

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8342 SENATE JUDICIARY

HB

410

CS HB 410 (STA)

HB 410 brings the real estate appraisers program into federal compliance. In 1989 the U.S. statutes enacted the Financial Institutions Reform and Recovery Act. (FIRREA). This act requires federal lending programs to have the appraisal certified by a state certified appraiser.

Initially, FIRREA set the number of classroom hours required for residential real estate appraisers at 75. In 1992 they increased this requirement to 105 hours. Now, the minimum number of hours required is 120. Alaska statutes have not been changed to reflect these increases. We still have a 75 hour requirement for certification as a residential real estate appraiser. The Federal Financial Institutions Examinations Council audited the Alaska certifying program recently and

gave the Alaska program until June 30, 1994 to meet the new requirements.

The Council has advised us that appraisers who do not meet 120 hours of training will no longer be recognized as certified appraisers and therefore will not be qualified to conduct appraisals in which federally financed loans are involved.

Currently there are 73 residential real estate appraisers and 75 general real estate appraisers licensed by the Alaska Real Estate board. This past year there were approximately 12,000 residential loan closures (this figure includes refinancing). A vast majority of these loans involved federal financing.

HB 410 removes the reference to specific number of hours required for certification in the statute and allows the Board of Real Estate Appraisers to set the minimum requirement in regulation. This change will allow the board to respond to changes in federal requirements without having to continually require legislation. The wording "not to exceed" was added in House Labor and Commerce to ensure that requirements adopted by the board are no more stringent than federal certification requirements.

HB 410 would also extend the termination date for the Board of Real Estate Appraisers to 1998

STATE OF ALASKA
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
BOARD OF CERTIFIED REAL ESTATE APPRAISERS
P.O. BOX 110806
JUNEAU, ALASKA 99811-0806
(907) 465-2542

Requirements for Certification as a General Real Estate Appraiser

Pursuant to AS 08.87.110, the board shall issue a general real estate appraiser certificate to a person who presents evidence satisfactory to the board that the person

(1) has successfully completed 150 hours of classroom instruction in subjects related to real estate appraisal from an appraisal organization or academic institution approved by the board; and

(2) has successfully completed 15 classroom hours of instruction related to standards of professional practice as a real estate appraiser;

(3) has within the seven years immediately preceding the filing of the application for certification four years of experience in real property appraisal or three years of experience as a registered trainee under AS 08.87.310;

(4) successfully completes an examination prescribed by the board;

(5) has not been convicted of a crime involving moral turpitude; and

(6) has paid the required fees.

CERTIFICATE BY ENDORSEMENT

The board may issue a general real estate appraiser certificate to a person who can, by evidence satisfactory to the board, show that the person

(1) has been certified in another state that has certification requirements substantially equivalent to the requirements established by this chapter and by regulations issued by the board under this chapter, and that provides for certification of nonresidents under condition similar to those set out in this subsection and without discriminatory costs;

(2) is not the subject of an unresolved complaint or disciplinary action before an authority regulating real estate appraiser or a professional real estate appraiser's association;

(3) has not failed the examination for certification as a real estate appraiser in this state;

(4) has not had certification as a real estate appraiser revoked or suspended in this state or in another jurisdiction;

(5) has submitted proof of continued competency satisfactory to the board;

(6) successfully completes an examination that may be prescribed by the board relating to appraisal matters unique to Alaska; and

(7) has paid the required fees.

CERTIFICATE BY EXAMINATION

The Alaska Board of Certified Real Estate Appraisers currently utilizes as its testing agent Assessment Systems, Inc. (ASI). Application forms for the examination are available from the offices of the Division of Occupational Licensing. For specific information regarding the examination and fees contact:

Appraiser Examination Program
ASI Processing Center
718 Arch Street
Philadelphia, PA 19106
Phone: (215) 592-0266

The following items must be on file before you will be considered for a certificate by examination:

1. complete and notarized application;
2. application fee, \$50.00;
3. certification fee, \$250.00;
4. federal registry fee, \$50.00 (\$25.00 per year);
5. official transcript, certified copies of certificates of completion or other evidence of course completion acceptable to the board that verify:
 - a. successful completion of 150 or more classroom hours of instruction in subjects related to real estate appraisal from an appraiser organization or academic institution approved by the board; and
 - b. successful completion of 15 classroom hours of instruction related to standards of professional practice as a real estate appraiser.

