

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 1995-1996

1427

156

Representative Tom Brice

ALASKA STATE LEGISLATURE

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Fairbanks, AK 99701
907-456-7423 / Fax: 451-9293

While in Juneau
State Capitol
Juneau, AK 99801-1182
907-465-3466

Representative Tom Brice
HB 438 Sponsor Statement

HB 438, mandates a geographic location indexing method within the the State Recorder's Office. The result will be the continuation of an effective cataloguing system of lands in the state, and future possibilities of cross referencing that information with the resources, leases, and claims information in other data bases. The Recorder's office now provides the location indexing service as a courtesy.

A geography based information system would tie grantor and grantee indices, both required by statute, to a map. The only single source of all documents regarding a property is found in a manual cardex system maintained in Fairbanks. The name indexes and the developing resource indexes are computerized. It should be noted that no indexing system replaces the documents it tracks; it merely locates them. This capability is important enough that it should be continued as an integral aspect of the state's recording system.

The need and demand for a geography based index exists now. Public demand for this information is equal to or greater than that of the other two indices. The three indices, grantor, grantee, and location, are coequal in their importance and usefulness. The information that can be derived from such a three pronged indexing system will prove useful on an ongoing basis as land is classified, selected, transferred, and developed in Alaska. Under the current work load, the Recorder's Office does not anticipate a significant fiscal impact, in that the expenses are offset by program receipts. The members of the mining industry have stated its willingness to support the location index through a reasonable fee structure for recorded documents.

Land is an important asset in our state, and providing the data for an eventually up-to-date, integrated system for recording and retrieving resource, ownership, and location data is in the State of Alaska's best interest.



EXPLANATION OF NEED FOR LOCATION INDEX IN RECORDER'S SYSTEM

The law, AS 40.17.040 presently requires that only grantor and grantee indices be maintained. When the state abandoned the maintenance of recorded instruments by type in the 1970's, the ability to do research by location was severely impaired. As a consequence the Division of Mining and Water Management began keeping mining location notices and affidavits of labor by location through a manually posted Kardex system.

The Division of Mining and Water Management now insists that the approximate \$30,000 annual cost of maintaining the Kardex system for mining records is too high and seeks to abandon the Kardex records. The mining community has relied on those records to insure that locations, prospecting sites and other mining activities on lands can be researched without error.

A group of concerned miners and others in Fairbanks who rely on the integrity of the Kardex system believe that the statute needs to be changed so that the contract the State Recorder has for electronic recording of data can be amended to include a sort by location. This will make the same information available in the future statewide that the state presently preserves manually in Fairbanks.

The state is moving rapidly to complete its geographical information system (GIS) for its lands records. Most, if not all, Native regional and village corporations have adopted a GIS lands management records system. Several of the boroughs have adopted a GIS for their assessment and lands records. Development of geographically based information through the State Recorder's Office will enhance the state's ability to complete its GIS lands management system, will allow the state's records to mesh with Native corporation and borough lands, and will preserve the ability of the mining community and other interested parties to research title and activity on lands by location.

The grantor and grantee indices for mining records is not sufficient. In order to maintain state and federal claims, location notices must be filed and annual affidavits filed. This makes mining records much more difficult to research than the ordinary property transactions. Inclusion of the requirement for maintenance of a location index will preserve the type of necessary historical information relating to mining claims and will not add appreciably to the cost of the recording system.



FAX TRANSMITTAL

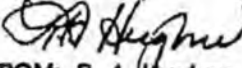
TO: Tom Brice
ORG.: Alaska State Legislature
CITY: Juneau, AK

DATE: 3/7/96
NO.: 465-2294

MESSAGE

This fax is sent in support of House Bill 438 "An Act relating to the indexing of documents recorded in the state recorder's offices; and providing for an effective date." A records indexing system is very important in performing land status research for mining project purposes.

I note that the current Kardex system employed by the DOM in Fairbanks has not been kept current. This system should be upgraded until the indexing system is in place and working effectively.


FROM: R. A. Hughes

2173 UNIVERSITY AVE. S., #101
FAIRBANKS, AK 99709

David S. Manzer
President
5381 Tudor Top Circle
Anchorage, Alaska 99507-1431
(907) 563-8882
FAX 563-8883

Alaska Land Status, Inc.



February 1, 1996

Representative Tom Brice
State Capitol
Juneau, AK 99801-1182
Fax: 465-2294

Via Telefax

Re: HB 438 & HB 439

Dear Representative Brice:

I am Co-Chairman of the State Oversight Committee of the Alaska Miner's Association. Our committee met today and discussed HB 438 and HB 439 which you sponsor. We support both bills as currently drafted.

Thank you for your support of the mining industry. If you have any questions regarding our discussion of these bills please call me or Steve Borell, our Executive Director.

Sincerely,

David S. Manzer

cc: Steve Borell
Rich Hughes
Bob Stiles

LAW OFFICES

BIRCH, HORTON, BITTNER AND CHEROT

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March 7, 1996

Rep. Jeannette James
Chair
House State Affairs Committee
Room 102, Capitol
Juneau, Alaska 99801-1182

Re: House Bill 438

Dear Jeannette:

House Bill 438, now pending in the House State Affairs Committee would require the State Recorder to maintain a location index in addition to grantor and grantee indices for property records. This bill is very important for miners because it would create an electronic index of vital information concerning mining claims that has been maintained manually by the Division of Mining and Water Management of the Department of Natural Resources. Historic records relating to mining claims is always important, but they are even more important now because of the success of the airborne geophysical mapping program conducted by DGGS.

The 1996 FY budget failed to fund the manually maintained program and, regrettably, made no alternative method of sustaining this information base. Over the summer and fall of 1995, a group of about 30 miners, representatives of the Division of Lands, DMWM and other interested persons met to develop a program that would tie into the state's land status mapping program as well as maintain ready access to the information relating to mining claims that the mining industry requires. The first step in developing a modern records and data acquisition program that Alaska needs is to require maintenance of a location index through the Recorders' Offices.

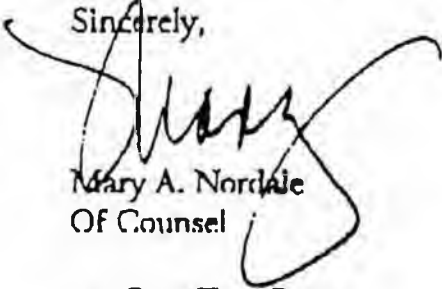
Rep. Jeannette Janc.
Page 2
March 7, 1996

This program would, in effect, pay for itself. I understand that the State Recorder has submitted a fiscal note that indicates that if the volume of recording remains the same, no additional costs will be incurred. If recordations increase, additional staff will be required. The additional staff would be required in any event and, since the Recorders' Offices not only pay for themselves, but return to the general fund about half of their receipts, there would be no increase in the deficit by adding this service.

One additional benefit would accrue to Alaskans. The manually maintained record of mining claims is available only in Fairbanks. If the State Recorder is required to establish a location index, essential property information will be available electronically readily throughout the state and to anyone else who can reach the data base maintained for the State Recorder by the Motznick system.

I urge that the bill be heard and that you support it vigorously. It is a good bill that will mean long-term benefits to the people of Alaska.

Sincerely,



Mary A. Nordale
Of Counsel

cc: Rep. Tom Brice
Earl H. Beistline
Steve Borell
Paul Richards

(9)
Date Referred to Committee: March 12, 1996

HOUSE COMMITTEE REPORT

FURTHER REFERRALS:

3/25/96
Rules
FIN (at)
Added
HB 438

Date of Committee Action: 3/25/96

The RESOURCES Committee considered:

HOUSE BILL NO. 438

RECORDING: INDEX DOCUMENTS BY LOCATION

"An Act relating to the indexing of documents recorded in the state recorder's offices; and providing for an effective date."

recommends it be replaced with the following committee substitute _____ [] the same title [] a new title

[] additional referral to _____ Committee
[] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
[] fiscal note(s) _____ (2) [] fiscal note(s) (2) DNR 3-12-96

[] zero fiscal note(s) _____ [] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
	Long	X			
	Williams	X			
	Kott			✓	
	Austerman	X			
	Ogan			-	
	Green	✓			
	Barnes			X	
		(4)		(3)	

CHAIR'S SIGNATURE

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: January 22, 1996

FURTHER REFERRALS:



Date of Committee Action: 3-12-96

The STATE AFFAIRS Committee considered:

HB 438

HOUSE BILL NO. 438

RECORDING: INDEX DOCUMENTS BY LOCATION

"An Act relating to the indexing of documents recorded in the state recorder's offices; and providing for an effective date."

recommends it be replaced with the following committee substitute _____ [] the same title [] a new title

[] additional referral to _____ Committee
[] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)
[x] fiscal note(s) DNR (2) [] fiscal note(s) _____

[] zero fiscal note(s) _____ [] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Janette James</i>	James	✓			
<i>Brian D. Porter</i>	Porter				✓
<i>Scott Ogan</i>	Ogan				✓
<i>Ed Willis</i>	Willis	✓			
<i>Don Robinson</i>	ROBINSON	✓			
<i>Ivan</i>	Ivan	✓			
		(4)			(2)

CHAIR'S SIGNATURE *Janette James*
James

FISCAL NOTE

No. 2

Bill Version: HB 438

(H) Publish Date: 3/12/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: _____ Dept Affected Natural Resources
 Title: "An act relating to the indexing of documents
in the state recorder's office" BRU: Management and Administration
 Sponsor: Rep. Brice Component: Recorder's Office/UCC
 Requestor: _____ Component Serial No. 802

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES	0.0	77.5	81.3	85.4	89.7	94.2
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	77.5	81.3	85.4	89.7	94.2
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (1003)	0.0	77.5	81.3	85.4	89.7	94.2

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	0.0	77.5	81.3	85.4	89.7	94.2
1006 GF/MHTIA						
Other						
TOTAL	0.0	77.5	81.3	85.4	89.7	94.2

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0	1	2	2	2	2
PART-TIME	0	1	0	0	1	1
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

HB438 simply adds three works to A.S. 40.17.040(a) to require that the recording system provide a location index in addition to the presently mandated grantor/grantee index. The recording system has in the past tried to maintain a location index as a courtesy for the public, but it has been replete with informational gaps and omissions of data. Since its implementation in 1972, approx., as a courtesy index, more than a third of all research activity by the public is connected with location research. The viability and usefulness of such an index in the future depends on its completeness, which in turn can only be assured if it is a mandatory, rather than discretionary, function. The ability of the component to consistently complete a location index, if mandated, is directly linked to fluctuating incoming workload, which is beyond its ability to control. Beginning in 1984, as the high refinance activity tapered off, and recording volumes declined, the recording system undertook efforts to make the courtesy index more complete by indexing all legal descriptions provided on recorded documents. With the level of recording volume existing at that time, and with the current recording volume, the recording system staff can and do maintain the location index in addition to all of their required

Prepared by: Sharon Young, State Recorder Phone: 269-8882
 Division: Support Services Date: 26-Jan-96
 Approved by Commissioner: [Signature] Date: 1/29/96
 Agency: Natural Resources

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FISCAL NOTE ANALYSIS (Continued)

functions. As recording volume growth occurs, staff must spend more time on required functions and may not be able to keep the discretionary index current without additional personal services funding. For purposes of this fiscal note, it is assumed that the FY97 recording volumes will remain at or near FY95 and FY96 levels, in which case no additional staffing would be required to maintain the location index. Assuming a five percent annual recording volume increase thereafter, additional personal services staffing would be proportionately required in fiscal years FY98 through FY02. The anticipated expenditures for FY98 through FY02 are estimates only, and recording volumes above or below the five percent assumptions would correspondingly affect staffing requirements. The component is fully funded by program receipts, and the assumed rate of recording volume growth would generate the increased program receipts necessary to fund the increased personal services required in future years. Passage of this bill would have no adverse impact on the state's economy, on local governments, or on any user group. However, continuing to maintain the location index as a discretionary courtesy index could impact various user groups who rely on location indexing to be accurate and complete. Legislatively requiring a location index in addition to the current grantor/grantee index will ensure that all index information will be available in a consistent and complete format for the tens of thousands of Alaskans who use this information each year.

