

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		-0-	-0-	-0-	-0-	-0-
SUPPLIES		-0-	-0-	-0-	-0-	-0-
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES		0	-0-	-0-	-0-	-0-
GRANTS, CLAIMS		0	-0-	-0-	-0-	-0-
MISCELLANEOUS		-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Funds to operate the ABC Board are included in the FY 87 Budget.

APA

Prepared by : Representative Adams - Chairman Phone : 465-3706
 Division : House Finance Committee Date : 4/28/86

Approved by Commissioner : _____ Date : _____
 Agency : _____

Distribution (by Agency preparing fiscal note):

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

Offered: 4/17/86
Referred: Finance

Original sponsor: Judiciary Committee

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR HOUSE BILL NO. 550 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act amending the qualifications for appointment
7 to the Alcoholic Beverage Control Board and extending
8 the termination date of the Alcoholic Beverage
9 Control Board; and providing for an effective date."

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

11 * Section 1. AS 04.06.020 is amended to read:

12 Sec. 04.06.020. APPOINTMENT AND QUALIFICATIONS. The board
13 consists of five members appointed by the governor and confirmed by a
14 majority of the members of the legislature in joint session. A member
15 of the board may not hold any other state or federal office, either
16 elective or appointive. Two members of the board shall be persons
17 actively engaged in the alcoholic beverage industry, except that no
18 member may hold a wholesale license or be an officer, agent, or em-
19 ployee of a wholesale alcoholic beverage enterprise. One member shall
20 have experience in the field of alcohol abuse treatment or prevention.
21 Two members shall be public members. No three members of the board
22 may be engaged in or retired from the same business, occupation, or
23 profession.

24 * Sec. 2. AS 44.66.010(a)(1) is amended to read:

25 (1) Alcoholic Beverage Control Board (AS 04.06.010) --
26 June 30, 1990 [1986];

27 * Sec. 3. TRANSITION. Notwithstanding the provisions of AS 04.06.020
28 as amended by sec. 1 of this Act, the members of the Alcoholic Beverage
29 Control Board on the effective date of this Act remain on the board until

1 their terms expire or the positions otherwise become vacant.

2 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-

3 10.070(c).

A PERFORMANCE REPORT ON THE
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD

August 21, 1985

Audit Control Number

04-1223-86-R

Commissioner, Department
of Revenue

Mary A. Nordale

Deputy Commissioners,
Department of Revenue

Bruce M. Botelho
Milton B. Barker

Members of the
Alcoholic Beverage Control Board

Chairman
Member
Member
Member
Member

William K. Smith
E. L. Holloway
Jane C. Perkins
James McNamee
Jack Griffin

STATE OF ALASKA

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

August 21, 1985

Members of the Legislative Budget
and Audit Committee:

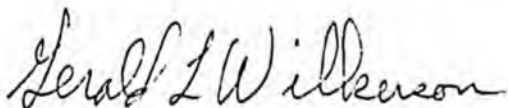
In accordance with the provisions of Title 24 of the Alaska
Statutes, the attached report is submitted for your review.

A PERFORMANCE REPORT ON THE
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD

August 21, 1985

Audit Control Number

04-1223-86-R



Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE OF THE REPORT

In accordance with the provisions of Alaska Statutes 24.20.271(1) and 44.60.050 (sunset legislation) an examination of the Alcoholic Beverage Control (ABC) Board was conducted to determine if the Board has been operating in an efficient and effective manner and if the Board should be reestablished.

As required by legislative intent, this report should be considered during the legislative oversight function in determining if the ABC Board should be reestablished. Per the 1984 amendment to AS 44.66.010(A)(1), the Board is scheduled to terminate on June 30, 1986.

The policy and audit approach utilized by the Division of Legislative Audit for Performance Reports can best be described as "audit by exception."

This methodology focuses audit effort on areas of an auditee's operations that have been identified by a preliminary survey as having a high degree of probability for needing improvements.

Therefore, by design, finite audit resources are used to identify where and how improvement can be made and little time is devoted to reviewing well run operations or programs. Consequently, this report highlights those areas needing improvement and does not emphasize those operations and programs that are properly functioning.