An applicant's classroom hours of instruction must relate directly to real estate appraisal theory or practices and must have been completed through courses offered by one of the following appraisal organizations or academic institutions:

1. any member organization of the Appraisal Foundation; or
2. regionally accredited junior college, college, or university.

To meet the requirements for initial certification, a course or seminar must be a minimum of 15 classroom hours in duration and require successful completion of a final examination.

6. Work experience verification form (three forms). The total amount of an applicant's work experience must be verified by a combination of at least three different individuals. If an applicant cannot, for good cause, provide three different work experience verification forms, the board will, in its discretion, consider other forms of work experience verification. For the general appraiser, 50% of the experience must be in nonresidential property. Alaska has adopted that ratio in our general appraiser experience requirements. Since the state law specifies four years of experience for a general appraiser, 50%, or two years of that must be in nonresidential property. Since the law defines one year as 1,000 work hours, a total of 2,000 hours of nonresidential experience must be demonstrated by each person seeking the general certification.

That experience need not be in a two-year period, but must be entirely within a seven-year period since all of the creditable experience for a general appraiser must have occurred during the past seven years.

7. Copy of examination results.

CERTIFICATE BY ENDORSEMENT

A person certified as a general real estate appraiser in another state who wishes to practice in the State of Alaska may apply for certification by endorsement by submitting the following items:

1. complete and notarized application;
2. application fee, \$50.00;
3. certification fee, \$250.00;
4. federal registry fee, \$50.00 (\$25.00 per year);
5. official transcript, certified copies of certificates of completion or other evidence of course completion acceptable to the board that verify:
 - a. successful completion of 150 or more classroom hours of instruction in subjects related to real estate appraisal from an appraiser organization or academic institution approved by the board; and
 - b. successful completion of 15 classroom hours of instruction related to standards of professional practice as a real estate appraiser.
6. Verification of certification from all states that applicant holds or has held a certificate/license.
7. Documentation of 40 hours of continuing education in real estate appraisal that contributed directly to a certified real estate appraiser's knowledge of current theories, practices and techniques of real estate analysis and appraisal that was obtained immediately preceding the date of application.

State of Alaska
 Department of Commerce and Economic Development
 Division of Occupational Licensing
 Board of Certified Real Estate Appraisers
 P.O. Box 110806
 Juneau, Alaska 99811-0806

FOR OFFICE USE ONLY

**GENERAL REAL ESTATE APPRAISER
 CERTIFICATION APPLICATION**

Applying by: Exam Endorsement

Application Fee: \$50.00 Certification Fee: \$250.00 Federal Registry Fee: \$50.00
 (\$25.00 per year)

BIOGRAPHICAL INFORMATION (Please Print)

NAME: _____
First M.I. Last

MAILING ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____ HOME TELEPHONE NO.: _____

(Social security number and personal physical characteristics are optional but are requested for identification purposes)

DATE OF BIRTH: _____ HEIGHT: _____ WEIGHT: _____ SEX: _____ EYES: _____ HAIR: _____ SOCIAL SECURITY NO.: _____
Month Day Year Inches

	YES	NO
1. Are you under indictment for, or have you ever been convicted of a crime?	<input type="checkbox"/>	<input type="checkbox"/>
2. Have you ever had a real estate appraiser license certificate revoked, denied, or suspended?	<input type="checkbox"/>	<input type="checkbox"/>
3. Have you ever had any other professional or occupational license revoked in any state or country?	<input type="checkbox"/>	<input type="checkbox"/>
4. Have you been the subject of an unresolved complaint or disciplinary action before an authority regulating real estate appraisers or a professional real estate appraiser's association?	<input type="checkbox"/>	<input type="checkbox"/>
5. Have there been any judgments rendered against you in the last three years?	<input type="checkbox"/>	<input type="checkbox"/>
6. Have you ever had a lawsuit filed against you alleging fraud or misrepresentation?	<input type="checkbox"/>	<input type="checkbox"/>

If you answered "yes" to any of the six questions in the boxed biographical area, attach a letter of explanation regarding the nature of the action, the date it occurred, and the resolution of the problem. Lawsuits that are related to accident, divorce or child support require only a brief explanation. For any other type of action, attach legal documentation.

