

ALASKA LEGISLATIVE COUNCIL FILED 1700 1700

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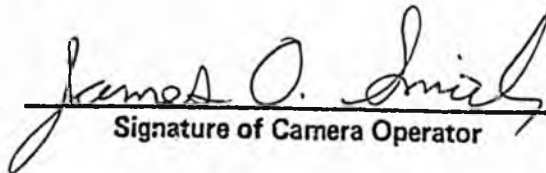
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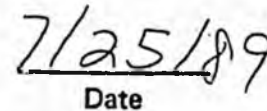


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Signature of Camera Operator


Date

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STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 14, 1986

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

The Honorable Max F. Gruenberg, Jr.
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: HB 526, relating to Alaskan artifacts


Dear Representative Gruenberg:

Earlier this year House Bill 526, relating to protection of important Alaskan artifacts, was introduced at Governor Sheffield's request. HB 526 is intended to deal with the problem of the increasing removal of important Alaskan artifacts, particularly objects of Native culture, by unfair or unscrupulous means. Because the mechanics of the bill might not be obvious on its face, a great deal of misunderstanding of the bill's effect has been created. Therefore, we have been asked to prepare an analysis of the bill, including its purposes and mechanics.

That analysis is attached. Please feel free to contact this office if you have further questions or comments.

Sincerely yours,

HAROLD M. BROWN
ATTORNEY GENERAL

By: 
Douglas K. Mertz
Assistant Attorney General

DKM:dlm

Attachments

ANALYSIS OF HB 526, RELATING TO
PRESERVATION OF IMPORTANT ARTIFACTS
OF ALASKAN CULTURE

Prepared by the Alaska Department of Law

House Bill 526, relating to preservation of important artifacts of Alaskan culture, has two major purposes: To prevent the loss of cultural treasures that have unique value to the people of Alaska, by removal under questionable circumstances; and to enable Native Alaskans who own certain artifacts communally to assert that ownership against persons claiming individual ownership.

The bill grew out of a series of incidents in which important historical or artistic pieces have been removed from Alaska by persons who might not have had proper title. There appears to be a regular trade in excavating and selling artifacts from ancient cultures, taken from public or private land without permission. In other incidents unscrupulous dealers have removed and sold important Native artifacts after telling the owners that they were merely being "borrowed" to be copied. On still other occasions individuals have tried to sell valuable Native artifacts despite contrary claims to ownership by groups or clans of Natives. (The history of attempts to acquire Southeast Alaskan artifacts, both legitimately and illegitimately, is recounted by Douglas Cole, in his Captured Heritage: The Scramble for Northwest Coast Artifacts [University of Washington Press, Seattle, 1985]. Many of the same collecting tactics continue in use today.)

House Bill 526 will not solve all of the problems of conflicting legal claims and unethical collecting practices. Probably no single piece of legislation could do so. But HB 526 would give valuable tools to those resisting the most egregious practices and would make it more difficult for the most valuable artifacts to be removed by persons without a right to them.

The bill contains two main mechanisms. The first, at Sections 1 and 2, makes technical amendments to the code of civil procedure and to state property law, to enable the courts to recognize traditional communal ownership of ceremonial, cultural, or religious property as a form of trust. Under current law, trusts and transfers of trust property must be in writing. In the traditional custom of certain Alaskan Native groups, some property is held by an entire clan or other social group. Custody of the object may be given to an individual, but only for the benefit of the entire group, and the object may be sold, if at all, only with consent and for the benefit of the entire group. This custom approximates the concept of a trust in Anglo-American law, yet the Native tradition is rarely reduced to writing. Sections 1 and 2 would permit the courts to receive evidence that such property is subject to an unwritten trust, and therefore, in appropriate cases, a court could prevent an individual from selling property that is subject to a trust for the benefit of a group of Natives.

It should be noted, however, that these sections would not create any new rights to an artifact; they merely enable

persons claiming that a trust for a Native group exists to offer proof that it exists. The burden would still be on the proponents of communal ownership to prove that fact.

In secs. 5 through 7, HB 526 offers a second means of protecting the most valuable class of Alaskan artifacts. It sets up a mechanism by which a person who intends to sell an artifact falling within a narrowly defined class must alert persons with a conflicting claim of ownership, and provides an opportunity for resolving conflicting claims.

These requirements would apply only to a narrow class of objects, and only when their owner has decided to sell them or transport them for sale. The class is limited to objects with cultural, artistic, or historical value, which were created or used in Alaska, which are over 40 years old, and which have a market value over \$25,000. It would not include objects of art without a unique Alaskan connection, nor would it include collections which together are worth over \$25,000 but whose individual pieces are worth less. These limitations were chosen for three reasons: to limit application of the law to only the most important valuable artifacts; to keep the number of affected objects small so that any burden on commerce is minimized; and to keep the program small enough that it can be administered by present staff.

In summary, the requirements imposed by the bill are as follows: when a person intends to sell an object fitting the criteria above (an "Alaskan heritage artifact"), he must provide

certain information to the director of the State Museums at least 30 days before the sale. That information must include a description of the article and its history, including date and place of origin and all available documentation of present ownership. (There is no requirement that the owner do original research on the article's history or ownership; instead, he must supply what information is already available.) The owner must also list all persons known to him to have asserted a conflicting claim of ownership, and must show that he has posted and published, in the community nearest or most closely associated with the object, a notice of intent to sell. The purpose of requiring this information is (a) to give the director of museums a basis for concluding whether or not the object is actually owned by the person intending to sell it, and (b) to alert other persons who claim ownership to the impending sale so that they may take steps to protect their interests before the sale occurs. The person intending to sell the object is not required to divulge the precise location of the object (other than the community in which it is located), nor the proposed selling price, nor the price for which he purchased it.

After that information is given to the director of museums, the director has 30 days within which to analyze the information and choose one of three courses. (The short, 30-day period was chosen consciously so as to put the burden on the state to act quickly and not delay proposed sales any longer than necessary.) The three choices for the director are (1) allow the

proposed sale to proceed; (2) request the attorney general to bring an interpleader action in which ownership between competing claimants would be decided; or (3) if he finds that the object is of "substantial importance to Alaskan heritage and will otherwise be lost to the people of Alaska," acquire it for the state for its fair market value. (Naturally, this last course would be subject to availability of acquisition funds.) In short, if there is a real controversy over ownership referred to the courts for resolution before a sale occurs; if the object has special value to Alaska and would otherwise be lost, the state may purchase it for fair market value. But, in the routine case where ownership is not in dispute, the sale would simply be allowed to proceed.

It should be noted that in no case would the owner of an artifact be denied his full fair market sale price. Nor would anything in this bill permit persons to question title of artifacts already sold or placed in collections before the effective date of the law.

Finally, HB 526 contains provisions to clarify and strengthen the Alaska Historic Preservation Act, AS 41.35. Section 7 clarifies that the Act applies to cultural resources belonging to the state, eliminating the current ambiguity in the statute. It also extends the current prohibition against unauthorized excavation and removal of artifacts on state land to

unauthorized acts on private land. And sec. 8 changes the penalty provisions in AS 41.35.210 so that severity of the penalty is keyed to the value of the objects illegally removed or sold.

We do not expect that HB 526 will solve all of the problems of unethical collection and removal of important Alaskan artifacts, but it is a first step in dealing with a problem of critical importance.

#

Introduced: 1/19/86
Referred: Health, Education &
Social Services and Judiciary

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 526

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to preservation of important arti-
7 facts of Alaskan culture; and providing for an effec-
8 tive date."

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

10 * Section 1. AS 09.25.010 is amended by adding a new subsection to
11 read:

12 (c) Notwithstanding other provisions in this section, the exis-
13 tence of a trust may be recognized and enforced by a court in the
14 absence of a writing, upon a showing, by a preponderance of the evi-
15 dence, that a trust or caretaking arrangement has been established by
16 Alaska Native custom and tradition for protection and conservation of
17 ceremonial, cultural, or religious property on behalf of all members
18 of a clan, house, band, or other traditional group of Alaska Natives
19 as owners in common.

20 * Sec. 2. AS 34.40.070 is amended by adding a new subsection to read:

21 (b) Notwithstanding (a) of this section, a court may recognize
22 and enforce a valid, unwritten grant or assignment of a trust or
23 caretaking arrangement for protection and conservation of ceremonial,
24 cultural, or religious property on behalf of all members of a clan,
25 house, band, or other traditional group of Alaska Natives, as owners
26 in common, upon a showing, by a preponderance of the evidence, of a
27 grant or assignment according to established Alaska Native custom and
28 tradition.

29 * Sec. 3. AS 41.35.010 is amended by adding a new subsection to read:

1 (2) as detailed a history of the artifact as is reasonably
2 possible, including date and place of origin, and all available docu-
3 mentation of its present ownership;

4 (3) a statement by the owner, signed under oath, that that
5 person is the true owner of the artifact and has the sole right to
6 alienate title;

7 (4) a list of all persons known to assert now, or known to
8 have asserted in the past, a conflicting claim regarding ownership or
9 the right to alienate the artifact; and

10 (5) proof of posting in a public place in the community
11 nearest or most closely associated with the artifact, and of publica-
12 tion in at least one newspaper of general circulation in the same
13 community, a notice of intent to sell which clearly identifies the
14 artifact and its location.

15 (b) Within 30 days after filing of the information required by
16 this section, the director of the Alaska State Museum shall

17 (1) bring an action through the attorney general to deter-
18 mine ownership of the artifact;

19 (2) bring an action through the attorney general to acquire
20 title to the artifact through eminent domain, under AS 41.35.060(c),
21 if the artifact is found to be of substantial importance to Alaskan
22 heritage and will otherwise be lost to the people of Alaska; or

23 (3) inform the person intending to sell the artifact that
24 the state will not take action under (1) or (2) of this subsection.