HB

450

HFIN

FILE

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: March 6, 1996

FURTHER REFERRALS:

Date of Committee Action: 3/11/96

The FINANCE Committee considered:

HB 450

HOUSE BILL NO. 450

ALASKA TRADEMARK ACT

"An Act relating to trademarks; amending Alaska Rule of Appellate Procedure 609; and providing for an effective date."

recommends it be replaced with the following committee substitute (S HB 450 (FIN)) [] the same title [] a new title

[] additional referral to _____ Committee [] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date) [] fiscal note(s) [] fiscal note(s) DCED 2/2/96

[] zero fiscal note(s) [] zero fiscal note(s)

Table with 5 columns: SIGNING WITH RECOMMENDATIONS, DP, DNP, NR, AM. Rows include signatures and names like Hanky Mulder, Terry Martin, Kehrings, Grussendorf, Brown, Kelly, Therkholt.

CHAIR'S SIGNATURE Mark Hanky Mulder

FISCAL NOTE

No. _____
 Bill Version: CSRB 4501367
 (H) Publish Date: 2/21/96

STATE OF ALASKA
 1996 LEGISLATIVE SESSION

Revision Date: _____
 Title: An Act Relating to Trademarks
 Sponsor: Representative Theraut
 Requestor: _____

Department: Commerce and Economic Development
 BRU: Banking, Securities and Corporations
 Component: Banking, Securities and Corporations
 COMPONENT SERIAL NO. _____ 1233

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
CHANGE IN REVENUES	4.0	11.3	12.4	13.8	14.9	16.4

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund	4.0	11.3	12.4	13.8	14.9	16.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	4.0	11.3	12.4	13.8	14.9	16.4

Estimate of any current year (FY 96) cost: \$ 0.0

POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)
 HB 450 will remove fees from the statute and give the Commissioner authority to promulgate fees by regulation. The current fee for new registration and renewals is \$10.00 per application. The current fee for assignment is \$2.00. The current fees have not increased in 30 years. The increase in revenue is based on an anticipated fee for new registrations and renewals of \$50.00 and an assignment fee of \$50.00.

Prepared by: Wills F. Kirkpatrick, Director *Wills F. Kirkpatrick* Phone: 485-2521
 Division: Banking, Securities and Corporations Date: 1-29-96
 Approved by Commissioner: William L. Hensley *William L. Hensley* Date: 1-29-96
 Agency: Commerce and Economic Development

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3/7/96

*pg 13
Section 25*

CS FOR HOUSE BILL NO. 450()

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE THERRIAULT

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to trademarks; and providing for an effective date."

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

3 * Section 1. INTENT. It is the intent of the legislature to provide a system of state
4 trademark registration and protection substantially consistent with the federal system of
5 trademark registration and protection under 15 U.S.C. 1051 et seq., 1091 et seq., 1111 et seq.
6 (Trademark Act of 1946, as amended). To that end, the construction given the Trademark Act
7 of 1946, as amended, should be examined as a persuasive authority for interpreting and
8 construing AS 45.50.010 - 45.50.205 (Alaska Trademark Act).

9 * Sec. 2. AS 43.20.040(a) is amended to read:

10 (a) In this chapter, income from sources in the state includes

11 (1) income from real or tangible personal property located in the state;

12 (2) income of whatever nature from a business, trade or profession
13 having a business situs in the state and compensation for services rendered in the state;

14 (3) income from stocks, bonds, notes, bank deposits, and other
15 intangible personal property having a taxable or business situs in the state;

1 (4) rentals and royalties for the use of or for the privilege of using, in
2 the state, patents, copyrights, secret processes and formulas, good will, marks
3 [TRADEMARKS], trade brands, franchises, and other property having a taxable or
4 business situs in the state.

5 * Sec. 3. AS 45.50.010 is amended to read:

6 Sec. 45.50.010. REGISTRABILITY. A mark [TRADEMARK] may not be
7 registered if it consists of or comprises

8 (1) [CONSISTS OF] immoral, deceptive, or scandalous matter;

9 (2) [CONSISTS OF] matter that [WHICH] may disparage or falsely
10 suggest a connection with persons, living or dead, institutions, beliefs, or national
11 symbols, or bring them into contempt [,] or disrepute;

12 (3) [CONSISTS OF] the flag, [OR] coat of arms, or other insignia of
13 the United States, this or another [OR OF A] state, a [OR] municipality of this or
14 another state, [OR OF] a foreign nation, or simulation of any of these;

15 (4) [CONSISTS OF] the name, signature, or portrait identifying [OF]
16 a living individual, except with the written consent of the individual;

17 (5) [CONSISTS OF] a mark that,

18 (A) when used on or in connection with goods or services of
19 the applicant, is merely descriptive or deceptively misdescriptive of them;
20 [THE APPLICANT'S GOODS, OR]

21 (B) when used on or in connection with the goods or services
22 of the applicant, is primarily geographically descriptive or deceptively
23 misdescriptive of them; [THE APPLICANT'S GOODS, OR]

24 (C) is primarily merely a surname; however, this paragraph
25 does not prevent the registration of a mark used [IN THE STATE] by the
26 applicant that [WHICH] has become distinctive of the applicant's goods or
27 services; the commissioner may accept [;] as evidence that the mark has
28 become distinctive, as used on or in connection with the applicant's goods
29 or services, [THE COMMISSIONER MAY ACCEPT] proof of continuous use
30 of the mark as a mark by the applicant in this state [OR ELSEWHERE] for the
31 five years immediately preceding the date on which the claim of

1 distinctiveness is made [OF THE FILING OF THE APPLICATION FOR
2 REGISTRATION]; or

3 (6) [CONSISTS OF] a mark [TRADEMARK] that so resembles a
4 mark [TRADEMARK] registered in the state or in the United States Patent and
5 Trademark Office, [A TRADEMARK] or a mark [TRADE NAME] previously used
6 [IN THIS STATE] by another and not abandoned, as to be likely, when used on or
7 in connection with [APPLIED TO] the goods or services of the applicant, to cause
8 confusion or mistake or to deceive.

9 * Sec. 4. AS 45.50.010 is amended by adding a new subsection to read:

10 (b) For purposes of this section,

11 (1) "descriptive" means a word or combination of words that describes
12 one or more of the characteristics of the goods or services, such as, what the goods or
13 services are, what the goods are made of, or what the goods or services are used for;
14 however, an otherwise descriptive word or combination of words can, as a secondary
15 meaning, become accepted as identifying the goods or services of the applicant, in
16 which case it is no longer merely descriptive;

17 (2) "misdescriptive" means a word or combination of words that falsely
18 describes the nature, function, or capacity of goods or services.

19 * Sec. 5. AS 45.50.020 is amended to read:

20 Sec. 45.50.020. APPLICATION FOR REGISTRATION. Subject to
21 limitations under AS 45.50.010 - 45.50.205, a [A] person who [ADOPTS AND] uses
22 a mark [TRADEMARK] in the state may file with the commissioner
23 [DEPARTMENT], on a form furnished by the department and in a manner
24 complying with AS 45.50.010 - 45.50.205, an application for registration of that
25 mark [THE TRADEMARK] setting out the following information:

26 (1) the name and business address of the registrant [PERSON
27 APPLYING FOR REGISTRATION,] and, if the registrant is a

28 (A) corporation, the state of incorporation; or

29 (B) partnership, the state in which the partnership is
30 organized and the names of the general partners;

31 (2) the goods or services on or in connection with which the mark is

1 used, the manner in which the mark is used on or in connection with the goods or
2 services, and the class of the goods or services;

3 (3) the date when the mark [TRADEMARK] was first used anywhere
4 and the date when it was first used in this state by the applicant or a [THE
5 APPLICANT'S] predecessor in interest; [BUSINESS; AND]

6 (4) a statement that the applicant is the owner of the mark, that the
7 mark is in use, [TRADEMARK] and that, to the knowledge of the individual
8 verifving the application, no other person has the right to use the mark
9 [TRADEMARK IN THIS STATE] either in the identical form or in a near
10 resemblance to it as to [MIGHT] be likelv, when applied to the goods or services
11 of another person, to cause confusion or mistake, or to deceive; and

12 (5) a statement as to whether the applicant, or a predecessor in
13 interest, has filed an application to register the mark, or portions or a composite
14 of the mark, with the United States Patent and Trademark Office, and, if so,
15 information regarding that application, including the filing date and serial
16 number, the status of that application, whether that application was refused
17 registration or otherwise did not result in a registration, and, if so, the reasons
18 that application did not result in a registration [CALCULATED TO DECEIVE OR
19 TO BE MISTAKEN FOR IT].

20 * Sec. 6. AS 45.50 is amended by adding a new section to read:

21 Sec. 45.50.025. PROCEDURE CONCERNING APPLICATION. (a) Upon
22 the filing of an application for registration of a mark and payment of the application
23 fee, the commissioner shall examine the application for conformity with AS 45.50.010
24 - 45.50.205. The commissioner may request additional information, including a
25 description of a design mark, suggest amendments to the application, or suggest that
26 a new application be filed. The applicant may provide the additional information
27 requested, authorize the commissioner to make amendments to the application, or
28 withdraw the application and file a new one to respond to a potential objection or
29 rejection.

30 (b) As a condition of registration, the commissioner may require the applicant
31 to disclaim an unregistrable component of a mark, or an applicant may voluntarily

1 disclaim a component of a mark originally sought to be registered. A disclaimer under
2 this subsection does not prejudice or affect the rights of an applicant or registrant

3 (1) in the disclaimed matter that exist at the time of the disclaimer or
4 that arise later; or

5 (2) to register the disclaimed matter in another application if the
6 disclaimed matter is or becomes distinctive of the applicant's or registrant's goods or
7 services.

8 (c) If an applicant is found not to be entitled to registration of a mark, the
9 commissioner shall notify the applicant and inform the applicant of the reasons for the
10 finding. The commissioner shall give the applicant a reasonable period of time in
11 which to reply or amend the application. If a reply or amendment is delivered to the
12 commissioner within the designated period, the commissioner shall reexamine the
13 application. Before making a final decision, an application may be amended and
14 reexamined as many times as the commissioner determines to be necessary. However,
15 if the applicant fails to reply or amend the application within the period designated by
16 the commissioner, the application is considered abandoned.

17 (d) When the commissioner makes a final decision on the application, the
18 commissioner shall notify the applicant in writing of the decision and that the decision
19 is final, setting out the reasons for the decision if the application is disapproved. The
20 applicant may appeal the commissioner's final decision to the superior court. The
21 court may enter judgment setting aside, modifying, remanding, or affirming the
22 decision.

23 (e) If the commissioner receives more than one application for registration of
24 the same or a confusingly similar mark for the same or related goods or services, the
25 commissioner shall grant the registration to the applicant who first filed the original
26 application if the application otherwise qualifies for registration. A rejected applicant
27 may bring an action in superior court for cancellation of the registration upon the
28 grounds of prior or superior rights to the mark.

29 * Sec. 7. AS 45.50.030 is amended to read:

30 Sec. 45.50.030. FORM OF APPLICATION. The application shall be signed
31 and verified by the applicant or by a member of the firm or an officer of the

1 corporation, partnership, or association applying. The application shall be
2 accompanied by three specimens showing the actual use of the mark on or in
3 connection with the goods or services [A SPECIMEN OR FACSIMILE OF THE
4 TRADEMARK IN TRIPLICATE].

5 * Sec. 8. AS 45.50.040 is amended to read:

6 Sec. 45.50.040. FILING FEE. The application for registration shall be
7 accompanied by a filing fee of \$50 [\$10] payable to the department [DEPARTMENT
8 OF COMMERCE AND ECONOMIC DEVELOPMENT].