TYPE OF ACTION REQUESTED

1. **Issue Initial Certificate By Examination (AS 08.87.110, 12 AAC 70.100)**
 Required education completed, certificate attached Yes No
 Have you ever been certified? Yes No When _____
 If yes, in what state? _____ Certificate No. _____
 Exam Passed: Place _____ Date _____
2. **Issue Certificate By Endorsement**
 Are you currently certified in another state? Yes No
 If yes, what state? _____ Certificate No. _____
 Date license certification verification requested from previous state _____
 Place _____ Date _____

CURRENT EMPLOYMENT INFORMATION

Provide names of employer(s), address(es), zip code(s), phone number(s), position(s) held, duties and responsibilities, and name of direct supervisor(s).

Expected place of employment in Alaska _____

Mailing address _____

City _____ State _____ Zip Code _____

Telephone _____

Beginning date of employment _____

STATE OF ALASKA
Department of Commerce and Economic Development
Division of Occupational Licensing
Board of Certified Real Estate Appraisers
P.O. Box 110806
Juneau, Alaska 99811-0806
(907) 465-2542

AUTHORIZATION FOR RELEASE OF RECORDS

TO WHOM IT MAY CONCERN:

I, _____, residing at _____

_____, authorize the Alaska Division of Occupational Licensing and its investigators to examine my appraisal employment, educational records, and records pertaining to litigation, judgements, suits and/or settlements, and any law enforcement records pertaining to me and discuss them with persons having possession of them. I also expressly permit and authorize the release of all such records pertaining to me to the Alaska Division of Occupational Licensing and its investigators.

I request that upon presentation of this release, or a true copy, that you provide copies of those records to the division and its investigators.

I authorize the division to discuss my records with persons or organizations which are considered appropriate by the division in connection with an official investigation, and to provide copies of my records to those persons or organization if appropriate.

This release also applies to any documents or records which contain information pertaining to psychiatric, drug or alcohol evaluation, diagnosis or treatment received by me.

This authorization is given expressly in connection with my application (initial, renewal, reactivation) for Alaska Appraisal Certificate. This authorization expires one year from the date of my signature.

My social security number is: _____ My date of birth is: _____

Home Telephone: () _____ Work Telephone: () _____

I hereby release you, your organization, the Alaska Department of Commerce and Economic Development, Division of Occupational Licensing and its investigators, and all others directly or indirectly involved in this matter from any liability or damage which may result from furnishing the information requested.

Signature: _____ Date: _____

SIGNED AND SWORN to before me on this _____ day of _____, 19 _____

Notary Public
My Commission Expires: _____

If Notary Public is unavailable, please have a witness verify your signature.

Witness: _____ Date: _____

NOTE: A photocopy reproduction of this request shall be, for all intents and purposes, as valid as the original. You may retain this form for your files.

State of Alaska
Department of Commerce and Economic Development
Division of Occupational Licensing
Board of Certified Real Estate Appraisers
P.O. Box 110806, Juneau, Alaska 99811-0806

VERIFICATION OF LICENSURE/CERTIFICATION

Sir:

I am applying for a certification to practice as an appraiser in the State of Alaska. The Board of Certified Real Appraisers requires that this form be completed by each jurisdiction in which I hold or have held certificates/licenses. Please complete the form and return it directly to the Board of Certified Real Estate Appraisers at the above address.

Name _____

Address _____

The information below must be completed by the state licensing board, not to be completed by the applicant.

.....
PLEASE DO NOT DETACH.

State of _____

Name of Licensee/Certificate Holder: _____

License/Certificate No. _____ Issued effective _____

By credentials/endorsement _____ By examination _____

Exam Source _____ (i.e., ASI, PES, etc.) Date _____

Certificate/License is current _____ lapsed _____ Expiration date _____

Has the applicant's certificate/license ever been suspended, revoked, voluntarily surrendered, placed on probation or restricted in any other way? Yes No

If so, for what reason? _____

Derogatory information, if any _____

Comments, if any _____

Does your state allow nonresidents to become certified? Yes No

If yes, is there additional costs or requirements to be incurred by the applicant? Yes No

[Board Seal]

(All verifications must have board seal)

Signed _____

Title _____

State Board _____

Date _____

State of Alaska
Department of Commerce and Economic Development
Division of Occupational Licensing
Board of Certified Real Estate Appraisers
P.O. Box 110806, Juneau, Alaska 99811-0806

**WORK EXPERIENCE VERIFICATION FOR
GENERAL REAL ESTATE APPRAISERS**

The board will accept a work verification form only if it has been completed by a licensed construction contractor, federal or state lender, present or former employer, company or entity that deals with real estate appraisers or officers of a state or federal agency, all of whom may have recent knowledge of the specific appraiser's experience.