25 * Sec. 7. AS 41.35.200 is amended to read:

26 Sec. 41.35.200. UNLAWFUL ACTS. (a) A person may not appropri-
27 ate, excavate, remove, injure, or destroy, without a permit from the
28 commissioner, any historic, prehistoric, [OR] archeological, or cul-
29 tural resources belonging to [OF] the state.

CORRECTION

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

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2 cultural artifacts, including ceremonial and religious objects impor-
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6 historical heritage. It has become necessary for the state to take a
7 strong role in preventing further loss of the Alaskan heritage and to
8 stop unfair and unethical methods of collecting artifacts.

9 * Sec. 4. AS 41.35.020 is amended by adding a new subsection to read:

10 (c) The director of the Alaska State Museum may arrange to
11 preserve, protect, and display objects of historic, prehistoric,
12 archeological, or cultural value owned by private persons. For this
13 purpose the museum may enter into agreements for loan and display of
14 objects, including reimbursement of the owner's costs associated with
15 the loan. A loan agreement may contain a provision guaranteeing the
16 owner access to the object loaned and for periodic return of the
17 object to the owner for private use, including ceremonial use.

18 * Sec. 5. AS 41.35.060 is amended by adding a new subsection to read:

19 (c) If the director of the Alaska State Museum finds that an
20 Alaskan heritage artifact for which notice of sale is required under
21 AS 41.35.095 is in danger of being sold or used so that its value to
22 the people of Alaska will be destroyed or seriously impaired, the
23 director may purchase the artifact or acquire it by eminent domain.

24 * Sec. 6. AS 41.35 is amended by adding a new section to read:

25 Sec. 41.35.095. SALE OF ALASKAN HERITAGE ARTIFACTS. (a) A
26 person who intends to sell an Alaskan heritage artifact shall provide
27 the following information to the director of the Alaska State Museum
28 at least 30 days before the sale:

29 (1) a description of the artifact, including a photograph;

1 (2) as detailed a history of the artifact as is reasonably
2 possible, including date and place of origin, and all available docu-
3 mentation of its present ownership;

4 (3) a statement by the owner, signed under oath, that that
5 person is the true owner of the artifact and has the sole right to
6 alienate title;

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8 have asserted in the past, a conflicting claim regarding ownership or
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14 artifact and its location.

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16 this section, the director of the Alaska State Museum shall

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20 title to the artifact through eminent domain, under AS 41.35.060(c),
21 if the artifact is found to be of substantial importance to Alaska
22 heritage and will otherwise be lost to the people of Alaska; or

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24 the state will not take action under (1) or (2) of this subsection.

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27 ate, excavate, remove, injure, or destroy, without a permit from the
28 commissioner, any historic, prehistoric, [OR] archeological, or cul-
29 tural resources belonging to [OF] the state.

1 (b) A person may not appropriate, excavate, remove, injure, or
2 destroy, without permission of the landowner, any historic, prehistor-
3 ic, archeological, or cultural resource located on privately owned
4 land, unless the person is the owner of the resource or has the per-
5 mission of the owner.

6 (c) [(b)] A person may not possess, sell, buy, or transport
7 within the state, or offer to sell, buy, or transport within the
8 state, historic, prehistoric, [OR] archeological, or cultural re-
9 sources taken, [OR] acquired, sold, or possessed in violation of this
10 chapter [SECTION] or 16 U.S.C. 433.

11 (d) A person may not sell, buy, or transport within the state in
12 connection with a sale or purchase, an Alaskan heritage artifact
13 unless the seller has complied with AS 41.35.095.

14 (e) [(c)] A person may not unlawfully destroy, mutilate, de-
15 face, injure, remove, or excavate a grave site or a tomb, monument,
16 gravestone, or other structure or object at a grave site, even though
17 the grave site appears to be abandoned, lost, or neglected.

18 (f) [(d)] A state-owned [AN] historic, prehistoric, [OR]
19 archeological, or cultural resource which is taken in violation of
20 this chapter [SECTION] shall be seized by any person designated in
21 AS 41.35.220 wherever found and at any time. Objects seized may be
22 disposed of as the commissioner determines by deposit in the proper
23 public depository.

24 * Sec. 8. AS 41.35.210 is repealed and reenacted to read:

25 Sec. 41.35.210. PENALTIES. A person who violates a provision of
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28 artifact or object with a market value under \$25,000, or a violation
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2 or object with a market value of \$25,000 to \$100,000; and

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5 * Sec. 9. AS 41.35.230(4) is amended to read:

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9 of antiquity which provide information pertaining to the historical or
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11 natural history of the state, and includes an Alaskan heritage arti-
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14 (5) "Alaskan heritage artifact" means an object with cul-
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OK

UNIVERSITY OF ALASKA, FAIRBANKS
Fairbanks, Alaska 99701

February 11, 1986

FEB 14 1986

Honorable John Ringstad
State Capitol
Pouch V (MS 3100)
Juneau, AK 99811

Dear John:

I want to call to your attention a bill which has been introduced in the House by the Rules Committee by request of the Governor. The bill, HB526, drafted in the Department of Law, by Mr. Doug Mertz, was filed on January 19. It is for an Act entitled: "An act relating to preservation of important artifacts of Alaskan culture; and providing for an effective date."

This bill, while I am sure is well intended, raises some horrific spectors, both for the Native cultures as well as non-Native peoples. While the intent is to stop the out-flow of cultural materials from the State of Alaska, it attempts to accomplish this goal through such means as identifying "an Alaskan heritage artifact is any object with cultural, artistic, or historic value created or used in Alaska which is over 50 years old and has a market value of over \$25,000 dollars." As you can readily see, such loose language would permit, the interpretation of the bill to include houses, ships, paintings, aircraft, etc. The bill also permits the Director of the Alaska State Museum, in his/her discretion to enter into agreements with Native peoples for "loan and display of objects, including reimbursement of costs to the owner associated with the loan." This is not a wise posture, i.e. to pay someone to lend something to the State.

The bill also sets up a new permitting system, which probably is not even needed, given current permitting status within the department of history and archeology (DNR). It also permits the Director of the Alaska State Museum to "bring an action through the Attorney General to determine ownership of "artifacts" and "bring an action through the Attorney General to acquire title to the artifact through eminent domain," "if the artifact is found to be of substantial importance to Alaskan heritage and would otherwise be lost to the people of Alaska....." This is probably unconstitutional, and certainly a frightening possibility of permitting state government to reach into a person's home and remove things. This simply seems to me to be an exceedingly poor method of attempting to accomplish a goal.

UNIVERSITY OF ALASKA

February 11, 1986

Page 2

There are other, more silly things stated such as an illusion to a "commissioner" which presumably is the Commissioner of Education, but some believe it refers to the Commissioner of DNR. Either way, it is plain silly the way it is stated.

Also, there is the statement that "a person may not....transport within the State.....Alaskan heritage artifacts without an artifact sale permit...." I am not sure what the author has in mind here, but this means that--even as defined--I could not move an artifact from the University of Alaska Museum to lower campus of University of Alaska-Fairbanks without getting a permit. I believe you can see the gist of my concerns.

I ask you please to review HB526, and to take appropriate steps to either abolish it in the present form or to vastly amend it so that it can accomplish what is probably a worthy intent without being unconstitutional or without encroaching upon individual's rights.

If you have further questions, please do not hesitate to call or write me.

Sincerely,

Basil C Hedrick
by H. Davis

Basil C. Hedrick, Director
University of Alaska Museum
907 Yukon Drive
Fairbanks, AK 99775-1200

FEB 14 1986

sjc

*Letter
zero 7 note*

Introduced: 1/29/86
Referred: Health, Education &
Social Services and Judiciary

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 526

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to preservation of important arti-
7 facts of Alaskan culture; and providing for an effec-
8 tive date."

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

10 * Section 1. AS 09.25.010 is amended by adding a new subsection to
11 read:

12 (c) Notwithstanding other provisions in this section, the exis-
13 tence of a trust may be recognized and enforced by a court in the
14 absence of a writing, upon a showing, by a preponderance of the evi-
15 dence, that a trust or caretaking arrangement has been established by
16 Alaska Native custom and tradition for protection and conservation of
17 ceremonial, cultural, or religious property on behalf of all members
18 of a clan, house, band, or other traditional group of Alaska Natives
19 as owners in common.

20 * Sec. 2. AS 34.40.070 is amended by adding a new subsection to read:

21 (b) Notwithstanding (a) of this section, a court may recognize
22 and enforce a valid, unwritten grant or assignment of a trust or
23 caretaking arrangement for protection and conservation of ceremonial,
24 cultural, or religious property on behalf of all members of a clan,
25 house, band, or other traditional group of Alaska Natives, as owners
26 in common, upon a showing, by a preponderance of the evidence, of a
27 grant or assignment according to established Alaska Native custom and
28 tradition.

29 * Sec. 3. AS 41.35.010 is amended by adding a new subsection to read:

COMMITTEE COPY

1 (b) The legislature finds that many of Alaska's historical and
2 cultural artifacts, including ceremonial and religious objects impor-
3 tant to Alaska's Native peoples, have been removed and sold, often by
4 persons without a rightful claim to them. All Alaskans share a deep
5 loss because of the removal of important parts of our cultural and
6 historical heritage. It has become necessary for the state to take a
7 strong role in preventing further loss of the Alaskan heritage and to
8 stop unfair and unethical methods of collecting artifacts.

9 * Sec. 4. AS 41.35.020 is amended by adding a new subsection to read:

10 (c) The director of the Alaska State Museum may arrange to
11 preserve, protect, and display objects of historic, prehistoric,
12 archeological, or cultural value owned by private persons. For this
13 purpose the museum may enter into agreements for loan and display of
14 objects, including reimbursement of the owner's costs associated with
15 the loan. A loan agreement may contain a provision guaranteeing the
16 owner access to the object loaned and for periodic return of the
17 object to the owner for private use, including ceremonial use.