ORGANIZATION AND FUNCTION

The Alcoholic Beverage Control Board (hereinafter referred to as the ABC Board or the Board) was established in 1959 by Title 4 of the Alaska Statutes as a regulatory, quasi-judicial agency. The Board is vested with the powers, duties, and responsibilities for the control of alcoholic beverages, including the power to propose and adopt regulations and to hear appeals.

Members are appointed for three-year terms by the Governor and serve at his pleasure subject to confirmation by the Legislature. Membership is limited by statute to five persons (two liquor industry representatives and three non-industry representatives). A director, also appointed by the Governor, serves as executive officer and is responsible for enforcement of Title 4 liquor laws and regulations developed by the Board. Although he is not a member of the Board, the director may cast a tie-breaking vote. Under the direction of the Board, the director may issue, renew, transfer, revoke or suspend licenses or permits.

Title 4 prescribes the type of licenses, fees, and specific activities allowed under each license classification (see schedule of license types and fees in Appendix C). Fees are payable at the time of application. To renew an already existing liquor license, the application must be filed and the corresponding fees paid on or before February 28.

The availability of licenses throughout the State is determined by the population within designated areas. Effective June 6, 1985, one license may be issued for every 3,000 in population or fraction thereof. As of June 30, 1985, a total of 1,679 licenses had been issued (see Appendix B).

The staff of the ABC Board is divided into three major functions: administration, licensing, and enforcement. A brief description of the services provided by those functions follows.

Administration. The director of the ABC Board provides all administrative support needed by the Board including overseeing all staff functions, preparing budget documents, directing the preparation and implementation of administrative and public hearings, and directing special enforcement investigations.

Licensing. The licensing staff currently consists of three full-time employees responsible for issuing and receiving application forms, maintaining records and files for all licenses, collecting fees, issuing all licenses and permits authorized by the Board, and answering inquiries from the general public on routine licensing matters.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting those practices are not within the scope of this review but require legislative consideration. In debating these decisions the legislative oversight committees should take into consideration the findings and recommendations presented in this report, so that the potential impact of the policy changes can be evaluated.

Report Conclusions

Title 4 of the Alaska Statutes established the ABC Board to control the manufacture, barter, possession, and sale of alcoholic beverages in the State in order to protect the public's health, safety, and welfare. We believe that there is a demonstrated need for this control to continue to exist. In order to operate in a more efficient and effective manner, the following recommendations should be implemented.

1. The ABC Board should document the mitigating circumstances and reasons for not pursuing a suspension or revocation of a license.
2. Alaska Statute 04.11.510(c) should be amended to exclude Board participation in informal conferences.
3. The ABC Board should cease the current practice of terminating a license without cause and seek legal advice for clarification of its authority.
4. The ABC Board should improve documentation of its enforcement efforts.
5. The ABC Board should promulgate regulations for the creation of restaurant designation permits and the establishment of fees.
6. The ABC Board should strengthen controls over liquor license stock.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The ABC Board should document the mitigating circumstances and reasons for not pursuing a suspension or revocation of a license.

Alaska Statute 04.11.370 provides for the suspension or revocation of a license if one or more of the eleven items listed in the provisions exists. Some of the major items listed include: misrepresentation of a material fact on an application; failure of a licensee to correct defects which constitute violations of Title 4; use of the licensed premises as a resort for illegal possessors or users of narcotics, prostitutes, or pimps; and violation by a licensee of Title 4 or a regulation or ordinance adopted under Title 4.

As prosecutor in the adjudication process, the ABC Board's Director is responsible for filing an accusation against a licensee when the facts show that a violation applicable to AS 04.11.370 has occurred. An accusation is a written statement of charges setting out the acts or omissions with which the licensee is charged and specifies the statute which the licensee is alleged to have violated.

Supporting the accusation is evidence gathered by the ABC Board's investigative staff. Investigative activity includes premise inspections, undercover observations, inquiries of licensee's staff and customers, and a review of local police reports.

Once an accusation has been filed by the Director, the ABC Board members have the responsibility of hearing the case and imposing the penalty upon a determination of the licensee's guilt.

Our review of cases requiring Board action showed that most cases resulted in dismissal of the accusation after an informal conference was held with the licensee. In some cases, the dismissal included a stipulation prohibiting any reoccurrences.