9 * Sec. 9. AS 45.50.050 is amended to read:

10 Sec. 45.50.050. FORM AND CONTENTS OF CERTIFICATE OF
11 REGISTRATION. Upon compliance by the applicant with the requirements of
12 AS 45.50.010 - 45.50.205 [AS 45.50.010 - 45.50.200], the commissioner shall issue
13 and deliver a certificate of registration to the applicant. The certificate of registration
14 shall be issued under the signature of the commissioner and the seal of the state. The
15 certificate must show

16 (1) the name and business address [AND, IF A CORPORATION, THE
17 STATE OF INCORPORATION,] of the registrant and, if that registrant is a

18 (A) corporation, the state of incorporation; or

19 (B) partnership, the state in which the partnership is
20 organized and the names of the general partners [; PERSON CLAIMING
21 OWNERSHIP OF THE TRADEMARK];

22 (2) the date claimed for the first use of the mark [TRADEMARK]
23 anywhere and the date claimed for the first use of the mark [TRADEMARK] in this
24 state;

25 (3) the class of goods or services and a description of the goods or
26 services on or in connection with which the mark [TRADEMARK] is used;

27 (4) a reproduction of the mark [TRADEMARK];

28 (5) the registration date; and

29 (6) the term of the registration.

30 * Sec. 10. AS 45.50.060 is amended to read:

31 Sec. 45.50.060. CERTIFICATE OF REGISTRATION AS EVIDENCE. A

1 certificate of registration issued by the commissioner [DEPARTMENT] under
2 AS 45.50.010 - 45.50.205 [THE PROVISIONS OF AS 45.50.010 - 45.50.200] or a
3 copy of it certified by the commissioner is admissible in evidence as competent and
4 sufficient proof of the registration of the mark [TRADEMARK] in an action or
5 judicial proceeding in the state.

6 * Sec. 11. AS 45.50.070 is amended to read:

7 Sec. 45.50.070. DURATION AND RENEWAL. Registration of a mark
8 [TRADEMARK] is effective for a term of five [10] years from the date of registration.
9 Upon application filed within six months before the expiration of the term in a
10 manner complying with the requirements of the commissioner [, ON A FORM
11 FURNISHED BY THE DEPARTMENT], the registration may be renewed for an
12 additional term of five [10] years.

13 * Sec. 12. AS 45.50.070 is amended by adding a new subsection to read:

14 (b) An application for renewal of a registration must include a verified
15 statement that the mark has been used and is still in use. Three specimens showing
16 actual use of the mark on or in connection with the goods or services shall be
17 submitted with the renewal application.

18 * Sec. 13. AS 45.50.080 is amended to read:

19 Sec. 45.50.080. FEE FOR RENEWAL OF REGISTRATION. A renewal fee
20 of \$50 [\$10] shall accompany the application for renewal of the registration.

21 * Sec. 14. AS 45.50.090 is amended to read:

22 Sec. 45.50.090. ADDITIONAL TERMS OF RENEWAL. A [TRADEMARK]
23 registration of a mark may be renewed for successive periods of five [10] years in the
24 manner provided in AS 45.50.070 and 45.50.080.

25 * Sec. 15. AS 45.50.100 is amended to read:

26 Sec. 45.50.100. NOTIFICATION OF EXPIRATION OF REGISTRATION
27 PERIOD. The commissioner shall notify each registrant of the necessity of renewal
28 at least six months [WITHIN THE YEAR] preceding the expiration [OF THE 10
29 YEARS FROM THE] date of the registration. Notification shall be by writing to the
30 last known address of the registrant.

31 * Sec. 16. AS 45.50.120 is amended to read:

1 Sec. 45.50.120. ASSIGNMENT. (a) A mark [TRADEMARK] and its
2 registration are assignable with the goodwill of the business in which the mark
3 [TRADEMARK] is used, or with that part of the goodwill of the business connected
4 with the use of and symbolized by the mark [TRADEMARK].

5 (b) An assignment shall be in writing and may be filed [RECORDED] with
6 the commissioner [DEPARTMENT] upon the payment of a fee of \$25 [\$2,
7 PAYABLE] to the department. The commissioner shall file [RECORD] the
8 assignment [,] and shall issue in the name of the assignee a new certificate for the
9 remainder of the term of the registration.

10 (c) An assignment of registration is void as against a subsequent purchaser for
11 valuable consideration without notice, unless it is filed [RECORDED] with the
12 commissioner [DEPARTMENT] within three months after the date of the assignment
13 or before the subsequent purchase.

14 * Sec. 17. AS 45.50 is amended by adding a new section to read:

15 Sec. 45.50.125. NAME CHANGE AND OTHER FILINGS. (a) The name of
16 a registrant or applicant may be changed by filing the change of name with the
17 commissioner on a form furnished by the department that has been signed and verified
18 by the registrant or applicant and paying a filing fee of \$25. The commissioner shall
19 issue in the changed name of a registrant an amended certificate of registration.

20 (b) Other signed and verified instruments that relate to a registered mark or
21 an application for registration of a mark may be filed at the discretion of the
22 commissioner upon payment of a filing fee established by regulation of the department.

23 (c) A photocopy of an instrument shall be accepted by the commissioner for
24 filing if it is certified by a party to the instrument or a successor of a party to be a true
25 and correct copy of the original and if the commissioner would have accepted the
26 original for filing under (a) or (b) of this section.

27 (d) Acknowledgment is prima facie evidence for the commissioner of the
28 execution of an assignment, change of name, or other instrument related to a registered
29 mark or to registration of a mark. When the instrument is filed by the commissioner,
30 the filing is prima facie evidence of execution of the instrument for all other purposes.

31 * Sec. 18. AS 45.50.130 is amended to read:

1 Sec. 45.50.130. COMMISSIONER TO KEEP RECORD OF REGISTRATION.

2 The commissioner shall keep for public examination a record of all marks
3 [TRADEMARKS] registered or renewed under AS 45.50.010 - 45.50.205 and a
4 record of all instruments filed under AS 45.50.125 [AS 45.50.010 - 45.50.200].

5 * Sec. 19. AS 45.50.140 is amended to read:

6 Sec. 45.50.140. CANCELLATION. The commissioner shall cancel in whole
7 or in part [FROM THE REGISTER]

8 (1) [EACH REGISTRATION UNDER A PREVIOUS LAW THAT IS
9 MORE THAN FIVE YEARS OLD AND NOT RENEWED IN ACCORDANCE
10 WITH AS 45.50.010 - 45.50.200;

11 (2)] a registration for which the commissioner receives a voluntary
12 written request for cancellation from [REQUESTED BY] the registrant or the
13 assignee of record [RECORDS TO BE CANCELED];

14 (2) [(3)] each registration [UNDER AS 45.50.010 - 45.50.200] that
15 expires and is not renewed under AS 45.50.070 and 45.50.090;

16 (3) [(4)] a registration found by a court to be

17 (A) abandoned; [,]

18 (B) not owned by the registrant; [,]

19 (C) granted improperly; [,]

20 (D) obtained fraudulently; [, OR]

21 (E) so similar, as to be likely to cause confusion or mistake or
22 to deceive, to a mark [TRADEMARK] registered by another person in the
23 United States Patent and Trademark Office, before the date of filing of the
24 application for registration by the registrant under AS 45.50.010 - 45.50.205
25 [AS 45.50.010 - 45.50.200], and not abandoned; however, if the registrant
26 proves that the registrant is the owner of a concurrent registration of the mark
27 [TRADEMARK] in the United States Patent and Trademark Office covering
28 an area including this state, the registration may not be canceled; or

29 (F) the generic name for all or a portion of the goods or
30 services for which the mark has been registered;

31 (4) [(5)] when a court orders cancellation of a registration on any

1 ground.

2 * Sec. 20. AS 45.50.140 is amended by adding a new subsection to read:

3 (b) For purposes of (a) of this section, registration of a mark is abandoned
4 when use of the mark has been discontinued and the registrant has no intent to resume
5 its use, or when the mark loses its significance as a mark due to action or failure to
6 act by the registrant. The intent not to resume the use of a mark may be inferred from
7 circumstances. No use of a mark by the registrant for at least a 24-month period
8 constitutes prima facie evidence that its registration has been abandoned.

9 * Sec. 21. AS 45.50.150 is amended to read:

10 Sec. 45.50.150. CLASSIFICATION. The department shall by regulation
11 establish a classification [FOLLOWING GENERAL CLASSES] of goods and
12 services [ARE ESTABLISHED] for convenience of administration of AS 45.50.010 -
13 45.50.205 [AS 45.50.010 - 45.50.200]. However, the classification does [THEY DO]
14 not limit or extend the applicant's or registrant's rights, and a single application for
15 registration of a mark [TRADEMARK] may include [ANY OR] all goods upon
16 which, or services with which, the mark [TRADEMARK] is actually being used
17 comprised in a single class, but in no event may a single application include goods or
18 services upon which the mark [TRADEMARK] is being used that [WHICH] fall
19 within different classes of goods or services. To the extent practical, the
20 classification of goods and services should conform to the classification adopted
21 by the United States Patent and Trademark Office [. THE CLASSES ARE
22 AS FOLLOWS:

23 (1) ABRASIVES AND POLISHING MATERIALS;

24 (2) ADHESIVES;

25 (3) BAGGAGE, ANIMAL EQUIPMENT, PORTFOLIOS, AND
26 POCKETBOOKS;

27 (4) BELTING, HOSE, MACHINERY PACKING, AND
28 NONMETALLIC TIRES;

29 (5) BROOMS, BRUSHES, AND DUSTERS;

30 (6) CANES, PARASOLS, AND UMBRELLAS;

31 (7) CHEMICALS AND CHEMICAL COMPOSITIONS;

- 1 (8) CLOTHING;
- 2 (9) CONSTRUCTION MATERIALS;
- 3 (10) CORDAGE;
- 4 (11) COSMETICS AND TOILET PREPARATIONS;
- 5 (12) CROCKERY, EARTHENWARE, AND PORCELAIN;
- 6 (13) CUTLERY, MACHINERY, AND TOOLS, AND PARTS
- 7 THEREOF;
- 8 (14) DENTAL, MEDICAL, AND SURGICAL APPLIANCES;
- 9 (15) DETERGENTS AND SOAPS;
- 10 (16) DISTILLED ALCOHOLIC LIQUORS;
- 11 (17) ELECTRICAL APPARATUS, MACHINES AND SUPPLIES;
- 12 (18) EXPLOSIVES, FIREARMS, EQUIPMENT, AND PROJECTILES;
- 13 (19) FANCY GOODS, FURNISHINGS, AND NOTIONS;
- 14 (20) FERTILIZERS;
- 15 (21) FILTERS AND REFRIGERATORS;
- 16 (22) FOODS AND INGREDIENTS OF FOODS;
- 17 (23) FURNITURE AND UPHOLSTERY;
- 18 (24) GAMES, TOYS, AND SPORTING GOODS;
- 19 (25) GLASSWARE;
- 20 (26) HARDWARE AND PLUMBING AND STEAMFITTING
- 21 SUPPLIES;
- 22 (27) HEATING, LIGHTING, AND VENTILATING APPARATUS;
- 23 (28) HOROLOGICAL INSTRUMENTS;
- 24 (29) INKS AND INKING MATERIALS;
- 25 (30) JEWELRY AND PRECIOUS METALWARE;
- 26 (31) KNITTED, NETTED AND TEXTILE FABRICS, AND
- 27 SUBSTITUTES FOR THEM;
- 28 (32) LAUNDRY APPLIANCES AND MACHINES;
- 29 (33) LINOLEUM AND OILED CLOTH;
- 30 (34) LOCKS AND SAFES;
- 31 (35) MALT BEVERAGES AND LIQUORS;

- 1 (36) MEASURING AND SCIENTIFIC APPLIANCES;
 2 (37) MEDICINES AND PHARMACEUTICAL PREPARATIONS;
 3 (38) METALS AND METAL CASTINGS AND FORGINGS;
 4 (39) MUSICAL INSTRUMENTS AND SUPPLIES;
 5 (40) OILS AND GREASES;
 6 (41) PAINTS AND PAINTERS' MATERIALS;
 7 (42) PAPER AND STATIONERY;
 8 (44) RAW OR PARTLY PREPARED MATERIALS;
 9 (45) RECEPTACLES;
 10 (46) SMOKERS' ARTICLES, NOT INCLUDING TOBACCO
 11 PRODUCTS;
 12 (47) SOFT DRINKS AND CARBONATED WATERS;
 13 (48) THREAD AND YARN;
 14 (49) TOBACCO PRODUCTS;
 15 (50) VEHICLES;
 16 (51) WINES;
 17 (52) MERCHANDISE NOT OTHERWISE CLASSIFIED].