18 * Sec. 5. AS 41.35.060 is amended by adding a new subsection to read:

19 (c) If the director of the Alaska State Museum finds that an
20 Alaskan heritage artifact for which notice of sale is required under
21 AS 41.35.095 is in danger of being sold or used so that its value to
22 the people of Alaska will be destroyed or seriously impaired, the
23 director may purchase the artifact or acquire it by eminent domain.

24 * Sec. 6. AS 41.35 is amended by adding a new section to read:

25 Sec. 41.35.095. SALE OF ALASKAN HERITAGE ARTIFACTS. (a) A
26 person who intends to sell a Alaskan heritage artifact shall provide
27 the following information to the director of the Alaska State Museum
28 at least 30 days before the sale:

29 (1) a description of the artifact, including a photograph;

1 (2) as detailed a history of the artifact as is reasonably
2 possible, including date and place of origin, and all available docu-
3 mentation of its present ownership;

4 (3) a statement by the owner, signed under oath, that that
5 person is the true owner of the artifact and has the sole right to
6 alienate title;

7 (4) a list of all persons known to assert now, or known to
8 have asserted in the past, a conflicting claim regarding ownership or
9 the right to alienate the artifact; and

10 (5) proof of posting in a public place in the community
11 nearest or most closely associated with the artifact, and of publica-
12 tion in at least one newspaper of general circulation in the same
13 community, a notice of intent to sell which clearly identifies the
14 artifact and its location.

15 (b) Within 30 days after filing of the information required by
16 this section, the director of the Alaska State Museum shall

17 (1) bring an action through the attorney general to deter-
18 mine ownership of the artifact;

19 (2) bring an action through the attorney general to acquire
20 title to the artifact through eminent domain, under AS 41.35.060(c),
21 if the artifact is found to be of substantial importance to Alaskan
22 heritage and will otherwise be lost to the people of Alaska; or

23 (3) inform the person intending to sell the artifact that
24 the state will not take action under (1) or (2) of this subsection.

25 * Sec. 7. AS 41.35.200 is amended to read:

26 Sec. 41.35.200. UNLAWFUL ACTS. (a) A person may not appropri-
27 ate, excavate, remove, injure, or destroy, without a permit from the
28 commissioner, any historic, prehistoric, [OR] archeological, or cul-
29 tural resources belonging to [OF] the state.

1 (b) A person may not appropriate, excavate, remove, injure, or
2 destroy, without permission of the landowner, any historic, prehistor-
3 ic, archeological, or cultural resource located on privately owned
4 land, unless the person is the owner of the resource or has the per-
5 mission of the owner.

6 (c) [(b)] A person may not possess, sell, buy, or transport
7 within the state, or offer to sell, buy, or transport within the
8 state, historic, prehistoric, [OR] archeological, or cultural re-
9 sources taken, [OR] acquired, sold, or possessed in violation of this
10 chapter [SECTION] or 16 U.S.C. 433.

11 (d) A person may not sell, buy, or transport within the state in
12 connection with a sale or purchase, an Alaskan heritage artifact
13 unless the seller has complied with AS 41.35.095.

14 (e) [(c)] A person may not unlawfully destroy, mutilate, de-
15 face, injure, remove, or excavate a grave site or a tomb, monument,
16 gravestone, or other structure or object at a grave site, even though
17 the grave site appears to be abandoned, lost, or neglected.

18 (f) [(d)] A state-owned [AN] historic, prehistoric, [OR]
19 archeological, or cultural resource which is taken in violation of
20 this chapter [SECTION] shall be seized by any person designated in
21 AS 41.35.220 wherever found and at any time. Objects seized may be
22 disposed of as the commissioner determines by deposit in the proper
23 public depository.

24 * Sec. 8. AS 41.35.210 is repealed and reenacted to read:

25 Sec. 41.35.210. PENALTIES. A person who violates a provision of
26 this chapter is guilty of

27 (1) a class A misdemeanor for a violation involving an
28 artifact or object with a market value under \$25,000, or a violation
29 that does not involve an artifact or object;

1 (2) a class C felony for violations involving an artifact
2 or object with a market value of \$25,000 to \$100,000; and

3 (3) a class B felony for violations involving an artifact
4 or object with a market value of more than \$100,000.

5 * Sec. 9. AS 41.35.230(4) is amended to read:

6 (4) "historic, prehistoric, [AND] archeological, and cul-
7 tural resources" includes deposits, structures, ruins, sites, build-
8 ings, graves, artifacts, fossils, ceremonial objects, or other objects
9 of antiquity which provide information pertaining to the historical or
10 prehistorical culture of the people in the state as well as to the
11 natural history of the state, and includes an Alaskan heritage arti-
12 fact.

13 * Sec. 10. AS 41.35.230 is amended by adding a new paragraph to read:

14 (5) "Alaskan heritage artifact" means an object with cul-
15 tural, artistic, or historical value, created or used in Alaska, which
16 is over 40 years old and has a market value of more than \$25,000.

17 * Sec. 11. This Act takes effect immediately in accordance with AS 01.-
18 10.070(c).

BILL SHEFFIELD
GOVERNOR



14B526

[Handwritten signature]
1/29

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 29, 1986

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to preservation of important Alaskan cultural artifacts.

This bill is intended to strengthen statutory protections against loss of important historical, archeological, and cultural artifacts. It is largely in response to continuing losses of Native artifacts to private collectors. Many of the threatened artifacts are of vital cultural or religious significance to Alaskan Natives. We are also increasingly aware of unethical practices of some collectors in their searches for Native artworks. Current statutory authority is inadequate to protect these resources. This bill is intended to help remedy that inadequacy.

Sections 1 and 2 of the bill are intended to enable state courts to recognize the validity of trusts created by Native custom and tradition. Many sought-after Native artifacts are owned communally by clans or other Native groups, and are entrusted to a person charged with their care and protection. This has been the cause of several legal disputes over the right of individuals to sell the artifacts. The bill would allow the courts to apply the law of trusts to such situations, in effect recognizing for purposes of state law these traditional unwritten Native trusts.

Sections 5, 6, and 7 of the bill contain the major amendments to the Alaska Historic Preservation Act, AS 41.35. Section 6 requires that possessors of major works of Alaskan cultural heritage notify the Alaska State Museum before their sale, and provide background information concerning the origin and ownership of those works. The museum must

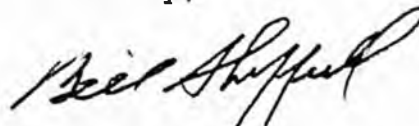
then take one of three courses of action. If it finds that a dispute over ownership exists, it may institute a court action to clarify who has the legal right to sell. If the Museum finds that an article proposed for sale is of substantial importance to Alaska, the article will otherwise be lost, and museum purchase cannot be negotiated, it may acquire the article itself, through eminent domain, for fair market value. (Section 5 of the bill authorizes the museum to acquire such articles in certain situations, by purchasing them or acquiring them through eminent domain, even if the statutorily required notice is not given.) Or, if neither of those two options is chosen, it must inform the seller that the state will take no action regarding the sale.

Section 7 would extend the Act's prohibition against removal of artifacts to those found on private land. (Current protections extend only to state land.) This is an attempt to deal with unauthorized excavations of archeological and grave sites on private land, e.g., Native corporation land.

The remainder of the bill makes related amendments to AS 41.35. The amendments in secs. 3 and 4 are generally to enhance protection and preservation of historical and cultural Alaskan artifacts. Section 8 amends AS 41.35.210 to conform the penalty section to the new Criminal Code and to substantially increase penalties for violations relating to historic, prehistoric, archeological, and cultural resources. The harsher penalties should provide incentive for compliance with the laws that are meant to protect irreplaceable Alaska resources. The amendments in secs. 9 and 10 are to definitions, and reflect the other amendments made in the bill.

The bill is intended to create a structure for protecting Alaskan artifacts, which is useful with any level of funding for the State Museum acquisition fund. According to the director of the State Museum, administration of the new provisions would not require increased appropriations. It is also clear, however, that the ability of the state to retain Alaskan heritage treasures by purchase depends on the funding level for acquisitions which the legislature considers appropriate.

Sincerely,



Bill Sheffield
Governor

cc 1/29

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST HB 526

Bill/Resolution No. : HB 526-86
Title : ...preservation of important artifacts of Alaskan Culture...

Sponsor : Governor
Requestor : Governor
Date of Request : 1-14-86

FISCAL DETAIL

Agency Affected : Education
BRU : Division of Museums

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

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

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

FUNDING : (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

This bill has no fiscal impact.

Prepared by : Steve Hole
Division : Commissioner's Office

Phone : 465-2800
Date : 1-14-86

Approved by Commissioner : Harold Reynolds, Jr.
Agency : Education

Date : 1-14-86

Distribution (by Agency preparing fiscal note) :

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

ALASKA STATE LEGISLATURE

14th.. Legislature .. SE 70NDSession

HOUSE BILL..... NO. ..526..

By THE RULES COMMITTEE BY.....
REQUEST OF THE GOVERNOR

"An Act relating to preservation
of important artifacts of
Alaskan culture; and providing
for an effective date."

preservation of artifacts

Introduced in the House ... 1/29.., 19.86

HISTORY IN THE HOUSE

19 86

Jan 29

Read first time and referred
to Committee on

HESS AND JUDICIARY

Reported back with
recommendation that

Read second time and

Read third time and

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reconsideration

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused
Reported correctly engrossed
Signed by Speaker
Sent to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19

Read first time and referred
to Committee on

Reported back with
recommendation that

Read second time and

Read third time and

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reconsideration

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused
Reported correctly engrossed
Signed by President
Returned to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19

Received from Senate

Concurred in Senate amendment
thus adopting:
VOTE

Failed to concur in Senate amend-
ment; asked Senate to recede:
VOTE

Senate receded from amendment
VOTE

Senate failed to recede from
amendment
VOTE

CC appointed by House

CC appointed by Senate

CC adopted by House
VOTE

CC adopted by Senate
VOTE

To enrolling
Reported correctly enrolled
Sent to Governor

..... by Governor

Filed with Lt. Governor

Chapter No.