It is the ABC Board's position that it is within their discretion to adopt stipulations with remedial actions rather than to impose suspensions and revocations. Although we recognize that stipulations are within the Board's discretion, the files seldom document the mitigating circumstances or provide an explanation of why the Board chose to dismiss the accusation. In all cases, the files should clearly document the reasons for the Board's actions.

Recommendation No. 3

The ABC Board should cease the current practice of terminating a license without cause and seek legal advice for clarification of its authority.

The ABC Board has established an informal policy of requiring a licensee to surrender an existing license upon the issuance of a new license of a different type. For example, the holder of a restaurant/eating place license would be required to surrender that license upon the issuance of a beverage dispensary license for the same premise. The Board's authority to enforce this policy is questionable.

The ABC Board is governed by Title 4 of the Alaska Statutes. Per AS 04.11.070 the Board has the authority to issue, renew, transfer, suspend, or revoke a license. Alaska Statutes 04.11.360 and 04.11.370 list the conditions under which the Board can deny a transfer or revoke a license. The conditions listed primarily address violations by the licensee, actions which are contrary to statute, and actions which are not in the best interest of the public.

Our review of the licenses surrendered per the Board's informal policy showed that none of the conditions listed in AS 04.11.360 and AS 04.11.370 existed. In addition, we found that the Board was inconsistent in its application of the policy. The requirement to surrender a license was only imposed if the existing license was originally issued to the holder by the ABC Board. If the existing license was acquired through a transfer (purchase) then, the licensee was allowed to retain the license or transfer it. In the former case, the licensee was deprived of the privilege to transfer the license whereas in the latter case he was not. Our review disclosed three cases in which the licensee was deprived of the transfer option.

Due to the passage of House Bill 34, the population limits for the issuance of licenses was increased from 1,500 to 3,000. As a result, the license quota for the issuance of new licenses has been capped for most areas in the State. The ownership and transferability of a license is more valuable now than ever before. We noted in our review that one of the three licenses was surrendered in November 1984 under protest. The licensees feel their rights of ownership should not be denied. Although the ABC Board has taken no action on the protest to date, we strongly recommend that the Board obtain an Attorney General's opinion prior to taking action on the matter.

CORRECTION

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

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Licensing. The licensing staff currently consists of three full-time employees responsible for issuing and receiving application forms, maintaining records and files for all licenses, collecting fees, issuing all licenses and permits authorized by the Board, and answering inquiries from the general public on routine licensing matters.

Enforcement. The ABC Board currently employs six investigators - four operating from the Anchorage central office, one operating from the Fairbanks field office, and one operating from the Juneau field office. Services provided include: (1) surveillance and inspections of licensed premises, (2) investigations to obtain information to be used in criminal and civil proceedings and investigations into suspected licensing violations, (3) public appearances relating to ABC laws and regulations, and (4) assisting the licensing staff in handling inquiries from the general public.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting those practices are not within the scope of this review but require legislative consideration. In debating these decisions the legislative oversight committees should take into consideration the findings and recommendations presented in this report, so that the potential impact of the policy changes can be evaluated.

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Recommendation No. 2

The Legislature should consider amending Alaska Statute 04.11.510(c) to exclude Board participation in informal conferences.

If an accusation is filed by the Director, the licensee is given the option of requesting an informal conference. Per AS 04.11.510(c), the informal conference may be held with the Director or the Board. If not satisfied with the results of the conference, the licensee may request a formal hearing. The ABC Board may delegate full authority to preside over the case to a hearing officer, or it may hear the case with the hearing officer. If the case is heard by the hearing officer, the officer is required to submit a proposed decision to the Board. The Board has the option of adopting the proposed decision or rendering a different one. If the case is heard by the Board and a hearing officer, the Board renders its final decision upon completion of the hearing.

When hearing a case, the Board should be unbiased and impartial. Evidence presented by the Director (the prosecutor) and the licensee (the defendant) should be weighed equally. Only evidence and testimony presented during the hearing may be considered in reaching a final decision. The Board's participation in informal conferences, prior to a formal hearing, may have a negative effect on their independence. No guidelines have been established to address what type of evidence can be submitted or what rules of law should be adhered to in the conferences.