18 * Sec. 22. AS 45.50.160 is amended to read:

19 Sec. 45.50.160. FRAUDULENT REGISTRATION. A person who, for the
 20 person or on behalf of another, procures the filing or registration of a mark under
 21 AS 45.50.010 - 45.50.205 [TRADEMARK WITH THE DEPARTMENT,] by
 22 knowingly making a false or fraudulent representation or declaration, orally
 23 [VERBALLY] or in writing, or by another [ANY OTHER] fraudulent means, is liable
 24 to pay all damages sustained in consequence of the filing or registration, which may
 25 be recovered by or on behalf of the party injured in any court.

26 * Sec. 23. AS 45.50.170 is amended to read:

27 Sec. 45.50.170. INFRINGEMENT. A [SUBJECT TO AS 45.50.190, A]
 28 person is liable in a civil action by the registrant [OWNER OF THE REGISTERED
 29 TRADEMARK] for the remedies provided in AS 45.50.180 [,] if the person
 30 (1) uses, without the consent of the registrant, a reproduction,
 31 counterfeit, copy, or colorable imitation of a mark [TRADEMARK] registered under

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AS 45.50.010 - 45.50.205 [AS 45.50.010 - 45.50.200] in connection with the sale, distribution, offering for sale, or advertising of goods or services on or in connection with which the use is likely to cause confusion or mistake or to deceive as to the source of origin of the goods or services; or

(2) reproduces, counterfeits, copies, or colorably imitates the mark [TRADEMARK] and applies the reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in conjunction with the sale or distribution in this state of the goods or services; except that under this paragraph the registrant may not recover profits or damages unless the acts are committed with [KNOWLEDGE THAT] the intent [TRADEMARK IS INTENDED TO BE USED] to cause confusion or mistake or to deceive.

* Sec. 24. AS 45.50.180(a) is amended to read:

(a) A registrant [THE OWNER OF A TRADEMARK REGISTERED UNDER AS 45.50.010 - 45.50.200] may enjoin the manufacture, use, display, or sale of a counterfeit or imitation of the registrant's mark [TRADEMARK].

* Sec. 25. AS 45.50.180(b) is amended to read:

(b) The court may grant an injunction to restrain the manufacture, use, display, or sale, and may require the defendant to pay to the registrant either [OWNER] the profits derived from or the damages suffered by reason of the wrongful manufacture, use, display, or sale, or both. The court may also order that the counterfeit or imitation in the possession or under the control of a defendant be delivered to an officer of the court, or to the complainant, to be destroyed. The court may also enter judgement for punitive damages in an amount not to exceed three times the profits, damages, and reasonable attorney fees of the prevailing party.

* Sec. 26. AS 45.50.180 is amended by adding new subsections to read:

(d) A registrant that owns a mark that is famous in the state is entitled to an injunction against another's dilution of the mark. If the user of the famous mark wilfully intended to trade on the registrant's reputation or to cause dilution of the mark, the registrant is also entitled to remedies set out in (b) of this section. In determining whether a mark is famous, a court may consider any factor, including the

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- 1 (1) degree of inherent or acquired distinctiveness of the mark in the
2 state;
- 3 (2) duration and extent of use of the mark in connection with the goods
4 and services;
- 5 (3) duration and extent of advertising and publicity of the mark in the
6 state;
- 7 (4) geographical extent of the trading area in which the mark is used;
- 8 (5) channels of trade for the goods or services with which the mark is
9 used;
- 10 (6) degree of recognition in the state of the mark in the registrant's
11 trading area and channel of trade, and in the user's trading area and channel of trade;
12 and
- 13 (7) nature and extent of use of the same or similar mark by other
14 persons.

15 (e) For purposes of (d) of this section, "dilution" means the use of a word,
16 symbol, or device, or a combination of one or more of these, in a manner that deprives
17 or reduces the distinctiveness of a mark.

18 * Sec. 27. AS 45.50.200 is amended to read:

19 Sec. 45.50.200. DEFINITIONS. In AS 45.50.010 - 45.50.205, [AS 45.50.010 -
20 45.50.200]

21 (1) "applicant" means the person filing an application for registration
22 of a mark [TRADEMARK], or a legal representative, successor, or assign of that
23 person;

24 (2) "certification mark" means a mark used upon or in connection
25 with the goods or services of one or more persons other than the registrant to
26 certify national or other origin, material, mode of manufacture, quality, accuracy,
27 or other characteristics of the goods or services or that the work or labor on the
28 goods or services was performed by members of a union or other organization;

29 (3) "collective mark" means a trademark or service mark used by
30 the members of a cooperative, an association or other collective group or
31 organization and includes marks used to indicate membership in a union, an

1 association, or other organization:

2 (4) "commissioner" means the commissioner of commerce and
3 economic development;

4 (5) [(3)] "department" means the Department of Commerce and
5 Economic Development;

6 (6) "mark" [(4) "PERSON"] means a certification mark, a collective
7 mark, a service mark, or a trademark:

8 (7) [AN INDIVIDUAL, FIRM, PARTNERSHIP, CORPORATION,
9 ASSOCIATION, UNION OR OTHER ORGANIZATION;

10 (5)] "registrant" means the person to whom the registration of a mark
11 [TRADEMARK] is issued, or a legal representative, successor, or assign of that
12 person;

13 (8) "service mark" means a word, symbol, design, or a combination
14 of one or more of these that identifies the services of a person:

15 (9) [(6)] "trademark" means a word, symbol, or design, or a
16 combination of one or more of these, used by a person to identify its goods and
17 distinguish them from those of another;

18 (10) "use" or "used" means the bona fide use of a mark in the
19 ordinary course of trade, and not made merely to reserve a right in the mark; a
20 mark is deemed to be in use on goods when it is placed in any manner on the
21 goods, on the goods' container, on tags or labels affixed to the goods, on displays
22 associated with the goods, or, if the nature of the goods makes other types of
23 placement impracticable, on documents associated with the goods or with the sale
24 of the goods when they are sold or transported in commerce in this state; a mark
25 is deemed to be in use on services when it is displayed in the sale or advertising
26 of services that are performed in this state;

27 (11) "verified" means that a document has been certified to be true
28 as provided in AS 09.63.040 [NAME, SYMBOL, OR DEVICE OR COMBINATION
29 OF ANY OF THESE ADOPTED AND USED BY A PERSON TO IDENTIFY
30 GOODS MADE OR SOLD BY THE PERSON AND TO DISTINGUISH THEM
31 FROM GOODS MADE OR SOLD BY OTHERS;

1 (7) A TRADEMARK IS "USED" IN THIS STATE WHEN IT IS
2 PLACED IN ANY "USED" MANNER ON GOODS OR THEIR CONTAINERS OR
3 ON THE TAGS OR LABELS AFFIXED TO GOODS, WHEN THE GOODS ARE
4 SOLD OR DISTRIBUTED IN THE STATE].

5 * Sec. 28. AS 45.50 is amended by adding a new section to article 1 to read:

6 Sec. 45.50.205. SHORT TITLE. AS 45.50.010 - 45.50.205 may be cited as
7 the Alaska Trademark Act.

8 * Sec. 29. AS 45.50.180(c) and 45.50.190 are repealed.

9 * Sec. 30. TRANSITION. The amendments made to AS 45.50.010 - 45.50.200 by this Act
10 do not apply to an application, suit, proceeding or appeal pending on the effective date of this
11 Act. Notwithstanding the amendments made to AS 45.50.070 - 45.50.090 in secs. 11 - 14 of
12 this Act, a registration or renewal of a registration that is in effect on the effective date of this
13 Act remains in effect for the full term that existed on the date of the registration or renewal.

14 * Sec. 31. AUTHORIZATION TO ADOPT REGULATIONS. The Department of
15 Commerce and Economic Development may adopt regulations to implement this Act;
16 however, the regulations may not be effective before the effective date of this Act.

17 * Sec. 32. Sections 1 - 30 of this Act take effect January 1, 1997.

18 * Sec. 33. Section 31 of this Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature

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House Of Representatives

House District 33

HB 450 "An act relating to trademarks; and providing for an effective date."

Sponsor: Representative Gene Therriault 

Sponsor Statement:

This legislation is intended to update the State Trademark Act. Alaska's current law is modeled upon the 1964 Lanham Act. The proposed revision is to bring Alaska's trademark law current with the changes to the Lanham Act over the past 30 years, and is modeled closely to the Model State Trademark Bill written by the International Trademark Association. This revision will allow the registration of marks that currently cannot be registered under state law, such as service marks, certification marks and collective marks. The legislation was introduced at the request of the Division of Banking, Securities and Corporations. Passage of the legislation is needed to strengthen the intellectual property rights for Alaska's business community.

The Judiciary Committee made one minor amendment by adding Section 30 on page 16, line 9. The new section allows the Department of Commerce and Economic Development to begin the process of implementing regulations so the regulations are in effect by the effective date of the bill.

The Committee Substitute makes two changes. The first affects the fees charged for applying for, renewing, assigning and changing the owners' name for trademarks. The fees are currently set in statute. House Bill 450 originally proposed taking the fees out of statute and allowing them to be set by the department. Because I agree with concerns raised in lower committees, however, I have decided to reinstate the current practice of setting fees in statute, but at a higher level to reflect today's market.

The Committee Substitute proposes the following fees:

Application	\$50 for five years
Renewal	\$50 every five years
Assignment	\$25
Name change	\$25

The second change affects the procedure for appealing the denial of a trademark application, Sec. 6 AS 45.50.025 (d), page 5, lines 20-25. The current version requires the court to hear the matter de novo, which requires amending the Alaska Rules of Appellate Procedure. The Committee Substitute removes the de novo provision.

3/8/96

Sectional Analysis

House Bill 450, "An act relating to trademarks; and providing for an effective date."

The revisions to this bill are based on the Model State Trademark Bill, promulgated by the International Trademark Association.

- Section 1** INTENT. The legislation is intended to make Alaska's system of state trademark registration consistent with the federal system.
- Section 2** Replaces the term "trademark" with the term "marks" as they relate to the income the state derives from rentals or royalties for using the marks. A trademark refers only to a word, name or symbol placed on a product to identify who made it. "Mark" includes a "certification mark," "collective mark," "service mark," and "trademark." A certification mark is used by someone other than the registrant to certify characteristics of the product or that the product was made by a union; a collective mark is used by members of a cooperative or association to indicate membership in a union; a service mark is used to identify the services of a person. This change is made throughout the bill.
- Section 3** **AS 45.50.010 (1) - (5)** Contains clarification and grammatical changes, including addition of the words "when used on or in connection with" to describe how a mark must be used. This change is made throughout the bill.
AS 45.50.010 (6) States that a mark cannot resemble another mark registered with the United States Patent and Trademark Office. The current law states the mark cannot resemble another mark registered in the state.
- Section 4** Adds definitions for "descriptive" and "misdescriptive" by stating that when words describing goods or services become accepted as identifying the goods or services, the words are no longer merely descriptive. Defines "misdescriptive" as words that falsely describe goods or services.
- Section 5** Changes the entity with whom a mark must be registered from the department to the commissioner, and makes technical changes.
(1) (B) Adds the following to the information that must be included when registering a trademark:

-- the partnership, the state in which the partnership is organized and the names of the general partners.

-- a statement that to the best of the applicant's knowledge, no other person has previously registered a confusingly similar mark.

-- a statement as to whether an application to register a mark has been filed with the United States Patent and Trademark Office by the applicant or a predecessor and, if registration was refused, why. The change is in response to comments from state trademark administrators who want to benefit from any prior federal examinations.

- Section 6** Adds a new section regarding the application procedure. This section clarifies the commissioner's authority to accept or reject an application, based on the registrability of the proposed mark. Current law gives the commissioner no direction on the procedure for examining applications.
- Section 7** Adds partnership to the list of groups that can apply to register a mark and requires three examples showing use of the mark on or in connection with the goods.
- Section 8** Changes the application filing fee from \$10 to \$50.
- Section 9** Adds the following to the information to be shown on the certificate:
- if a corporation, the state of incorporation
 - if a partnership, the state in which the partnership is organized and the names of the general partners.
- Makes various other technical revisions, such as adding "services" to the definition of products that can be registered. This change is made throughout the bill.
- Section 10** Changes "department" to "commissioner" as the party that issues certificates. Similar changes are made throughout the bill.
- Section 11** Changes the duration of regular registration from 10 years to five years to reduce the number of "deadwood" registrations. "Deadwood" refers to marks that have not been used in commerce for an extended period of time.
- Section 12** Adds a subsection stating that renewal applications must include a verified statement that the mark has been and still is in use.
- Section 13** Changes the renewal fee from \$10 to \$50.