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

7/25/89
Date

H B

5 4 3

1-14-85



RECEIVED
JUN 12 1985

and
OK - + if it looks good
Reply to her
Check the
have bill drafted

AKA

June 12, 1985

Representative Jim Duncan
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Duncan:

This letter is in regards to Senate Bill No. 319 which was introduced May 5, 1985, by Senator Zharoff and Rodey.

The Bill deals with the establishment of a Special Education Cooperative Service Unit to serve districts which have Low Incidence handicapped students.

As the Director of Special Services for the Juneau School District, I have had the opportunity to work with an organization called the Alaska Resource for the Severely and Moderately Impaired (ARMSI). ARMSI, as it is typically called, has done an outstanding job in providing those services to the smaller communities which is outlined in Senate Bill 319. However, due to the state budgeting process they live year to year with very little job or program security. As this program functions as an entity of the public school system without any of its benefits, I feel it is imperative that we strive to include them in Senate Bill 319. Your support, with an introduction of a comparison piece of legislation, would be greatly appreciated. If you have any questions, please feel free to call me at 586-2200. I would be happy to spend any amount of time necessary to see that this Bill becomes inacted.

Sincerely,

David J. Thomas
David J. Thomas, Director
Special Services

Enclosure
DT/el

Aleutian Region School District

TECHNICAL CENTER
640 West 36th Avenue
Anchorage, Alaska 99503-5898
(907) 562-2924



January 24, 1986

Dr. LeRoy Owens
Superintendent

BOARD OF DIRECTORS

Clayton Brown, President
Cold Bay, Alaska 99571

Jack Nelson, Clerk
Nelson Lagoon, Alaska 99571

Helen Prokopoff
Akutan, Alaska 99553

Michael Spurgarth
Atka, Alaska 99502

Gilda Shelton
Faule Pass, Alaska 99584

Representative Max Gruenberg
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Max:

The difficult question of equitable financing of basic school support is with us again this session. For the past three years, the Department of Education has struggled with preparation of a formula that would solve all the problems that everyone has thought was true of past distribution formulae. The proposal designed the Education Commissioner's office is far from perfect, but has reflected a variety of opinion about how to best reach equity among the fifty-five school districts. While this activity progressed, the school education has received only one cost of living adjustment in the past three years.

It is my judgment that the best course of action for the legislature is to adopt the formula, perhaps with some minor adjustments, and provide a base of funding to all districts at the minimum per student amount used last year. At the same time, I believe it is fair to provide for the 80% capital construction reimbursement provided city districts last session. Certainly this should be adjusted for future years to prevent an open checkbook approach by city districts.

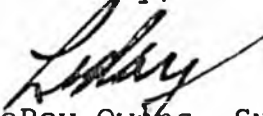
Much work needs to be done on the data base used to formulate the proposal for basic school funding. I know of no one who is satisfied totally with this work, but we do need a new formula and a continuing effort to improve the data base upon which it is built.

We are hearing various figures thrown around at this time for the cost of funding the proposed formula, a hold harmless clause for all districts, and the 80% capital

construction reimbursement for school buildings this past year. I believe the best approach to conclude this issue this session would be to fund schools and construction as I have outlined above, and require that the basic data and funding formula be revised periodically, and that a system for hearing grievances of districts who feel that they have been unfairly treated be included.

If I can be of any help with information or ideas as you consider these issues, please do not hesitate to give me a call.

Sincerely,



LeRoy Owens, Superintendent
Aleutian Region School District

cc: Bob Greene
Don McKinnon

Members are appointed for a term of three years.

An appointee to a vacant seat serves for the remainder of the three years.

Travel and per diem are authorized as for other boards and commissions.

The board, in consultation with the department shall adopt and amend bylaws for its operation.

Employees of the board shall be members of PERS or TRS.

The board may receive and expend public and private funds, and contract with the department or other public or private agencies to carry out its purpose.

The board shall be responsible for providing special education services including:

itinerant outreach services for special education students

instructional support and training for local school district special education personnel, and

other services appropriate to special education needs.

They shall hire an executive director and other personnel, provide for an annual audit, provide a plan of operations with a description of services, and present a budget to the department annually.

The agency shall provide services for districts whose special education needs occur infrequently, require specialized services not normally available, and whose needs cannot be easily served because of the low number of students in that district who are in need of a particular service.

The amount of funding available shall be the greater of \$100 for each special education student or the equivalent of 2% of the funds appropriated for special education.

Sec. 3 PARTICIPATION BY SPECIAL EDUCATION AGENCY EMPLOYEES

This section sets forth the requirements an employee of the agency must meet to participate in the retirement system. They must possess or be eligible for a teachers certificate and pay all retroactive contributions as required by law.

Sec. 4 Adds Special Education Service Agency employees to the definitions section of the Teachers' Retirement statutes.

Sec. 5 Staggers the terms of membership of the initial appointees to the board and requires the commissioner to assign those terms by lot.

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

Revision Date: _____

REQUEST

Bill/Resolution No.: HB-543
 Title: An Act creating the special
 education service agency.

 Sponsor: Duncan
 Requestor: SPONSOR
 Date of Request: February 6, 1986

FISCAL DETAIL

Agency Affected: Department of Education
 BRU: K-12 support

 Components: Schools for the
 handicapped

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS		234.0	234.0	234.0	234.0	234.0
MISCELLANEOUS						
TOTAL OPERATING		234.0	234.0	234.0	234.0	234.0

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

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

FUNDING : (Thousands of Dollars)

GENERAL FUND		234.0	234.0	234.0	234.0	234.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

FY-86 Grant to Alaska Resources for the Moderately & Severly Impaired \$1,300.0
 FY-86 Number of special education students 15,340 X \$100 (Sec. 14.30.670) 1,534.0
 FY-87 cost estimate \$ 234.0
 Post FY-87 costs will vary based upon special education K-12 population.

Prepared by: Steve Hole Phone: 465-2800
 Division: Commissioner's Office Date: February 6, 1986

Approved by Commissioner: Harold Reynolds, Jr. Date: February 6, 1986
 Agency: Department of Education

Distribution (by Agency preparing fiscal note):

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

SECTIONAL ANALYSIS - HOUSE BILL 543

Sec. 1 PURPOSE To continue to support the availability of Special Education services to all exceptional children in the state.

Sec. 2 SPECIAL EDUCATION SERVICE AGENCY This section provides for the establishment of an eleven member board appointed by the commissioner of education with the approval of the State Board of Education. The membership shall consist of:

- one member from the Governor's Council for the
 Handicapped and Gifted;
- one member from the Department of Education;
- five members who are special education teachers or
 directors, school administrators, or higher
 education or training representatives;
- two who are parents of children requiring outreach
 services;
- one member from the Department of Health and Social
 Services, and
- one public member.

ALASKA RESOURCES FOR THE MODERATELY SEVERELY IMPAIRED

The Alaska Resources for the Moderately/Severely Impaired Program (ARMSI) is funded by a yearly grant provided by the State Department of Education. ARMSI, which is housed in Anchorage, provides services statewide to low incidence, severely handicapped students ages 3 to 22, when the specialized educational services required by the students are not available locally. To qualify for services, a student must be deaf, hard of hearing, blind, visually impaired, severely emotionally disturbed, deaf blind, other health impaired, mentally retarded or multiple handicapped.

ARMSI's main function is to assist districts serving low incidence severely handicapped students by providing on-site technical assistance for district staff. The availability of ARMSI services allows districts to serve many students who otherwise could not be provided adequate educational programs locally.

	FY 84	FY 85	FY 86	FY 87
Children Served	219	255	275	310 (estimate)
Cost	\$1,140,000	\$1,270,000	\$1,300,000	\$1,456,515

The costs of ARMSI services have increased yearly, because of salary increases for staff, increased costs of transportation, and an increase in the number of students served.

We anticipate that the number of students ARMSI serves will increase slightly as the state population increases. The percentage of moderately and severely impaired students should remain between 2% - 5% of the total state special education population.

HOUSE
COMMITTEE REPORT

(7)

Date referred: 2/5/86

FURTHER REFERRALS: FINANCE

DATE: March 13, 1986

HEALTH, EDUCATION AND
The SOCIAL SERVICES

Committee has considered HB 543

"An Act relating to special education service agency."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with 12 HB 543 (HSS) same title
- new title

and recommends do pass

further referral to the _____ Committee

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

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Mrs. Gumbert
Miss Korman
Katie Sullivan
Via Chair Holly L. Taylor
David W. Shannon
Alice Stanley

[Signature] no use

[Signature]
 chairman

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: _____

REQUEST

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

FISCAL DETAIL

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

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

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

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Steve Hole Phone: 2800
 Division: Commissioner's Office Date: 3/14/86

Approved by Commissioner: Marshall Lind Date: 3/14/86
 Agency: Education

- Distribution (by/Agency preparing fiscal note):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

Original sponsors: Duncan and Thompson

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 543 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

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

21 ARTICLE 8. SPECIAL EDUCATION SERVICE AGENCY.

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

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

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

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

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

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

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

8 (6) one public member.

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

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

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

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

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

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

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

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

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

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

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

11 (b) The board shall

12 (1) provide special education services including

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

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

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

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

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

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

1 regulation;

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

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

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

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

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

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

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

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

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

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

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

28 (20) "membership service" means

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

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

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

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

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

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

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

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

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

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

IN THE HOUSE

BY DUNCAN

HOUSE BILL NO. 543

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act creating the special education service agency."