SECTION I. General Real Estate Appraiser

I, _____ of _____
Printed Name Title Representing
_____ certify to my knowledge that _____
Name of Applicant

has at least four years of experience of which two years of experience is known to me to be of a nonresidential experience in real property appraisal within the last seven years or three years of experience as a registered trainee under AS 08.87.310. I am/was associated with the applicant from ____ / ____ to ____ / ____ .
mo. yr. mo. yr.

NOTARY SEAL

Signature

Date

SUBSCRIBED AND SWORN before me, a Notary Public, in and for the state of _____
this ____ day of _____, 19 ____ .

Notary Public

My Commission Expires: _____

SECTION II. Registered Trainee

Please complete this section if applicant is a registered trainee:

I, _____ certify that I am a certified real estate appraiser
certified in the State of Alaska and that _____ has been/was
Applicant's Name
employed and under my direct supervision as a registered trainee from ____ / ____ to ____ / ____ .
mo. yr. mo. yr.

NOTARY SEAL

Signature

Date

SUBSCRIBED AND SWORN before me, a Notary Public, in and for the state of _____
this ____ day of _____, 19 ____ .

Notary Public

My Commission Expires: _____

State of Alaska
Department of Commerce and Economic Development
Division of Occupational Licensing
Board of Certified Real Estate Appraisers
P.O. Box 110806, Juneau, Alaska 99811-0806

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mo. yr. mo. yr.

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Applicant's Name
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mo. yr. mo. yr.

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Printed Name Title Representing

_____ certify to my knowledge that _____
Name of Applicant

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mo. yr. mo. yr.

NOTARY SEAL

Signature

Date

SUBSCRIBED AND SWORN before me, a Notary Public, in and for the state of _____
this ____ day of _____, 19 ____ .

Notary Public

My Commission Expires: _____

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certified in the State of Alaska and that _____ has been/was
Applicant's Name

employed and under my direct supervision as a registered trainee from ____ / ____ to ____ / ____ .
mo. yr. mo. yr.

NOTARY SEAL

Signature

Date

SUBSCRIBED AND SWORN before me, a Notary Public, in and for the state of _____
this ____ day of _____, 19 ____ .

Notary Public

My Commission Expires: _____

The following is summary comments which should help the applicant complete the appraiser's work verification form for Board review. The purpose of this form is for the board to determine the diversity and complexity of work experience and to verify the appropriate number of work hours. The following guide notes, labelled A through K, are provided to explain what type of information the board looks for in each column. Please refer to the following list when filling out the work verification form.

- (A) ID Number: This number is your office file identification number.
- (B) Date: The month and year the appraisal report was completed.
- (C) Name/Location: This is the common name/location of the property, i.e., George's Office Tower, Anchorage, Alaska. Please be very clear, so the board can understand the property being appraised.
- (D) Size: Size of the property, note if square footage, acres, or number of units.
- (E) Experience Category: A numeric answer regarding the following 11 experience categories.
- (F) Property Classification: Below are 13 general property classifications, indicate the one which most closely approximates the appraisal assignment.
- (G) Value Range: Check the appropriate column range as follows: \$1 to \$250,000; \$251,000 to \$500,000; \$500,001 and over.
- (H) Approaches to Value: Check the appropriate columns if full approaches to value were utilized in the report.
- (I) Type of Report: Please check appropriate format for report, i.e., narrative, letter, form appraisal, or other. If the other column is checked, please attach an explanation as to the format used.
- (J) Appraiser: Indicate whether you were sole signer, co-signer or did not sign the report.
- (K) Hours: Indicate total number of hours spent on research, analysis and preparation of report. Do not include hours which someone else spent.