- Section 14** Reduces the renewal time from 10 successive years to five successive years.
- Section 15** Changes the time the commissioner must notify registrants of the need to renew from one year to six months before the mark expires.
- Section 16** Changes the assignment fee from \$2 to \$25.
- Section 17** Adds a new section regarding name changes and other filings. Under previous versions of the Model Bill, assignments of trademark registrations and applications are recordable. This section was revised to allow the recording of name changes as well. It sets a fee of \$25 for the service.
45.50.125(b) Allows the recording of other instruments that relate to state trademark registrations such as licenses, security interests or mortgages.
- Section 18** Technical amendments to reflect other changes.
- Section 19** Provides that the commissioner can cancel registrations that expire and are not renewed under AS 45.50.070 - 45.50.090. Currently, the commissioner can cancel a mark that was registered under previous law, is more than five years old and has not been renewed.
45.50.140 (f) Provides that a registration may be canceled if the mark has become generic.
- Section 20** Adds a new section stating that a mark is abandoned when use of the mark has been discontinued and the registrant has no intent to resume its use, or when the mark loses its significance as a mark due to action or failure to act. No use of a mark for two years is sufficient to prove that registration has been abandoned.
- Section 21** This section affects classification of goods and services. Some states have adopted the old U.S. classification system while others have converted to the International classification system. The bill removes direct delineation and states that to the extent practical, the classification of goods and services should conform to the classification adopted by the United States Patent and Trademark Office.
- Section 22** Makes technical amendments.
- Section 23** Makes technical amendments.

Section 24 Makes technical amendments.

Section 25 Provides remedies for cases involving infringement, in the form of a judgment for punitive damages not to exceed three times the profits, damages, and reasonable attorney fees of the prevailing party.

Section 26 Adds new sections regarding dilution of a mark. Dilution is the lessening of the capacity of a mark to identify and distinguish goods or services. Often the distinctiveness of a famous mark is diluted when it is used without the owner's consent on dissimilar products over a period of time, gradually chipping away the famous mark's foundation. **45.50.180 (d)** gives a registrant the right to file an injunction against another's dilution of a famous mark, and to collect damages if the dilution was intentional. It lists factors to be considered when determining if a mark is famous.

Section 27 Provides definitions.

45.50.200 (10) Adds a new definition for "use" or "used." The word "use" has been revised according to the standards of the Trademark Law Revision Act and to cover only "use in the state." The requirement of intrastate use eliminates possible ambiguities created by alternate references to "use" or "used."

45.50.200 (11) Adds a new definition for "verified."

Section 28 Makes technical amendments

Section 29 Makes technical amendments

Section 30 Makes technical amendments

Section 31 Provides a transition period, stating that the amendments do not apply to an application or proceeding pending on the effective date of the act, and that a registration or renewal of a registration that is in effect on the effective date of the Act remains in effect despite the Act.

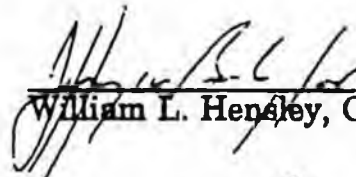
HB 450

The department supports the passage of HB 450. Passage of this bill will make the Alaska Trademark Act substantially consistent with the federal system of trademark registration, and will strengthen "intellectual property" (various types of trademark forms) rights for Alaskan businesses.

The major improvements to the Alaska Trademark Act, proposed by HB 450, include broadening trademark protection to service providers, adding additional remedies to trademark owners for infringement, and providing anti-dilution provisions for "intellectual property" owners whose trademark has become famous in this state.

The department endorses the intent of this bill to update the Alaska Trademark Act, and strengthen "intellectual property" rights for Alaskan businesses.

The department expects no additional cost will be incurred by this legislation.



William L. Hensley, Commissioner

Date: 1-31-96



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Commerce & Economic Dev.	DIVISION Banking, Securities & Corp.	BILL NUMBER HB 450	SPONSOR Representative Gene Therriault
SHORT TITLE OF BILL Alaska Trademark Act			
DEPARTMENT POSITION The department supports passage of HB 450.			
PREPARED BY Willis F. Kirkpatrick, Director	DATE 1/30/96	COMMISSIONER'S SIGNATURE <i>Just L. [Signature]</i>	DATE 1-31-96

SUMMARY

OTHER AGENCIES AFFECTED BY BILL None	CONSTITUENT GROUP(S) AFFECTED BY BILL Any type of business owners in Alaska who use words or logos to identify their goods and services. Legal practitioners in intellectual property.
ORGANIZATIONAL SUPPORT FOR BILL The International Trademark Association, Intellectual Property Attorneys	ORGANIZATIONAL OPPOSITION TO BILL None
FISCAL IMPACT: <input type="checkbox"/> NONE <input checked="" type="checkbox"/> FISCAL NOTE ATTACHED	

BACKGROUND/LEGISLATIVE INTENT
HB 450 was patterned to be substantially consistent with the federal system of trademark registration under the Lanham Act of 1946, as amended.

ANALYSIS OF BILL/PROGRAM EFFECTS
The current Act is modeled after a pre 1964 version of the Model State Trademark Bill, and has not kept pace with changes to the Lanham Act which have occurred over the past 30 years. The proposed legislation is based upon a revision to the MSTB which was adopted by the International Trademark Association, the International Association of Corporation Administrators, and the National Association of Secretaries of State. HB 450 will make the State Trademark Act more consistent with the Lanham Act, and will strengthen intellectual property rights for Alaskan businesses.

AMENDMENTS PROPOSED
Sec. 32. TRANSITION: REGULATIONS. Notwithstanding Sec. 33 of this Act, the state agencies affected by this Act may proceed to adopt regulations necessary to implement changes in law enacted by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the respective effective date of the change in law in this Act.

Sec. 33. This Act takes effect January 1, 1997.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

LANE
POWELL
SPEARS
LUBERSKY

February 16, 1996

Mark Rindner

Law Offices

550 W. 7th Ave.
Suite 1650
Anchorage, AK
99501-3568

(907) 277-9511

Facsimile:

(907) 276-2631

A Partnership
Including
Professional
Corporations

The Honorable Gene Therriault
Representative
Alaska House of Representatives
Room 421 State Capitol
Juneau, AK 99801-1182

Re: House Bill No. 450, and Act Relating to Trademarks

Dear Representative Therriault:

I am writing to express my support for House Bill 450, entitled "An Act Relating to Trademarks; Amending Alaska Rule of Appellate Procedure 609; and Providing for An Effective Date." This legislation is based on the revised Model State Trademark Bill, a document drafted in 1992 by the International Trademark Association (INTA), the world's leading organization of trademark owners and practitioners. My firm, Lane Powell Spears Lubersky, is a member of INTA. As an attorney, I encourage the Alaska Legislature to adopt this measure.

House Bill 450 reflects, in part, recent amendments made to the Lanham Act, the federal trademark statute that has effectively protected the interests of consumers and the business community over a period of fifty years. It also promotes consistency with new changes to the trademark laws of other states.

The enactment of this legislation will improve the functioning of the state trademark system. It will allow me and my firm to better defend our clients' marks against infringement and improve the quality of trademark searches undertaken by the Department of Commerce and Economic Development. The promotion of trademarks and the recognition of the important role they play in commerce will also be greatly enhanced.

Please feel free to contact me should you have any questions concerning my support of House Bill 450.

Anchorage, AK
Los Angeles, CA
Mount Vernon, WA
Olympia, WA
Portland, OR
Seattle, WA

London, England
Tokyo, Japan

The Honorable Gene Therriault
February 16, 1996
Page 2

Thank you for your assistance.

Very truly yours,

LANE POWELL SPEARS LUBERSKY



Mark Rindner

cc: Anne W. Glazer, Esq.

MR\therriau.ltr



FAX

To: Representative Theriault
Alaska State Legislature
Room 421, State Capitol
Juneau, Alaska 99801-1182

From: Don and Rose Harris
Cookhouse, Inc.
dba: Red Dog Saloon
Juneau, Alaska
FAX: 541-347-4061
pages 1 of 2

Re: Revision of the Alaska Trademark Act

Dear Representative Theriault:

With much enthusiasm, we want you to "forge ahead" to update Alaska's State Trademark Act. Over the past several years, our well known Alaska landmark, the Red Dog Saloon, has been infringed upon, diluted and identified with as major in-state/out-of-state business concerns attempt to do business in Alaska. Each time our Corporation has "rallied to the cause" to defend our registered trademark. And, each time this procedure has cost many dollars and expended undue time and energies away from our business activities.

We learned that the existing system of state trademark registration and protection is vague at best and almost impossible to defend. One of the major obstacles is Alaska's inconsistency with the federal system of trademark registration.

You have our support for your efforts to sponsor legislation to update Alaska's State Trademark Act. We can swap "horror stories", show you examples of large companies attempting to use our trademark, or simply talk with you as you make progress. If we can be of assistance, contact us.

Don and Rose Harris
Cookhouse, Inc.
200 Admiral Way
Gunnear, Alaska
FAX: 541 347 4061

6

3/6/96

(7)

HOUSE COMMITTEE REPORT

Date Referred to Committee: February 21, 1996

FURTHER REFERRALS:

Rules
Fin Ref. added 3/6/96

Date of Committee Action: 3/4/96

The JUDICIARY Committee considered:

HB 450

HOUSE BILL NO. 450

ALASKA TRADEMARK ACT

"An Act relating to trademarks; amending Alaska Rule of Appellate Procedure 609; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 450(L&C) [] the same title [X] a new title

[] additional referral to _____ Committee
[] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) CED 2/21/96
[] fiscal note(s) _____ [X] fiscal note(s) _____

[] zero fiscal note(s) _____ [] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
Brian D. Porter	Porter	✓			
Car Bunde	Bunde			✓	
John Toohy	Toohy	✓			
John Vezev	Vezev				✓
John Finkelstein	Finkelstein			X	
		(2)		(2)	(1)

CHAIR'S SIGNATURE Brian Porter
Director

2/21/96

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: January 26, 1996

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 2-7-96

The LABOR AND COMMERCE Committee considered:

HB 450

HOUSE BILL NO. 450

ALASKA TRADEMARK ACT

"An Act relating to trademarks; amending Alaska Rule of Appellate Procedure 609; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 450 (LEC) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) CFD _____ fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>[Signature]</i>	Kott	✓			
<i>[Signature]</i>	Rokeberg			✓	
<i>[Signature]</i>	S. How			✓	
<i>[Signature]</i>	Kubina			✓	
<i>[Signature]</i>	Porter	✓			
<i>[Signature]</i>	Masek			✓	
<i>[Signature]</i>	Sanders			✓	
		(2)		(5)	

CHAIR'S SIGNATURE *[Signature]*

HB

450

SFIN

FILE

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 450 (FIN)

Revision Date: April 30, 1996
 Title: An Act Relating to Trademarks
 Sponsor: Representative Therriault
 Requestor: Senate Finance

Department: Commerce and Economic Development
 BRU: Banking, Securities and Corporations
 Component: Banking, Securities and Corporations
 COMPONENT SERIAL NO. 1233

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES	4.0	11.3	12.4	13.6	14.9	16.4
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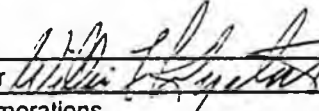
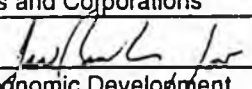
FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund	4.0	11.3	12.4	13.6	14.9	16.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	4.0	11.3	12.4	13.6	14.9	16.4

Estimate of any current year (FY 96) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)
 The current fee for new-registration and renewals is \$10.00 per application. The current fee for assignment is \$2.00. These fees have not increased in 30 years. The increase in revenue is based on an anticipated fee for new registrations and renewals of \$50.00 and an assignment fee of \$25.00.