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

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

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

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

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

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

ARTICLE 8. SPECIAL EDUCATION SERVICE AGENCY.

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

Sec. 14.30.610. GOVERNING BOARD. (a) The agency shall be governed by an 11 member board appointed by the commissioner of education with the approval of the state Board of Education. The board consists of

(1) one member from the Governor's Council for the Handicapped and Gifted;

(2) one member from the Department of Education;

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

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

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

(6) one public member.

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

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

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

(c) Board members receive no salary but are entitled to per diem and travel expenses authorized by law for other boards and commissions.

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

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

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

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

1 out the purposes of the agency;

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

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

7 (b) The board shall

8 (1) provide special educational services including

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

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

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

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

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

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

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

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

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

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

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

- (1) "agency" means the special education service agency;
- (2) "board" means the governing board of the special education service agency.

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

Sec. 14.25.047. PARTICIPATION BY SPECIAL EDUCATION AGENCY EMPLOYEES. An employee of the Special Education Agency may participate in the retirement fund under this chapter if

- (1) the employee possesses or is eligible to possess a teacher certificate under AS 14.30.020; and
- (2) the employee pays all retroactive contributions required to be made under this chapter.

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

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

the Department of Education or the school board of a city, regional educational attendance area, or borough school district;

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

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

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

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

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



February 25, 1986

Co-Chairman Kopenen
House HESS Committee
Box Z
Juneau, Alaska 99811

Dear Representative Kopenen:

The Juneau School District, Special Services Program, would like your support of HB 543, "An Act Creating The Special Education Service Agency." HB 543 would provide the State of Alaska with a special education service agency to provide rural school districts with out-reach services for low incidence severely handicapped students.

Currently, low incidence handicapped students are being served through an RFP process handled by the Department of Education on a year-to-year basis. The yearly RFP process does not provide for continuity in services to students nor consistency of staff in providing this service. As you know, continuity and consistenc, of service to these low incidence severely handicapped students is critial for their continued growth.

Your active support in HB 543 would be greatly appreciated for the low incidence handicapped children in rural areas. Other supporters of 543 include the Governor's Council on Handicapped and Gifted, NEA Alaska, Alaska Council for Exceptional Children, Alaska Association for Administrators of Special Education, and the Alaska Resources for the Moderately and Severely Impaired Advisory Board. In addition, companion legislation, a committee substitute to SB 319, has been introduced by Senate HESS.

If you have questions, please feel free to call me at 586-2200. I would be happy to discuss any component of HB 543 with you or your staff.

Sincerely,

David J. Thomas
David J. Thomas
Director, Special Services

DT/el



GOVERNOR'S COUNCIL FOR THE HANDICAPPED AND GIFTED

600 University Avenue, Suite C • Fairbanks, Alaska 99701 • Phone (907) 479-6507

POSITION PAPER ON CSSB 319, HB 543

An act creating a special education outreach services agency

February 17, 1986

The Alaska Governor's Council for the Handicapped and Gifted supports CSSB 319 and HB 543.

The main objective of the legislation is to insure long-term continuity and availability of special education outreach services to low-incidence, hard-to-serve handicapped children in all Alaskan school districts.

The proposed legislation achieves this important goal by creating a public agency to manage the services in cooperation with the Department of Education, and by providing a basic level of funding for the outreach services in relation to the total number of special education students enrolled in school and the total amount of funding for special education in Alaska.

Every child in the United States has the right to a free public education. Sometimes handicapped children have been denied that right because of the severity of the handicap, lack of funding, lack of availability of trained teachers, remoteness or rural location, and discriminatory attitudes. This legislation will help Alaska to keep the promise of a free, appropriate education for every handicapped child no matter where he or she lives and no matter what kind of handicapping condition he or she experiences.

By adopting this measure, at least 300 low-incidence handicapped children per year will receive the services they need for their future personal and academic success. Deaf, blind, orthopedically handicapped, seriously health impaired, deaf-blind, multiply-handicapped, severely mentally retarded, and emotionally disturbed school-age children will be served in all school districts.

Services will be available to assist local administrators, teachers, students and parents in each school district. In many cases, these services will eliminate the need for costly out-of-district or out-of-state placements away from home and family.

Without stable funding and continuity of services, students will not receive the services they require, a number of due process hearings and legal actions are likely to be filed, thirty or forty students will have to leave home and be placed in special schools in Anchorage or outside the state at a cost of \$25,000 to \$95,000 per year per student. And, long-term, we will see people with disabilities becoming adults with life-long dependency on all forms of public programs because they did not have the benefit of specialized education and training to prepare them for social or economic independence.

The Council appreciates legislators' interest in special education for exceptional children, and urges passage of CSSB 319 and HB 543.

GROUPS SUPPORTING CSSB 319 and HB 543

Alaska Association of Administrators for Special Education

Alaska Resources for the Moderately and Severely Impaired, Advisory Board

NEA Alaska

Alaska Council for Exceptional Children

Protection and Advocacy for the Developmentally Disabled

QUESTIONS AND ANSWERS

Why do we need this legislation?

State and federal laws require every handicapped child to receive a free, appropriate public education in the least restrictive environment. Because of the small number of special education students with certain kinds of handicapping conditions, each school district or REAA cannot afford to hire a specialist or a variety of specialists to meet the unique needs of each child. An outreach agency which employs specialists to travel to several districts is a cost-effective, efficient way to reach all students in their home villages or schools.

Aren't these specialists available in the private sector?

No. There are no blind/vision impaired specialists in the private sector in Alaska. Nor are there deaf education specialists, or specialists to work with non-ambulatory, non-verbal, severely mentally retarded children or children with a combination of severe handicaps. There are private psychologists and this legislation would not in any way compete or supplant those existing services.

Why not just give the money to school districts to buy their own services?

If you divided the funds between the 55 school districts, each district would receive about \$27,000 additional dollars. Some districts would not need all the services this year while another district might have several new severely handicapped students enroll in school and not have enough funding to purchase the services. Since the required specialists are not available in the private sector, school districts won't be able to find a provider from whom to purchase the services.

If each district has to negotiate separate contracts for the variety of services needed for each child, more of the local administrators' time will be devoted to this activity and for scheduling and handling logistics.

As proposed there would be one agency responsible for being "on call" to all school districts. By coordinating and centralizing the services, a greater degree of comprehensiveness, stability and efficiency can be achieved.

If private sector people were available, wouldn't the services be cheaper?

No. Costs of the outreach services would be averaged across all the students and districts being served. An outreach agency teacher would be on regular salary rather than on an hourly fee for service, and travelling on a per diem rate rather than a flat fee per day working out of the office. Current daily rates for private consultants in psychological services or physical therapy (services not provided by the outreach agency) range from \$275 to \$450 per day not including travel or per diem or overhead costs.

Aren't the districts already supposed to be serving these children?

Yes, they are. And the districts are serving them. The difficulty is that a single small district cannot afford to hire a specialist just for one or two hard-to-serve students. What the cooperative service agency will do is to provide the specialized services while the local district provides the basic service through its special education program. The district or REAA employs the child's regular classroom teacher and/or aide and provides the direct service on a day-to-day basis.

So what exactly would the special education outreach service agency do?

The outreach service agency sends a specialist in the area of the child's disability to develop specialized materials, train the local teacher or aide, show how services can be provided, set up intervention strategies and monitoring systems, develop home/school programs, assess students, provide audio/visual materials, adapt existing curricula or materials, or provide in-service training to local teachers. In between on-site visits, the outreach specialist does follow-up by phone, sends materials, researches additional resources, coordinates ancillary services, and may be contacted by the district or REAA at any time.

For example, in the case of a blind student, a specialist for the blind/visually impaired may help a local school teach braille, provide braille coursework by transcribing textbook materials, provide curriculum materials, train local teachers to work with the student in learning to use a cane to travel in the school, and supply necessary braille equipment, listening tapes, and other special materials.

Over several on-site visits, the outreach specialist may assess the student and staff needs through observation, testing, and consultation, then help develop a written instructional program for the student along with behavioral objectives, and then train the local teacher to provide the day-to-day services with back-up materials supplied on a regular basis from the outreach service agency.

How many students are we talking about in Alaska?

At any given time, there may be two to five per cent of the special education population in need of some specialized outreach services. Over the past four years when the services were begun in Alaska and provided through a contract, a total of 436 students were served:

FY 83	FY 84	FY 85	FY 86 est
219	219	255	275

It is estimated that over 300 would be served in F87 by the new service agency.

How many districts need the services in a year?

Right now there are 44 districts utilizing the contract services. Last year 46 districts requested services.

Are there any students not being served who need services now?

As of February 6, 1986 twenty-four (24) handicapped students in eleven school districts are on a waiting list for services.

How does Alaska compare with other states in the provision of these kinds of services?

On a percentage basis, Alaska is about average in the number of handicapped students served through special education programs, about 11%. Some states serve as few as 7 or 8%, some as high as 14%.

Because of the small population and the dispersal of students in small rural schools, Alaska faces a number of problems in serving each handicapped child. Problems relating to special education services, ranked in the top ten by Alaska school districts, include staff development, involving parents, ability to provide support services, services to low-incidence students, funding, distances between schools and services, and retention of teachers and aides (Anderson, 1985).

Across the country 37 states developed cooperative service units, intermediate service agencies, regional units, county school offices, and other educational service agencies in the 1970s as a means of providing services in the most efficient manner.

The recent national focus on the quality of education is causing a resurgence of such effort, both for "general" education cooperatives (in program areas of financing, staffing, recruitment, staff development, instructional materials) and for special education cooperatives to provide services covered by CSSB 319 and HB 543. As state boards of education have moved to increase course requirements for math, computers, science, foreign languages, language arts, and social studies, small, isolated rural school districts are being given an even tougher challenge to provide quality education services.