For the most part, informal conferences are held by the Board without counsel to advise them on matters of law. As noted in Recommendation No. 1, Board action to resolve most cases resulted from informal conferences. If a hearing is requested by the disgruntled licensee after an informal conference, the Board runs the risk of having developed a biased opinion prior to the hearing.

To ensure the Board's independence, informal conferences held on pending cases should be limited to the Director. Any stipulations made by the Director and the licensee should be submitted to the Board for review. Board review of the stipulations should include an evaluation of the fairness of the resolution and an analysis of whether the terms are in compliance with statutory requirements. Final Board action should be documented by a motion and vote of the Board at an open meeting.

In addition, all informal conferences should be recorded to document the matters discussed. A brief summary of the discussion and agreements made should be transcribed and maintained in the licensee's file.

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Recommendation No. 4

The ABC Board should improve documentation of its enforcement efforts.

This recommendation was made in our prior audit. Primarily, we had found that the ABC Board did not maintain adequate documentation of its enforcement actions from inception to final resolution. In addition, documentation of actions resulting from informal conferences held with the licensee was not adequate. Although the ABC Board staff has made some improvements (especially the Enforcement Section) our current review disclosed the following additional problems:

1. Documentation of the Director's review of investigative reports is not adequate.

The Director is required to review all investigative reports generated by the enforcement staff. However, our review showed that 26 of 46 reports did not have documentation of Director review.

2. Documentation of administrative decisions made by the Director is not adequate.

Not all violations noted by the ABC Board staff are prepared for prosecution. The Director is responsible for making the ultimate decision. Factors considered by the Director include; type of violation, evidence gathered by enforcement staff, prior violations, and the intent of the licensee. Therefore, a violation by one licensee may result in the filing of an accusation whereas a violation by another licensee may not. Our review showed that no documentation is maintained by the Director to show cause for not pursuing a case. As a result, in our review of 35 cases, we found nine cases which were not pursued by the Director although the violation and evidence gathered by the enforcement staff appeared to warrant further action. For example, an investigative report was prepared noting over 140 instances of violence on a licensee's premises over approximately a three year period. The investigators recommended an accusation be filed to suspend or revoke the license. An accusation was not filed and the file did not contain an explanation of why the case was not pursued. Documentation of administrative decisions would ensure proper review and fair treatment of cases.

3. The administrative filing system needs improvement.

An administrative file is established if violations noted by the Enforcement Section require prosecution by the Director. The file contains documentation of actions arising from the Director and/or Board review.

If another action involving the same licensee arises, then a separate file is created. No system has been established to record a historical summary of administrative actions and penalties imposed by the Board per each licensee. Thus, vital information which could be utilized by the Director and the Board in the decision making process is not readily available. In addition, a historical summary could also be utilized by the enforcement staff when conducting routine inspections to identify potential problem areas and ensure compliance to requirements stipulated by the Board.

We encourage the ABC Board to continue its efforts in implementing procedures to resolve the problems noted in our prior audit.

Additionally, we recommend that the ABC Board develop procedures to resolve the problems noted above.

Recommendation No. 5

The ABC Board should promulgate regulations for the creation of restaurant designation permits and the establishment of fees.

Alaska Statute 04.16.049 requires Board designation of a premise as a restaurant in order to allow access by a minor for dining or employment purposes. Approval of the governing body having jurisdiction over the premise is also required, if access of a minor is allowed for employment purposes.

In an effort to comply with the above requirement, the ABC Board required the licensee to submit an application indicating the type of designation requested. Upon receipt of the application a notification is sent to the governing body requesting their review and approval. The governing body is given 30 days to respond. Once reviewed and approved by the Board a notification is sent to the applicant and a permit is issued. The licensee is required to post the designation permit next to the liquor license. The permit is valid for one calendar year. A licensee must reapply for the permit annually.

Due to the process stated above, the ABC Board has created a new class of permits called restaurant designation permits. However, no regulations have been developed to formally establish the classification. In addition, no application fees or permit fees have been assessed to cover the expenses associated with the processing and issuance of the permits. According to the ABC Board staff, processing of the permits is very time consuming. Approximately 250 applications per year were processed in 1983 and 1984. Over 300 applications have been processed since January 1985.