Prepared by: Willis F. Kirkpatrick, Director  Phone: 465-2521
 Division: Banking, Securities and Corporations Date: 4-30-96
 Approved by Commissioner: William L. Hensley  Date: 4-30-96
 Agency: Commerce and Economic Development

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FISCAL NOTE

No. 1

Bill Version: CSHB 450(I.&C)

(H) Publish Date: 2/21/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: _____
Title: An Act Relating to Trademarks

Department: Commerce and Economic Development
BRU: Banking, Securities and Corporations
Component: Banking, Securities and Corporations

Sponsor: Representative Theriault
Requestor: _____

COMPONENT SERIAL NO. _____ 1233

Expenditures/Revenues

(Thousands of Dollars)

	FY 97	FY 98	FY 99	FY00	FY 01	FY 02
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES	4.0	11.3	12.4	13.6	14.9	16.4
---------------------------	-----	------	------	------	------	------

FUND SOURCE

(Thousands of Dollars)

	FY 97	FY 98	FY 99	FY00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 General Fund	4.0	11.3	12.4	13.6	14.9	16.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	4.0	11.3	12.4	13.6	14.9	16.4

Estimate of any current year (FY 96) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HB 450 will remove fees from the statute and give the Commissioner authority to promulgate fees by regulation. The current fee for new registration and renewals is \$10.00 per application. The current fee for assignment is \$2.00. The current fees have not increased in 30 years. The increase in revenue is based on an anticipated fee for new registrations and renewals of \$50.00 and an assignment fee of \$50.00.

Prepared by: Willis F. Kirkpatrick, Director *Willis F. Kirkpatrick* Phone: 465-2521
 Division: Banking, Securities and Corporations Date: 1-29-96
 Approved by Commissioner: William L. Hensley *William L. Hensley* Date: 1-29-96
 Agency: Commerce and Economic Development

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COMMITTEE COPY

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 3/25/96

FURTHER: Finance

DATE TURNED INTO OFFICE: 4/12/96

The Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 450(FIN)

"An Act relating to trademarks; and providing for an effective date."

PHF

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING/DO PAS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Mike Miller</i>	<input checked="" type="checkbox"/>				
<i>John Ferguson</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>Tim Kelly</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>DCED</i>	<i>1/29/96</i>		<i>4.0</i>

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

HB

456

HFIN

FILE

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: February 21, 1996

FURTHER REFERRALS:

Date of Committee Action: 4/12/96

The FINANCE Committee considered:

HB 456

HOUSE BILL NO. 456

BOARD OF STORAGE TANK ASSISTANCE

"An Act relating to the Board of Storage Tank Assistance; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 456 (L+C) [X] the same title [] a new title

[] additional referral to _____ Committee [] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date) [] fiscal note(s) [] fiscal note(s)

[] zero fiscal note(s) [X] zero fiscal note(s) DEC 2/21/96

Table with columns: SIGNING WITH RECOMMENDATIONS, DP, DNP, NR, AM. Rows include signatures and names: Richard Foster, Hanley, Mulder, Martin, Gussendorf, Kohring, Therriault, Brown, Darnell, Kelly, Mike Spence.

CHAIR'S SIGNATURE: Mike Hanley

Signature: Richard Foster

FISCAL NOTE

1
 Bill Version: CSHB 456(L&C)
 (H) Publish Date: 2/21/96

STATE OF ALASKA
 1996 LEGISLATIVE SESSION

Revision Date: 30-Jan-96
 Title: Board of Storage Tank Assistance
 Sponsor: Labor and Commerce
 Requestor: House Labor and Commerce

Department Affected: Environmental Conservation
 BRU: Spill Prevention and Response
 Component: Storage Tanks

COMPONENT SERIAL NO. 2063

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS.CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipt	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 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: (Attach a separate page if necessary.)

Prepared by: Lynn J. Tomich Kent
 Division: Spill Prevention and Response

Phone: 465-5390
 Date: 2/9/96

Approved by Commissioner: [Signature]
 Agency: Department of Environmental Conservation

Date: 2/9/96

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COMMITTEE COPY

House Labor & Commerce Committee

State Capitol
Juneau, Alaska 99801-1182
907-465-4954

SPONSOR STATEMENT CS HB 456 (L&C)

The Board of Storage Tank Assistance is scheduled to sunset on June 30, 1996 unless it is statutorily extended. This board, as stated by a recent Legislative Audit Report:

"... works in conjunction with the State's Department of Environmental Conservation (DEC) to carry out the various requirements of the UST (underground storage tank) statutes. The board is involved in the making of regulations pertaining to USTs and DEC is responsible for administering the UST program. "

CS HB 456(L&C), as sponsored by the House Labor and Commerce Committee, would extend the Board of Storage Tank Assistance to June 30, 2000, as recommended by the Legislative Audit Report. In addition, also as recommended by the auditors, CS HB 456 (L&C) would add a public member to the Board who has no financial or commercial interest in retrofitting or replacing underground storage tanks. Finally, to prevent an even-numbered Board, the Commissioner of the Department of Transportation and Public Facilities is removed.

I urge your support.

House Labor & Commerce Committee

State Capitol
Juneau, Alaska 99801-1182
907-465-4954

CS HB 456 L&C) SECTIONAL ANALYSIS

Section 1 extends the Board of Storage Tank Assistance to June 30, 2000.

Section 2 removes the Commissioner of Transportation and Public Facilities from the Board and adds a public member to the Board.

Section 3 creates an effective date of July 1, 1996.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105


MEMORANDUM

February 6, 1996

SUBJECT: Sectional Summary of HB 456. (An Act relating to the Board of Storage Tank Assistance)

TO: Representative Pete Kott
Attn: George Dozier

FROM: Terri Lauterbach
Legislative Counsel



You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

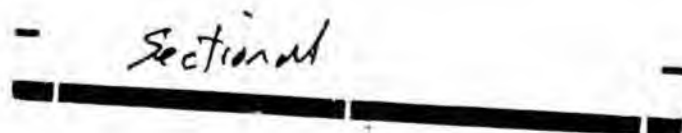
Section 1. Extends the life of the board to June 30, 2000.

Section 2. Adds a member of the public to the board.

Section 3. Provides a July 1, 1996, effective date.

TML:klb
96-070.klb

- Sectional -



Board of Storage Tank Assistance



- 1 The Board is a seven member board comprised of two Commissioners and five citizens from the private sector.
- 2 Board members serve without compensation and have one employee.
- 3 The Board is a judicial appeal board that resolves disputes between the regulated community and the Department of Environmental Conservation thereby saving the state thousands of dollars in potential legal costs.
- 4 The Board mediates disputes regarding eligibility for financial assistance, eligible costs, priority ranking positions and contaminated site cleanup plans.
- 5 The Board provides technical and educational assistance to petroleum storage tank owners and operators throughout Alaska
- 6 There are over 800 unfunded requests for assistance currently on file. The total amount requested is presently over \$50 million. Limited annual funding requires applications to be priority ranked annually using a Board scoring system that emphasizes imminent threats to public health. Additional criteria including size of business, proximity to alternate fuel, rural or urban location and other factors determined relevant to the Board.

- Background -

Board of Storage Tank Assistance

The 1990 Legislature established the seven-member Board of Storage Tank Assistance with two government members and five public members. The commissioners of the Departments of Environmental Conservation and Transportation and Public Facilities are the government members. Each of the five public members are required to have special knowledge pertaining to underground storage tanks. A registered engineer familiar with tank cleanups, a general contractor familiar with tank installations and closures, a person from the insurance industry that is knowledgeable about pollution liability insurance for underground storage tanks, a owner of more than 10 tanks, and an owner of 10 or less tanks. Former Governor Cowper appointed the original seven board members on September 5, 1990. Members serve without compensation other than per diem and expenses when traveling. They have an Executive Director, who is their sole employee.

The Board of Storage Tank Assistance is an Appeal Board to mediate disputes between the Department of Environmental Conservation and regulated underground petroleum storage tank owners and operators. In regard to disputes arising over eligibility, priority rankings and eligible costs, the Board's decisions are binding upon the department and the owner or operator. For corrective action plan disputes, or denials for payment under the retroactive reimbursement program (sec. 7, ch.96, SLA 1990), the board may only issue recommendations. In addition, the Board works directly with the legislature on funding issues and determines the program distribution of the annual legislative appropriations.

The first duty of the Board was to write regulations relating to financial assistance for UST owners and operators. The Board also jointly developed regulations with DEC pertaining to cleanup standards and allowable technologies to be used in the cleanup of contamination resulting from leaking tanks.

The Department of Environmental Conservation is responsible for administering the Storage Tank Assistance Fund. The Department is tasked with advertising the application periods, receiving the applications, processing the requests, administering the grants and auditing project costs. The Division of Investments in the Department of Commerce and Economic Development works in partnership with the DEC to provide cleanup loans for eligible UST owners and operators.

Although the Board developed the financial assistance regulations, the Department of Environmental Conservation actually implements those regulations by physically processing each applicant's request for financial assistance. This enables the Board to remain objective and unbiased when a dispute arises. The Board is then tasked with resolving the matter in a prompt and conscientious manner.

D
(7)

HOUSE COMMITTEE REPORT

2/21/96
Finance

Date Referred to Committee: January 30, 1996

FURTHER REFERRALS:

Date of Committee Action: 2-19-96

The LABOR AND COMMERCE Committee considered:

HB 456

HOUSE BILL NO. 456

BOARD OF STORAGE TANK ASSISTANCE

"An Act relating to the Board of Storage Tank Assistance; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 456 (L&C) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) DEC

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>[Signature]</i>	Rokeberg	✓			
<i>[Signature]</i>	Elton	✓			
<i>[Signature]</i>	Porter	✓			
<i>[Signature]</i>	Masek			✓	
<i>[Signature]</i>	Sanders			✓	
<i>[Signature]</i>	Kott	✓			
		(4)		(2)	

CHAIR'S SIGNATURE

[Signature]
Kott

Audit Report

DEPARTMENT OF ENVIRONMENTAL
CONSERVATION BOARD OF STORAGE
TANK ASSISTANCE

September 19, 1995



Audit Control Number:

18-1432-96

Division of Legislative Audit

P.O. Box 113300, Juneau, Alaska 99811-3300

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
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September 19, 1995

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.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION BOARD OF STORAGE TANK ASSISTANCE

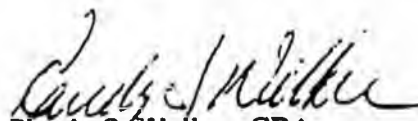
September 19, 1995

Audit Control Number

18-1432-96

This audit was conducted under the requirements of Alaska Statutes 44.66.050 and the authority of AS 24.20.271(1). In the report, we assess the operations and performance of the Board of Storage Tank Assistance utilizing the criteria set out in AS 44.66.050(c). This statutory criteria is intended to be used to assess whether the activities of a given board, commission, council, agency, or program is effectively meeting a demonstrated public need. Currently under AS 44.66.010(18), the board is scheduled for termination on June 30, 1996. The board would be allowed one year in which to conclude its affairs. We recommend that the legislature extend the board until June 30, 2000.

The audit was conducted in accordance with generally accepted government auditing standards and the criteria set out in AS 44.66.050(c). Fieldwork procedures utilized in the course of developing this report are discussed in the Objectives, Scope, and Methodology section of this report.


Randy S. Welker, CPA
Legislative Auditor

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
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State of Alaska



Audit Report

**DEPARTMENT OF ENVIRONMENTAL
CONSERVATION BOARD OF STORAGE
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P.O. Box 113300, Juneau, Alaska 99811-3300

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DIVISION OF LEGISLATIVE AUDIT

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The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$5 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

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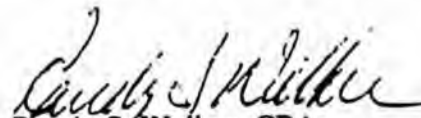

Randy S. Welker, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Storage Tank Assistance. As required by AS 44.66.050(a), the legislative committee of reference shall consider this report during the legislative oversight process to determine whether the board should be reestablished. Currently, AS 44.66.010(18) states that the board will terminate on June 30, 1996, and will have one year from that date to conclude its affairs.