"While general education offers unique challenges for rural educators, providing services to special needs children seems to magnify these challenges" (Hensley, 1966). Benefits of cooperative programs are cited as "cost efficiency, retaining local autonomy, compliance, access to specialists, and better teacher retention" (Widvey et al, 1985).

If the delivery of services has been successful in Alaska since 1981, why not leave it as a contract for services which goes out to bid?

A number of services are not provided which are needed because funds have been cut mid-year during the last two years. Recruitment and retention of specialists has been a continuing problem as the contracting agency does not know from year to year what the funding level will be or whether a different contractor will receive the contract, or whether the Department of Education will further limit or change the kinds of services provided.

Also, as a contract program, the department must go out to bid for the services. The department could decide to go to bid annually, every two years, every three years or not at all. Because of shortages of funds to pay for out-of-state transfers, the department has discussed cutting outreach services by as much as \$650,000 in F87 even though this would mean more students would ultimately be sent away from home to special schools.

As a service which is part of the state's system of public education, the outreach services should be a part of that system, not an optional service if the funds happen to be available from year to year.

How will recruitment and retention be improved if the legislation passes?

Over the past four years six specialists have left the outreach services contractor and gone to work for school districts (one multi-handicapped and one blind specialist to Kenai, two blind specialists to Anchorage, one orthopedically handicapped and one blind/visually impaired specialist to Mat-Su). While helping districts recruit specialists should be one of the stated objectives of the agency, it should not occur as a result of a non-competitive hiring situation. Contractor salaries are lower than school district salaries in Anchorage, employees have not had access to benefits such as retirement, they have worked more days per year, and they may have been required to travel half time.

There is a nation-wide shortage of specialized teachers. The contractor has had one vacancy for a blind/visually impaired orientation and mobility specialist for two years. To serve orthopedically handicapped students, there has been one position unfilled for a year. For deaf/hearing impaired specialists the recruitment period is six months. The contractor has never been able to recruit a language specialist for the multi-handicapped.

By having a public agency with access to the teachers' retirement system or the public employees' retirement system, the agency will be better able to compete with districts in recruitment of personnel. By having a permanent agency established, a greater degree of job security will be afforded. Even with these improvements, the rate of turnover would be expected to exceed that of local districts because of travel demands and other factors.

Won't it cost a lot more per year to provide these benefit options to agency employees?

At the present time the FICA contributions for the kinds of personnel that would be employed by the new agency are about \$61,000 per year. The TRS and PERS costs to the agency are estimated at \$70,000.

What would it cost to have salaries at the same level as the Anchorage School District salary schedule?

Using the 18 positions budgeted under the current DOE contract it would cost about \$26,000 to reach parity.

It should be noted that entry level for program specialists would be expected to be a master's degree with certification in the specialty area plus three years of experience. For most districts, entry level in special education is a bachelor's degree and a general teaching certificate.

How much will it cost to have an agency board?

For an eleven member board to meet four times a year and to hold teleconferences, cost is estimated at \$16,000 as travel can be arranged to coincide with other education meetings such as the superintendents' or school boards' or special education directors' conferences.

What services are not provided that would be able to be provided by the new agency?

Due to limited funding and budget cuts, the funding for outreach services has not kept pace with the number of students needing services or with the other specialized programs funded by the state such as the State Program for the Deaf, the Multi-Handicapped Program, or the API Program, all operated by the Anchorage School District (but not on competitive bid award like the outreach services).

Consequently a number of basic services are not provided:

COST	STAFF	SERVICES	PURPOSE
\$70.0	2	Diagnostic/Therapy	Lack of multi-handicapped therapy services; need increased frequency and more services
5.0	0	Program and Staff Development	Advise districts/REAs on needed services, how to develop local programs, help with recruitment and training, provide advanced training for outreach personnel
30.0	0	Summer Program for Blind Students	Orientation to an urban setting and other specialized training for blind/visually impaired students (12-15/summer) for two weeks
15.0		Central Site Training	One week training at a demo site for 15-20 rural teacher per year
15.0		Workshops	Specialists brought to a central location or to rural districts to give workshops to teachers and aides in areas such as language development for severely multi-handicapped
15.0		Materials and Equipment Loan	Loan to districts for short-term use and try-out to save districts from purchase of expensive equipment that is not appropriate
5.0		Equipment Repair	Repair and maintain equipment on hand

All of the above services were provided prior to F85 except for the purchase of materials and equipment. The services were cut due to contract reductions and restrictions. DOE has instituted a policy to involve the outreach contractor in planning of all out-of-district transfers. No increased funds were allotted for this service in F86.

Would the service agency be competing with existing private providers?

Because the education specialists are not available in the private sector, there is no competition factor to be considered. Because basic diagnostic work and school psychologist services would not be within the framework of the service agency, the public and private sector services would complement each other.

How many students will be served?

About 300 children will be served annually by about 20 specialized personnel at a cost of \$1.5 million, about fifty more students and \$200,000 more than currently budgeted in F86.

What is the time frame for implementing these services?

Time is of the essence in implementing this legislation. The services authorized must be available to school districts in the fall of 1986. Transition from a contract program which expires June 30th to full services under a new public agency must be accomplished quickly. The Commissioner of Education will have to appoint a board, and personnel will have to be recruited. Local districts are preparing their fall 1986 programs and budgets now. They must know that services will be available so their budgets can be finalized and students' individual education programs designed.

What about local control?

Local school districts have the primary responsibility for providing educational services. Therefore, within broad state and federal guidelines, local districts determine their own needs and services. The special education outreach agency will only serve exceptional students at the request of a local district.

For example, a district would initiate a referral to the agency when the district determines it cannot provide services required under the law to a particular student. The agency would take a look at the student's needs in concert with the local district. A service plan would be prepared and signed off by the local district. The services would then be delivered, and, at regular frequencies, the local district or REAA would evaluate, modify, and monitor the service.

By establishing a board with representation from school administrators, special education directors, teachers, and local parents of children requiring outreach services, responsiveness to local needs will be insured. Seven of the eleven board members would represent these constituencies.

Also, by having an agency separate from the Department of Education, but related to it by regulation, funding, and appointment of board members, a balance between department control and local control can be achieved.

A public board means public scrutiny of policies and operations and this, in turn, assures long-term viability and responsiveness of services.

Why not have the service provided by the Department of Education?

The original SB 319 called for the department to employ the personnel and provide the services. Two problems exist with that option. First, the department's role is administrative, regulatory, and consultative.

Second, the cost of creating 20 or more state positions at the Education Specialist level and range would be more than the amount currently projected to operate the total program including travel, overhead, equipment, and associated costs.

What is the rationale for the funding mechanism?

First, funding for the outreach services must be stable. This is essential to guarantee that the services will be there when students and districts need them.

Second, funding must not come out of the foundation account. The foundation funding is to cover regular, on-going local district services. It is not designed to cover extraordinary costs such as school construction, or the costs of special schools, or the unpredictable, fluctuating costs of outreach services for these hard-to-serve handicapped students.

Given the possibility of reduced foundation funding over-all for some rural districts, and the fact that there has been no increase in foundation funding the past three years, the idea of taking the outreach services funding from the foundation account or charging districts for the services would be a "double whammy".

To give a funding floor for the outreach services, the proposed funding mechanism would be related to state funding for special education and to the number of students enrolled in special education programs. When over-all dollars for education increase or decrease, funding for the outreach services would increase or decrease. When special education enrollments increase, the need for outreach services will increase, and so funding will be related to that increase.

Since about two per cent of the state's special education students may need outreach services each year, an amount equal to two per cent of the funds appropriated for special education would be allocated to the special education service agency. Under the proposed DOE foundation proposal about \$63 to 65 million would be generated statewide for special education. Two per cent would be about \$1.3 million.

Based on \$100 per student in special education, an approach used in several other states, the 15,000 special education students would provide a base of \$1.5 million for the services.

The proposed legislation provides a base level of funding tied to these two important variables, state appropriations for education and student enrollments, and would not preclude districts from paying for additional services if this was mutually agreed. Nor would it preclude utilizing other agencies as agents or sub-contractors for services.

These principles are consistent with the principles used in school funding in Alaska and across the country: more students in more schools generate more dollars, and education funding changes based on state and local economic conditions.

If the funding were based on actual cost per student or dollars per student/district, there would be big fluctuations from fall to spring, and from year to year, with a constant game of "catch up" to what is needed, thus defeating the purpose of stabilizing the funding and insuring efficiency and continuity of service.

Why not have the funding level left to the annual discretion of DOE?

Discretionary funding does not provide stability or continuity from year to year. As discussed above, the services budget has been cut mid-year during the last two years: \$130,000 or about 10% in F85 and now another \$60,000 in F86.

A look at the funding levels for contract programs shows that the outreach services have been decreased while others programs have increased.

DOE CONTRACT PROGRAMS-SCHOOLS FOR THE HANDICAPPED

Program	#	F85	F86	Increase	% +/-	Cost/Student
OUTREACH	250	1,400.0	1,300.0	(100.0)	- 7.1	5,200
A.P.I.	20	206.1	247.8	41.7	+20.2	12,390
DEAF	60	1,294.5	1,407.3	112.8	+ 8.7	23,455
MULTI-HDCP	80	1,272.5	1,429.8	157.3	+12.3	17,872
A.N.M.C.	10	106.1	-0-	(106.1)	-100.0	-0-
OUT/STATE	9	400.0	40.2	(359.8)	- 90.0	60,000*
Total	429	4,679.2	4,425.2	(254.1)	- 5.4	

Note that the \$254,100 decrease from F85 to F86 was a transfer of funds to a new BRU for the Youth in Detention programs at McLaughlin, Fairbanks Youth Facility, and Johnson Human Services Center. The Alaska Native Medical Center services were eliminated in F86.

The API, Deaf, and Multi-Handicapped programs are contracted to the Anchorage School District and do not go out to bid.

* Estimated average cost/student for an out-of-state 12 month placement.

POSITION PAPER ON CSSB 319, HB 543

An act creating a special education outreach services agency

February 17, 1986

The Alaska Governor's Council for the Handicapped and Gifted supports CSSB 319 and HB 543.

The main objective of the legislation is to insure long-term continuity and availability of special education outreach services to low-incidence hard-to-serve handicapped children in all Alaskan school districts.

The proposed legislation achieves this important goal by creating a public agency to manage the services in cooperation with the Department of Education, and by providing a basic level of funding for the outreach services in relation to the total number of special education students enrolled in school and the total amount of funding for special education in Alaska.

Every child in the United States has the right to a free public education. Sometimes handicapped children have been denied that right because of the severity of the handicap, lack of funding, lack of availability of trained teachers, remoteness or rural location, and discriminatory attitudes. This legislation will help Alaska to keep the promise of a free, appropriate education for every handicapped child no matter where he or she lives and no matter what kind of handicapping condition he or she experiences.

By adopting this measure, at least 300 low-incidence handicapped children per year will receive the services they need for their future personal and academic success. Deaf, blind, orthopedically handicapped, seriously health impaired, deaf-blind, multiply-handicapped, severely mentally retarded, and emotionally disturbed school-age children will be served in all school districts.

Services will be available to assist local administrators, teachers, students and parents in each school district. In many cases, these services will eliminate the need for costly out-of-district or out-of-state placements away from home and family.

Without stable funding and continuity of services, students will not receive the services they require, a number of due process hearings and legal actions are likely to be filed, thirty or forty students will have to leave home and be placed in special schools in Anchorage or outside the state at a cost of \$25,000 to \$95,000 per year per student. And, long-term, we will see people with disabilities becoming adults with life-long dependency on all forms of public programs because they did not have the benefit of specialized education and training to prepare them for social or economic independence.

The Council appreciates legislators' interest in special education for exceptional children, and urges passage of CSSB 319 and HB 543.

GROUPS SUPPORTING CSSB 319 and HB 543

Alaska Association of Administrators for Special Education

Alaska Resources for the Moderately and Severely Impaired, Advisory Board

NEA Alaska

Alaska Council for Exceptional Children

Protection and Advocacy for the Developmentally Disabled

QUESTIONS AND ANSWERS

Why do we need this legislation?

State and federal laws require every handicapped child to receive a free, appropriate public education in the least restrictive environment. Because of the small number of special education students with certain kinds of handicapping conditions, each school district or REAA cannot afford to hire a specialist or a variety of specialists to meet the unique needs of each child. An outreach agency which employs specialists to travel to several districts is a cost-effective, efficient way to reach all students in their home villages or schools.

Aren't these specialists available in the private sector?

No. There are no blind/vision impaired specialists in the private sector in Alaska. Nor are there deaf education specialists, or specialists to work with non-ambulatory, non-verbal, severely mentally retarded children or children with a combination of severe handicaps. There are private psychologists and this legislation would not in any way compete or supplant those existing services.

Why not just give the money to school districts to buy their own services?

If you divided the funds between the 55 school districts, each district would receive about \$27,000 additional dollars. Some districts would not need all the services this year while another district might have several new severely handicapped students enroll in school and not have enough funding to purchase the services. Since the required specialists are not available in the private sector, school districts won't be able to find a provider from whom to purchase the services.

If each district has to negotiate separate contracts for the variety of services needed for each child, more of the local administrators' time will be devoted to this activity and for scheduling and handling logistics.

As proposed there would be one agency responsible for being "on call" to all school districts. By coordinating and centralizing the services, a greater degree of comprehensiveness, stability and efficiency can be achieved.

If private sector people were available, wouldn't the services be cheaper?

No. Costs of the outreach services would be averaged across all those students and districts being served. An outreach agency teacher would be on regular salary rather than on an hourly fee for service, and travelling on a per diem rate rather than a flat fee per day working out of the office. Current daily rates for private consultants in psychological services or physical therapy (services not provided by the outreach agency) range from \$275 to \$450 per day not including travel or per diem or overhead costs.

Aren't the districts already supposed to be serving these children?

Yes, they are. And the districts are serving them. The difficulty is that a single small district cannot afford to hire a specialist just for one or two hard-to-serve students. What the cooperative service agency will do is to provide the specialized services while the local district provides the basic service through its special education program. The district or REAA employs the child's regular classroom teacher and/or aide and provides the direct service on a day-to-day basis.

So what exactly would the special education outreach service agency do?

The outreach service agency sends a specialist in the area of the child's disability to develop specialized materials, train the local teacher or aide, show how services can be provided, set up intervention strategies and monitoring systems, develop home/school programs, assess students, provide audio/visual materials, adapt existing curricula or materials, or provide in-service training to local teachers. In between on-site visits, the outreach specialist does follow-up by phone, sends materials, researches additional resources, coordinates ancillary services, and may be contacted by the district or REAA at any time.

For example, in the case of a blind student, a specialist for the blind/visually impaired may help a local school teach braille, provide braille coursework by transcribing textbook materials, provide curriculum materials, train local teachers to work with the student in learning to use a cane to travel in the school, and supply necessary braille equipment, listening tapes, and other special materials.

Over several on-site visits, the outreach specialist may assess the student and staff needs through observation, testing, and consultation, then help develop a written instructional program for the student along with behavioral objectives, and then train the local teacher to provide the day-to-day services with back-up materials supplied on a regular basis from the outreach service agency.

How many students are we talking about in Alaska?

At any given time, there may be two to five per cent of the special education population in need of some specialized outreach services. Over the past four years when the services were begun in Alaska and provided through a contract, a total of 436 students were served:

FY 83	FY 84	FY 85	FY 86 est
219	219	255	275

It is estimated that over 300 would be served in F87 by the new service agency.

How many districts need the services in a year?

Right now there are 44 districts utilizing the contract services. Last year 46 districts requested services.

Are there any students not being served who need services now?

As of February 6, 1986 twenty-four (24) handicapped students in eleven school districts are on a waiting list for services.

How does Alaska compare with other states in the provision of these kinds of services?

On a percentage basis, Alaska is about average in the number of handicapped students served through special education programs, about 11%. Some states serve as few as 7 or 8%, some as high as 14%.

Because of the small population and the dispersal of students in small rural schools, Alaska faces a number of problems in serving each handicapped child. Problems relating to special education services, ranked in the top ten by Alaska school districts, include staff development, involving parents, ability to provide support services, services to low-incidence students, funding, distances between schools and services, and retention of teachers and aides (Anderson, 1985).

Across the country 37 states developed cooperative service units, intermediate service agencies, regional units, county school offices, and other educational service agencies in the 1970s as a means of providing services in the most efficient manner.

The recent national focus on the quality of education is causing a resurgence of such effort, both for "general" education cooperatives (in program areas of financing, staffing, recruitment, staff development, instructional materials) and for special education cooperatives to provide services covered by CSSB 319 and HB 543. As state boards of education have moved to increase course requirements for math, computers, science, foreign languages, language arts, and social studies, small, isolated rural school districts are being given an even tougher challenge to provide quality education services.

"While general education offers unique challenges for rural educators, providing services to special needs children seems to magnify these challenges" (Hensley, 1966). Benefits of cooperative programs are cited as "cost efficiency, retaining local autonomy, compliance, access to specialists, and better teacher retention" (Widvey et al, 1985).

If the delivery of services has been successful in Alaska since 1981, why not leave it as a contract for services which goes out to bid?

A number of services are not provided which are needed because funds have been cut mid-year during the last two years. Recruitment and retention of specialists has been a continuing problem as the contracting agency does not know from year to year what the funding level will be or whether a different contractor will receive the contract, or whether the Department of Education will further limit or change the kinds of services provided.

Also, as a contract program, the department must go out to bid for the services. The department could decide to go to bid annually, every two years, every three years or not at all. Because of shortages of funds to pay for out-of-state transfers, the department has discussed cutting outreach services by as much as \$650,000 in F87 even though this would mean more students would ultimately be sent away from home to special schools.

As a service which is part of the state's system of public education, the outreach services should be a part of that system, not an optional service if the funds happen to be available from year to year.

How will recruitment and retention be improved if the legislation passes?

Over the past four years six specialists have left the outreach services contractor and gone to work for school districts (one multi-handicapped and one blind specialist to Kenai, two blind specialists to Anchorage, one orthopedically handicapped and one blind/visually impaired specialist to Mat-Su). While helping districts recruit specialists should be one of the stated objectives of the agency, it should not occur as a result of a non-competitive hiring situation. Contractor salaries are lower than school district salaries in Anchorage, employees have not had access to benefits such as retirement, they have worked more days per year, and they may have been required to travel half time.

There is a nation-wide shortage of specialized teachers. The contractor has had one vacancy for a blind/visually impaired orientation and mobility specialist for two years. To serve orthopedically handicapped students, there has been one position unfilled for a year. For deaf/hearing impaired specialists the recruitment period is six months. The contractor has never been able to recruit a language specialist for the multi-handicapped.

By having a public agency with access to the teachers' retirement system or the public employees' retirement system, the agency will be better able to compete with districts in recruitment of personnel. By having a permanent agency established, a greater degree of job security will be afforded. Even with these improvements, the rate of turnover would be expected to exceed that of local districts because of travel demands and other factors.

Won't it cost a lot more per year to provide these benefit options to agency employees?

At the present time the FICA contributions for the kinds of personnel that would be employed by the new agency are about \$61,000 per year. The TRS and PERS costs to the agency are estimated at \$70,000.

What would it cost to have salaries at the same level as the Anchorage School District salary schedule?

Using the 18 positions budgeted under the current DOE contract it would cost about \$26,000 to reach parity.