Objectives

Our specific audit objectives were:

1. To determine if the termination date of the board should be extended.
2. To determine if the board is operating in the interest of the public. In assessing the operations and performance of the board, we utilized the criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the board.

Scope and Methodology

The board was created in September 1990. Our scope included all activities of the board since its inception. We reviewed the board's activities to determine whether they have been in the interest of the public and whether they have been in compliance with Alaska statutes and regulations.

In order to address our audit objectives, we reviewed the following:

- Applicable sections of Alaska's statutes and regulations.
- Budget documents, session laws and other legislative information relating to the board's operations.
- Transcribed minutes and audio tapes of board meetings.
- Internal reports and documents prepared by the board and the Department of Environmental Conservation (DEC).
- Reading files of the board's executive director.
- Grant files of recipients of financial assistance.
- Financial information on the State's accounting system.

- Office of the Ombudsman closed case file.
- Office of the Governor, Boards & Commissions files.
- Prior year audit workpapers and audit reports related to various DEC operations.

Also, we conducted interviews with the following:

- Board members and the board's executive director.
- DEC staff.
- Owners and operators of underground petroleum storage tanks.

In addition, we attended the July 20, 1995 meeting of the board. We observed the proceedings and the interaction of the board with the public.

ORGANIZATION AND FUNCTION

In 1990, the legislature (Chapter 96, SLA 1990) established a process to provide both technical and financial assistance to owners and operators of underground storage tanks (USTs). It was determined that such assistance was necessary for UST owners to comply with both current and prospective federal and state requirements. The 1990 legislature also provided for the cleanup of existing leaks and prevention of future leaks associated with USTs in order to protect the public from contamination of drinking water and to protect the environment.

The comprehensive legislation established the Board of Storage Tank Assistance. The board works in conjunction with the State's Department of Environmental Conservation (DEC) to carry out the various requirements of the UST statutes. The board is involved in the making of regulations pertaining to USTs and DEC is responsible for administering the UST program. This includes the administration of the financial assistance program.

The program offers grants and loans to owners and operators to test, clean up, upgrade, or close their facilities. The Storage Tank Assistance Fund (STAF) was established to fund the program. Appropriations are made to STAF from the mitigation account fund and from tank registration receipts.

Board Responsibilities

The board's primary statutory functions are to:

1. Adopt regulations to be used by DEC in determining which costs are eligible for financial assistance.
2. Adopt regulations to be used by DEC to rank (prioritize) applications for financial assistance.
3. Resolve disputes that might arise when DEC determines that a UST owner or operator is not eligible for assistance, determines that costs are ineligible, or assigns a rank with which an owner or operator does not agree.
4. Approve regulations specifying allowable technologies for testing, containment and cleanup, or corrective action prior to being adopted by DEC.
5. Review regulations proposed by DEC that sets a standard for the level of a contaminant that is allowed to remain in soil or groundwater after cleanup of a release from, or associated with, an UST.

Additional responsibilities are assigned to the board under 18 AAC 78. The board allocates funds appropriated to the STAF for the financial assistance program. Also, the board is responsible for the establishment of a point system to rank eligible applicants.

Board Membership

Under the requirements of AS 46.03.360, the seven member board consists of the commissioners of DEC and the Department of Transportation and Public Facilities (DOTPF), or their designees, and the following persons appointed by the governor to serve staggered four-year terms:

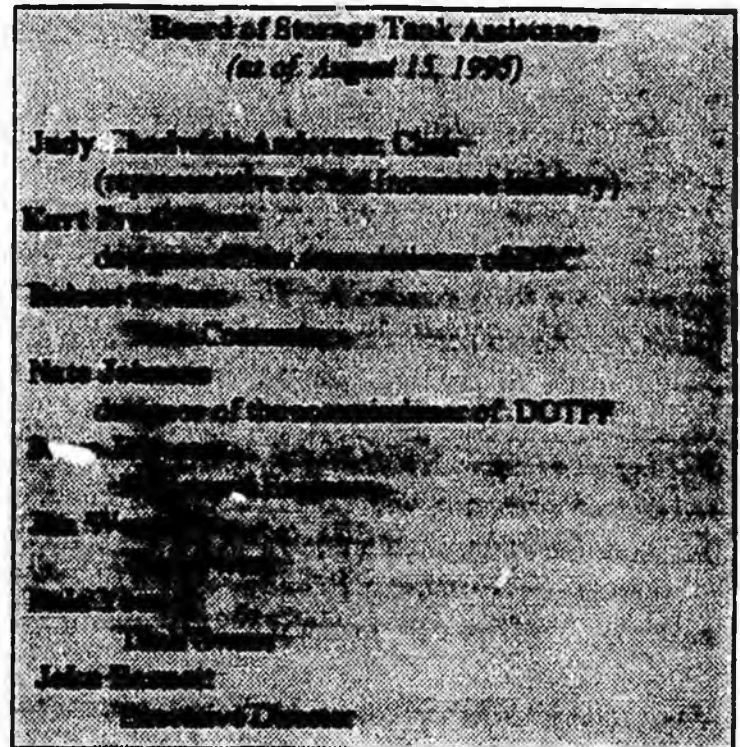
- A registered engineer, who is knowledgeable about installing, upgrading, repairing, or closing USTs.
- A general contractor, who is knowledgeable about installing, upgrading, repairing, or closing USTs.
- Two owners or operators of an UST, at least one of whom does not own or operate more than 10 USTs.
- A member of the insurance industry.

Members serve without compensation, but are entitled to per diem and travel expenses. Since 1991, the board has employed a full-time executive director.

DEC's Responsibilities

DEC's Division of Spill Prevention and Response administers the financial assistance program. Statutes and regulations require DEC to:

1. Receive, review, and approve applications and other required documentation for financial assistance.
2. Priority rank applicants using a scoring system developed by the board.
3. Distribute and monitor grant awards.
4. Manage the Storage Tank Assistance Fund.



BACKGROUND INFORMATION

In 1990, the legislature created a program to provide both financial and technical advisory assistance to the owner and operators of underground petroleum storage tanks (UST). The assistance was to help UST owners and operators comply with current and prospective state and federal regulations (see inset at right). These regulatory requirements address numerous design and operational aspects of USTs.

Underground tanks are typically used to store petroleum and other potentially hazardous substances. These tanks invariably develop leaks which allow the substances stored in them to leak into the surrounding soil, contaminating the groundwater, which in turn could contaminate a drinking water source.

The U.S. Congress directed the Environmental Protection Agency to develop regulations for the design, construction, and installation of new tanks. Additionally, new, stricter standards were established for the retrofitting of existing tanks. Such tanks will be required to be upgraded to provide for leak detection, corrosion prevention, and spill and overflow protection.

In addition, UST owners are required to demonstrate they are capable of assuming financial responsibility for the costs involved in taking corrective action and cleaning up releases from their tanks.

Such financial responsibility extends to covering third party loss and bodily injury. Most UST owners are required to demonstrate \$1 million of financial responsibility per occurrence and \$2 million aggregate. Failure to meet the requirements may result in fines of up to \$10,000 per day.

Federal Law Imposes Strict Requirements on USTs

Congress passed the Hazardous and Solid Waste Amendments of 1984 to the Resource Conservation and Recovery Act. These amendments, in part, require the U.S. Environmental Protection Agency (EPA) to regulate USTs containing petroleum and hazardous substances. According to EPA estimates, nationwide there are several million USTs that contain petroleum or hazardous substances—most of thousands of which, together with their associated piping, are leaking and contaminating groundwater, a major source of drinking water for a large portion of the country.

Congress directed the EPA to develop regulations for the design, construction, and installation of new tanks, as well as the addition of leak detection, corrosion prevention, and spill and overflow protection to existing tanks. The EPA regulations went into effect on December 22, 1988 and USTs installed after this date are considered "existing tanks," while those tanks installed prior to that date are considered "new installations." New installations are to meet the performance standards set out in the regulations at the time of tank installation. Existing tanks are allowed to phase in these standards over a period of 10 years.

Congress also mandated that all UST owners, state and federally owned or operated tanks, be held to demonstrate specific levels of financial responsibility for corrective action and cleanup associated with releases from their USTs that cause third party loss and bodily injury. The financial responsibility requirements were phased in according to the type of owner and the number of tanks owned. The final date for all tank owners to meet the requirements was December 31, 1993. Most tank owners are required to demonstrate \$1 million of financial responsibility per occurrence and \$2 million aggregate. Failure to meet the requirements may result in fines of up to \$10,000 per day.

Source: DEC's FF94 ERAP Report

Because most Alaska businesses using USTs were unable to meet the financial responsibility requirements and unable to pay the possible fines, state legislation was introduced to provide assistance to assume "financial responsibility." The prime sponsor of the original 1990 legislation stated that it is "the responsibility of the legislature to assist the small tank owners to comply with the new federal regulations."

The enacted legislation addressed educational, technical, and financial assistance for UST owners and operators. It required owners and operators to register their tanks and pay a registration fee based on the size of their tank. In addition, the storage tank assistance fund (STAF) was established to provide financial assistance to owners and operators.

Financial Assistance Programs

Appropriations are made to STAF to fund the financial assistance programs. The programs provide grants and loans to owners and operators of regulated USTs. Assistance is provided under four different programs. As shown below, each program has different eligibility requirements, application dates, and grant reimbursement percentages.

Summary of UST Financial Assistance Programs				
PROGRAM	STATUTE (AS) REGULATION (AAC) SESSION LAW (SLA)	APPLICATION DUE DATE	ELIGIBLE COSTS	TYPE OF ASSISTANCE
Tank Tightness Testing & Site Assessment Incentive Program	AS 46.03.415 18 AAC 78.510 (Subsequently repealed)	March 5, 1992	Tank tightness tests or site assessments to determine if there had been a release of petroleum.	50% of actual costs. Not to exceed (a) \$300 per tank for tank tightness tests up to a maximum of \$1,200 per facility; and, (b) \$800 per tank for site assessments up to \$3,200 per facility.
Tank Cleanup Grant & Loan Program	AS 46.03.420 18 AAC 78.515	June 30, 1994	Risk assessment, containment, corrective action, and cleanup.	Up to \$1 million per occurrence. Owner/operator is responsible for 10% of total cleanup costs (not to exceed \$25,000). Loans are available for owner's share.
Tank Upgrade & Closure Grant Program	AS 46.03.430 18 AAC 78.520	December 31, 1994	Removal, upgrade or replacement of UST that was installed before December 22, 1988.	60% of actual cost. Not to exceed \$60,000.
Reimbursement Program	SLA 1990, Ch 96, Sec 7 18 AAC 78.525	March 5, 1991	Risk assessment, containment, cleanup, corrective action, upgrading or closure activities on or after December 22, 1988 and before September 5, 1990.	90% of containment, cleanup, corrective action and risk assessment. 60% of upgrade or closure. Not to exceed \$200,000 per owner/operator.

Financial assistance is no longer provided under the tank tightness testing and site assessment incentive program. Eligible applicants that applied before the due date for the other three programs are still on the active list awaiting funds. Applications for the tank cleanup grant and loan program are still accepted from applicants who applied before the due date for the tank upgrade and closure grant program if they discover and report contamination before July 1, 1996. Eligible applicants that applied before the due date for the other three programs are still on the active list awaiting funds

Funding Issues

Like all state operations, funding for the STAF must be appropriated by the legislature. Since the beginning of the financial assistance program, demand for assistance has been much more than the annual appropriations. Eligible applicants that are not funded in one year remain active until funds are available.

At the inception of the program, \$6 million was appropriated for the grant and loan program. That amount has decreased each year with \$1.9 million appropriated to fund FY 96 grants. DEC has estimated that over \$54 million is needed to fund all eligible applicants. It will take approximately 19 years to fund existing projects at that level of funding.

Reimbursement Program

Original legislation assigned a low priority to this program. Payment is to be made if there is sufficient funding. Since inception, no projects have been funded. DEC has 158 applications for reimbursement. They estimate that it will require over \$3 million to fund all projects.