It should be noted that entry level for program specialists would be expected to be a master's degree with certification in the specialty area plus three years of experience. For most districts, entry level in special education is a bachelor's degree and a general teaching certificate.

How much will it cost to have an agency board?

For an eleven member board to meet four times a year and to hold teleconferences, cost is estimated at \$16,000 as travel can be arranged to coincide with other education meetings such as the superintendents' or school boards' or special education directors' conferences.

What services are not provided that would be able to be provided by the new agency?

Due to limited funding and budget cuts, the funding for outreach services has not kept pace with the number of students needing services or with the other specialized programs funded by the state such as the State Program for the Deaf, the Multi-Handicapped Program, or the API Program, all operated by the Anchorage School District (but not on competitive bid award like the outreach services).

Consequently a number of basic services are not provided:

COST	STAFF	SERVICES	PURPOSE
\$70.0	2	Diagnostic/ Therapy	Lack of multi-handicapped therapy services; need increased frequency and more services
5.0	0	Program and Staff Development	Advise districts/REAs on needed services, how to develop local programs, help with recruitment and training, provide advanced training for outreach personnel
30.0	0	Summer Program for Blind Students	Orientation to an urban setting and other specialized training for blind/visually impaired students (12-15/summer) for two weeks
15.0		Central Site Training	One week training at a demo site for 15-20 rural teacher per year
15.0		Workshops	Specialists brought to a central location or to rural districts to give workshops to teachers and aides in areas such as language development for severely multi-handicapped
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STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST Bill/Resolution No.: <u>HB 543</u> Title: <u>"An Act creating the special education service agency."</u> Sponsor: <u>Duncan</u> Requestor: _____ Date of Request: _____	FISCAL DETAIL Agency Affected: <u>Education</u> BRU: <u>TRS State Match</u> Components: <u>TRS State Match</u>
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EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES						
RTMNT & BNFTS						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
TRS MATCH		70.9	76.6	82.7	89.3	96.5
TOTAL OPERATING	-0-	70.9	76.6	82.7	89.3	96.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		70.9	76.6	82.7	89.3	96.5
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	70.9	76.6	82.7	89.3	96.5

POSITIONS: -0- -0- -0- -0- -0- -0-

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See attached

Prepared By: J.K. Humphreys, Director Phone: 465-4470
 Division: Retirement & Benefits Date: 2/11/86
 Approved by Commissioner: Eleanor Andrews Date: 2/12/86
 Agency: Department of Administration

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

House Bill 543
Fiscal Note Analysis
Prepared by Division of Retirement & Benefits
Department of Administration

February 10, 1986

iv Analysis:

Passage of this bill would create a new special education service agency, with 21 professional employees participating in the Teachers' Retirement System (TRS). The FY 87 TRS covered payroll for this new agency is estimated to be \$798,465.

The TRS State Match cost of \$70.9 is calculated as follows:

$\frac{1}{2}$ of 17.76% (the actuarially determined contribution rate) times the estimated FY 87 TRS salaries (\$798,465) equals

\$70,900.00

GOVERNOR'S COUNCIL FOR THE HANDICAPPED AND GIFTED

600 University Avenue, Suite C • Fairbanks, Alaska 99701 • Phone (907) 479-6507



MEMORANDUM of FEBRUARY 11, 1986

TO: SPECIAL EDUCATION DIRECTORS and GROUPS CONCERNED WITH
SPECIAL EDUCATION

RE: SENATE BILL 319 and HOUSE BILL 543

FROM: DOT TRURAN, Staff, GOVERNOR'S COUNCIL *DT*

Enclosed is a copy of HOUSE BILL 543, which is the House version of SB 319, the special education service agency (cooperative service or outreach service) bill.

It is important for you to know about these bills, recent changes, and some of the rationale behind them. It is also important for you to give input to your legislators and the members of the HESS and Finance Committees.

The Senate HESS Committee will be having a hearing on SB 319 on February 27th. The House HESS Committee may hear HB 543 on the 26th. Once they are passed out of the HESS Committees, they will be considered by the Finance Committees.

Senator Fahrenkamp, Chair of Senate HESS, has had a member of her staff participate in the special education funding formula development, and is very interested in seeing that comprehensive special education services are available statewide.

House Bill 543, introduced last week by Representative Duncan of Juneau, contains the revisions to SB 319 suggested by various groups over the past six months. They are also contained in a draft committee substitute (CS) for SB 319. The changes came up in discussions with members of the ARMSI Board and staff, Don McKinnon of the Superintendents' Association, Bob Greene of the School Boards' Association, and the Executive Committee of the Governor's Council for the Handicapped and Gifted.

The changes are as follows:

1. The revised bill calls for a Special Education Service Agency separate from the Department of Education, but related to it by regulations, funding, and appointment of board members.

The original bill established a "cooperative service unit" in the Department which meant it would be operated by the department and personnel would be DOE employees recruited under the state's civil service system, and paid at state wage scales. Concerns were raised about issues of local control, insuring responsiveness to local and rural districts' needs, obvious political problems with establishing 20-some new state positions at a time when the Governor and the Legislature are cutting state positions, and the difficulties inherent in hiring specialists or changing staffing patterns via the state's personnel system.

2. The revised bill says that the employees of the new special education service agency are not state employees and not subject to the state's personnel rules. But, employees would be able to be members of the Teachers' Retirement System or the Public Employees' Retirement System.

; means the outreach services agency would be better able to recruit and retain the quality of program specialists needed to serve local districts. Under the present arrangement, contract for services to a non-profit agency, the education specialists cannot be members of the teachers' retirement system and therefore often look for other employment where there is job security from year-to-year and access to retirement benefits.

3. The new bill cleans up the funding mechanism language so that funding for the agency does not come out of foundation funding. It was never intended by the original sponsors, Senators Zharoff and Rodey, that funding should come out of the foundation account, but a drafting oversight had it set up that way in the original SB 319.

Given the possibility of reduced foundation funding over-all for some rural districts, and the fact that there has been no increase in foundation funding the past three years, the idea of taking the outreach services funding from the foundation account or charging the districts for the services would be a "double whammy".

As revised in HB 543 the funding would come from the Department of Education in a separate budget line item from the foundation funding. But funding would be related to foundation funding as follows: an amount equivalent to two per cent (note there is still a typo in the bill) of the funds appropriated for special education would be provided to the agency each year or \$100 per special education student in ADM statewide would be budgeted for the agency.

Since about two per cent of the state's special education students may be served by the outreach agency each year, an amount equal to two per cent of the total special education funding might be a reasonable funding base. Under the proposed DOE foundation proposal about \$61 million would be generated statewide for special education. Two per cent would be \$1.22 million. Based on \$100 per student in special education, the 15,000 students would provide a base of \$1.5 million for the outreach services. The \$61 million would go to districts in foundation funding for special education. At least an additional \$1.22 or \$1.5 million, whichever is greater, would go to fund the special education service agency. (Note that contract outreach services are currently budgeted at \$1.3 million and not all needed services are currently available.)

This is a pro-ration of funding based on the total population much like a tax on the whole population to make sure services are provided to the most needy.

The proposed bill provides a base level of funding and would not preclude districts from paying for "extra" services (above base, such as diagnostic or other service not available) if this was mutually agreed. Nor would it preclude utilizing regional agencies such as Southeast Regional Resource Center from providing many of the services on a regional basis as an arm of the special education service agency.

The fiscal relationship that would be constant over time would be that as

dollars for education increase, the dollars for the agency would increase or, as the number of students increases over-all, the number of students requiring the outreach services will increase and so will the funding. Both of these mechanisms are consistent with the principles used in school funding in Alaska and across the country: more students in more schools generate more dollars, and education funding continues to change based on state economic conditions and inflation factors.

If the funding were based on actual cost per student or dollars per student/district there would be big fluctuations from spring and from year to year, with a constant game of "catch'up" to what is needed, thus defeating the purpose of stabilizing the funding and insuring continuity of service.

Here is the status regarding groups supporting the legislation:

OFFICIALLY IN FAVOR:

Governor's Council for the Handicapped and Gifted

Alaska Association of Administrators for Special Education

Alaska Resources for the Moderately and Severely Impaired Advisory Board

National Education Association, Alaska

Council for Exceptional Children, Alaska

The Department of Education (Steve Hole, January 30th) indicated a desire to support the bill. The idea is considered good (Commissioner Reynolds, January 29th). Three technical concerns need further discussion or some sort of resolution in order for the department to fully support the legislation: fiscal note, funding mechanism, and sunset provision. Discussions are continuing on these issues.

FEB 25 Recd

DISTRICT OFFICE

BERING STRAIT SCHOOL DISTRICT

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February 19, 1986



Honorable John G. (Jack) Fuller
Representative for Alaska
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BREVIG MISSION

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UNALAKLEET

WALES

WHITE MOUNTAIN

Dear Representative Fuller:

I am writing in support of House Bill 543 which provides for the establishment of a Special Education Service Agency to make special education and related services available to all hard-to-serve low incidence handicapped children in rural Alaska. The proposed legislation would utilize existing funding under the "Contract Services" portion of the Department of Education budget to establish a permanent state administrative structure attached to the Department of Education. The principal benefit realized by House Bill 543 would be the assurance of stability and continuity of services for severely handicapped children in isolated areas.

The Bering Strait School District has coordinated for the past four years with the outreach program, Alaska Resources for the Moderately/Severely Impaired (A.R.M.S.I.) to provide services for low incidence students. The A.R.M.S.I. project has maintained a high level of excellence, however each year district administration, parents and students do not have the guarantee of an on-going level of services. This district is committed to meeting the unique learning needs of each child in his or her local village, however without the expertise of specialists for the deaf, visually impaired and multihandicapped, it is doubtful whether several of our students could be educated in their villages.

The outreach model for services to low incidence students realizes the least restrictive environment for exceptional students in rural Alaska while being cost effective for the state.