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REPORT CONCLUSIONS

In our opinion, the Board of Storage Tank Assistance should be reestablished. The board plays an integral role in the State's underground storage tank (UST) program. The board acts as a mediator, sets regulations, and acts as a sounding board to owners and operators of USTs.

The board acts as an independent body in settling disputes between DEC and owners and operators of USTs. Since the board's inception, they have mediated over eleven formal appeal cases. The board has been involved in numerous cases on an informal basis. Owners and operators call the board to informally discuss the applicability of state statutes and regulations to their specific situation; thereby averting the need for formal appeals.

The board actively participates in the making of statutes and regulations pertaining to USTs. The board is statutorily required to adopt regulations to be used by DEC to administer the UST program. Regulations originally adopted have been amended and are currently in the process of being revised. The board also reviews all regulations pertaining to USTs that are proposed by DEC.

We believe the board should continue until June 30, 2000. The intent of legislation establishing the board was to assist owners and operators of USTs to comply with federal and state laws and regulations. U.S. Environmental Protection Agency (EPA) regulations require USTs to meet new, stricter federal standards by December 22, 1998. The "need" or demand for funding to bring operating USTs into compliance have far outstripped the appropriations made to date. Prospectively, it is unlikely that the amount of the appropriations will substantially increase over the next few fiscal years.¹

Currently, it is unclear what enforcement actions EPA will take in Alaska against UST owners that are not in compliance with the new regulations. Given these circumstances, we foresee there may be an ongoing public policy role for the board beyond the EPA implementation deadline. By extending the board to June 30, 2000, a reevaluation of its activities can be made in the summer of 1999. Evaluation at this time would be made in the context of EPA's enforcement action regarding UST requirements.

Many owners and operators need assistance from the financial assistance program before undertaking the necessary action to comply with federal and state laws and regulations. With the existing level of funding (See Background Information) for the program, some eligible applicants will not receive funding until after the federal deadline.

¹ As discussed in the Background Information section, it is estimated that it will cost more than \$54 million to bring operating USTs into compliance with the prospective federal requirements. This estimate is based only on the funding that has been applied for to date under the State's assistance program. Representatives of the Alaska Underground Tank Owners and Operators organization reported to us that they felt there were many owners and operators, who face being in non-compliance, that have not come forward and even applied for any of the available funding.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The legislature should consider changing the statute to require the appointment of one public member to the Board of Storage Tank Assistance with no commercial or financial interest in the replacement and retrofitting of underground storage tanks.

Alaska Statute (AS 46.03.360) requires seven members to be appointed to the Board of Storage Tank Assistance. Membership includes two government members — the commissioners of the Department of Environmental Conservation and the Department of Transportation and Public Facilities — and five “public members.” Four of the public members must have specific knowledge of underground storage tanks. The fifth public member must be a member of the insurance industry. While not required by statute, this position has been filled by individuals involved in UST pollution liability insurance.

Typically, the legislature has provided for the appointment of what is termed “a public member” to the State’s various professional licensing boards. The intent behind such a requirement is to give the general public access to the decision-making and actions that such a board might take. The public member acts as a disinterested representative on these boards, that unlike other board members, has no professional nor financial interest in board proceedings. While the five public members on the Board of Storage Tank Assistance are from the private sector, they are involved, to varying degrees, with the commercial aspects surrounding USTs.

Because environmental concerns are shared equally by the general public as well as those with a specialized knowledge of UST issues and concerns, we suggest that the board and the public may benefit from the appointment of a board member with no ties to USTs. Such an appointee should have no commercial or financial interest in the replacement and retrofitting of USTs. Appointment of such a member would serve to “open up” the board proceedings in this admittedly very esoteric subject area. Since the board is instrumental in developing priorities and criteria by which funding decisions are made, such a perspective may provide a viewpoint that is independent from any operational, regulatory, or commercial interest. The presence of such a member would increase, albeit perhaps very incrementally, awareness of the objectives and goals of the board, to the public at large while providing a “reality check” on the actions and goals of the board.

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A ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis of board activities relates to the public need factors defined in the "sunset" law, Alaska Statute 44.66.050. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

The extent to which the board, commission, or program has operated in the public interest.

Projects with the greatest health and environmental threats receive priority

In accordance with its statutory responsibility, the board has adopted regulations to be used by the Department of Environmental Conservation (DEC) to rank requests for assistance. Regulations specify the criteria to be used for ranking applications for cleanup, upgrade, and closure. Although not in regulation, the board has established a point system to prioritize each type of project. The point system is designed to give the highest points to leaking underground petroleum storage tanks (USTs) that pose the greatest threat to public health and the environment, thus ensuring projects requiring prompt corrective action are funded first.

Projects with imminent public health threats receive emergency funds

An owner or operator of a UST is eligible for emergency financial assistance if a leak or overfill of their tank poses an imminent public health threat and the owner or operator does not have the funds to begin clean up action. This type of release is usually evidenced by groundwater that has a high potential for contamination with a distinct probability that drinking water is or will be threatened.

After determining eligibility for an emergency grant, DEC must consult the board. At a public meeting the board reviews the severity of the situation, the need for financial assistance, and the applicant's compliance with federal and state laws. Also, the board reviews the preliminary scope of work. The board determines whether the amount of requested funds is appropriate for the proposed scope of work.

Since the board's inception, they have approved seven projects in which almost \$700,000 has been expended on emergency projects.

Board resolves disputes

DEC receives and processes applications for financial assistance. If determined eligible, an applicant's project receives a score (or rank). Once the project receives funding, documentation of expenses is submitted to DEC for reimbursement.

One of the board's statutory duties is to hear appeals from owners and operators who disagree with DEC's determinations. The board has adopted regulations on the appeal process. Once an appeal is requested, regulations require a hearing to be held at the next scheduled board meeting and the board is required to issue a decision within 10 days. According to the board, the hearing date and time is scheduled at the convenience of the appellant. If the location of the next board meeting is inconvenient, a teleconference is held.

Our testing revealed that the board is in compliance with regulations. The files we reviewed showed that appeal hearings were heard within 30 days after a written request was made. Decisions were issued at the end of each hearing.

Since 1991, the board has heard eleven appeals. The majority were related to rank and the remainder related to the eligibility of costs. Appeals over eligibility for the financial assistance program have never been brought before the board. The board has ruled in favor of the appellant in 6 of the eleven appeals (55%), with the remainder in favor of DEC.

According to the board, they have worked with numerous UST owners and operators who have disagreed with DEC's actions but, due to the board's intervention, did not request an appeal. Often, an explanation or clarification of procedures by the board's executive director has eliminated the need for a formal appeal.

Information provided to interested parties

The board utilizes several mediums to ensure that owners and operators are kept abreast of federal and state regulations. After the new storage tank statutes and regulations were adopted, the board, in conjunction with DEC, conducted workshops in seven different areas of the State to introduce individuals to the UST program. The workshops were attended by owners and operators of USTs and individuals from private companies; city, borough, and state agencies.

Currently, the board contributes one or two articles to DEC's newsletter, "Alaska Underground," which is published approximately three times a year. Articles are about board activities or changes in regulations or policies. In addition to owners and operators, the newsletter is distributed to consultants, certified workers, legislators, state agencies and interested persons.

In between publication dates, the board prepares information bulletins that are distributed to tank owners and operators. The bulletins are one to two page reports on issues of interest.

The board has prepared a booklet of "Questions and Answers" about the UST program. It is designed to introduce people to the program and provide answers to questions most frequently asked of the board. It is updated annually and distributed to tank owners and operators, legislators, DEC staff, and federal Environmental Protection Agency staff.

The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

The board's establishing legislation also provided financial assistance programs to assist the owners and operators of USTs to comply with federal and state requirements. Appropriations are made to the storage tank assistance fund to provide assistance to owners and operators of UST. Although DEC manages the fund, the board is responsible for allocating funds to the financial assistance programs.

Each year, at its July meeting, the board discusses funding. DEC informs the board of the number of applications received and the amount requested. They also suggest various methods to allocate the funds. The board then decides which projects to fund.

When the fund was first established in 1991 more than \$6 million was allocated to storage tank grants. Since then, funding has decreased. While funds have decreased, requests for financial assistance have increased. DEC estimates that over \$54 million is needed to fund all projects on file.

The FY 96 appropriation to financial assistance grants and loans was \$1.9 million. If funding continues at the this level it will take approximately 19 years to fund all projects.

Due to insufficient funding, no funds have been paid to eligible applicants of the reimbursement program. Original legislation allowed tank owners and operators to apply for reimbursement for a part of their eligible costs for UST upgrade activities if such activities took place prior to the law's effective date. Applicants had to apply by March 5, 1991 to be considered for funding. Legislation required that payments under this program would only be made after other requests for financial assistance had been satisfied. Since there remains outstanding funding requests under the various other programs, the board has not allocated any funding for this purpose.

DEC's records indicate that approximately \$3 million is needed to reimburse the 158 eligible applicants on file.

The extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

The board has actively participated in statutory changes regarding USTs. In 1994, three changes were made to the statutes:

1. Original legislation required the board to hear appeals when disputes arose on eligibility of costs and priority ranking. Statutes were amended to allow the board to also hear appeals on program eligibility.

2. The due date for applications for financial assistance for the tank closure and upgrade and closure program was set for December 31, 1994.
3. The application due date for the tank cleanup grant and loan program (cleanup program) was June 30, 1994. Statutes were amended to extend the due date for two years for eligible applicants of the upgrade and closure program if they discover and report contamination before July 1, 1996.

The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

Activities of the board are discussed at meetings that are open to the public. All meetings are announced in newspapers in the three largest cities in the State. The announcement includes a brief summary of the major issues that will be discussed.

The meeting agenda provides for public comment at the beginning and end of each meeting. Also, the board chair solicits public comments throughout the meeting.

The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

The board has encouraged public participation in the making of its regulations. Prior to adoption, regulations are discussed at board meetings which are advertised and open to the public.

The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

From a review of the ombudsman closed case files we determined that no complaints have been filed against any activities of the board.

The extent to which the board or commission which regulates entry into an occupation or profession has processed qualified applicants to serve the public.

Since the board does not regulate any occupation or profession, this criterion is not applicable to the activities of the board.

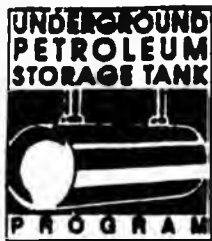
The extent to which state personnel practices, including affirmative action requirements have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

Nothing has come to our attention to indicate that the board has not complied with state personnel practices.

The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

See Recommendation No. 1.

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Board of Storage Tank Assistance

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Tony Knowles, Governor

December 22, 1995

Division of Legislative Audit
P.O. Box 113300
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LEGISLATIVE AUDIT

Attention: Jim Griffin

RE: Preliminary Report Sunset Review of the Board of Storage Tank Assistance
Audit Control Number: 18-1432-95

Dear Mr. Griffin,

This letter is in response to the Preliminary Report pertaining to the Sunset Review of the Board of Storage Tank Assistance.

Several errors were noted as follows:

Page 7, paragraph 3. Actual number is \$1.9 million, not \$2.9 million.

Page 15, paragraph 5. Actual number is \$1.9 million, not \$2.9 million.

Page 16, Items 2 & 3. References to "closure program" should read "upgrade and closure program"

The Board of Storage Tank Assistance discussed at length the findings and recommendation outlined in the Preliminary Report, specifically Recommendation No 1, "*The legislature should consider amending Board statutes to provide for the appointment of a public member with no specialized knowledge of, or commercial interest in, underground storage tanks.*"

The Board fully supports modifying existing statutes to allow for additional appointments. With nearly 50 million dollars in financial assistance requests currently on file, the Board welcomes any additional input and insight that might be brought forward by citizens concerned with protecting Alaska's public health and environment. The Board of Storage Tank Assistance has been extremely successful in protecting and restoring Alaska's fragile environment from petroleum contamination resulting from leaking underground storage tanks and has done so without jeopardizing Alaskan jobs or Alaska's transportation dependant economy. The program is under funded at this time and needs to develop an alternative funding source to address current and future needs. The appointment of a concerned representative from outside the tank industry will help the Board evaluate future needs, scope and funding alternatives to insure the continued future success of the Storage Tank Assistance program.