EXPERIENCE CATEGORY

1. Fee and Staff Appraisal
2. Ad Valorem Tax Appraisal
3. Review Appraisal
4. Appraisal Analysis
5. Real Estate Counseling
6. Highest and Best Use Analysis
7. Feasibility Analysis
8. Instruction of Appraisal Courses
9. Setting Forth of Opinions of Value of Real Property for Tax Purposes as an Employee of a County Assessor's or Board of Equalization
10. Assistance in Preparation of Appraisals
11. Real Estate Valuation Experience as a Real Estate Lending Officer or Real Estate Broker but Only to the Extent that the Experience is Directly Related to the Actual Performance or Professional Review of Real Estate Appraisals

PROPERTY CLASSIFICATIONS:

- CB Commercial Building
- CL Commercial & Office Land
- FL Farm/Forest Land
- FR Farm/Forest Land with Residential and/or Farm-Use Equipment
- IB Industrial Warehouse & Manufacturing Building
- IL Industrial and "Business Campus" Land
- MFS Multi-Family Small 2-8 Units
- MFL Multi-Family Large 8 or More Units
- ML Multi-Family Land
- OB Office Buildings and Plazas, Including Medical
- RL Residential (Single-Family) Land Including Any Subdivision Potential and Multiple Lot Sales
- SFR Single Family Residential (1-4 Family Units)
- OT Other (Please Specify) _____

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 410 (H&C) (STA)

Revision Date: 4/21/94
 Title: An Act relating to real estate appraisers and the Board of Certified Real Estate Appraisers.
 Sponsor: House Labor & Commerce
 Requestor: House Labor & Commerce

Department: Commerce and Economic Dev.
 BRU: Occupational Licensing
 Component: Operations

COMPONENT SERIAL NO. 1844

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
--------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 94) cost: \$ None

POSITIONS

POSITIONS	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)
 The bill amends AS 08.87 allowing the Board of Certified Real Estate Appraisers to adopt regulations necessary to comply with federal laws. New funds are not required to implement provisions of this bill.

Prepared by: Jennifer Strickler, Administrative Officer
 Division: Occupational Licensing
 Approved by Commissioner: Paul Fuhs
 Agency: Commerce and Economic Development

Phone: 465-2144
 Date: 4/21/94
 Date: 4/21/94

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HB

415

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 415 (JUD)

Revision Date: March 2, 1994
Title: "...making corrective amendment: to the Alaska Statutes..."
Sponsor: House Rules Committee by Request
Requestor: House Rules Committee

Department Affected: Department of Law
BRU: Legal Services
Component: Operations
COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard I. Peques, Director
Division: Administrative Services Division

Phone: 465-3672
Date: March 2, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law

March 2, 1994

PREPARER TO PROVIDE
For further

FISCAL NOTES

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r's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 415 (JUD)

ANALYSIS CONTINUATION:

The Judiciary Committee Substitute makes non-substantive changes to the original bill that will not have an impact. Otherwise, this bill seeks legislative concurrence with corrections to the Alaska Statutes recommended by the revisor of statutes, needed to correct inadvertent errors in recently approved legislation to conform to the understanding of what the legislation was to accomplish. For example, in legislation involving the Alaska Public Utilities Commission, the term commission is substituted for the inadvertent use of the term department. The Department of Law has reviewed the bill and concurs with the corrections that have been recommended by the revisor of statutes. None of the needed corrections will have a fiscal impact.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

NO. _____
BILL VERSION: CSHB 415 (JUD)
PUBLISH DATE: _____

Revision Date: _____
Title: "An Act making corrective amendments to the Alaska Statutes as recommended by the revisor..."
Sponsor: House Rules Committee
Requestor: House Rules Committee

Department Affected: Legislative Affairs Agency
BRU: All
Component: All

COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
----------------	---	---	---	---	---	---

REVENUE FUND SOURCE	0	0	0	0	0	0
----------------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact.

Prepared By: Karla Schotfield, Deputy Director *Karla Schotfield* Phone: 465-3852
Division: Administrative Services Date: 3/2/94

Approved By: Pamela A. Stoops, Executive Director *Pamela A. Stoops*
Agency: Legislative Affairs Agency Date: 3/2/94

Distribution (by preparer): Leg. Finance, Legislative Sponsor, Requestor, OMB, Gov. , & Impacted Agency(ies).

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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


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

MEMORANDUM

January 27, 1994

SUBJECT: 1994 Revisor's Bill (Work Order No. 8-LS1482\A)

TO: Representative Carl Moses, Chair
House Rules Committee

FROM: David R. Dierdorff 
Revisor of Statutes

The enclosed bill was prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

* * * shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of * * * the statute law of this state.

To assist in understanding the bill, I have summarized the contents by listing sections that have similar purposes or effects.

Sections that delete, repeal, or update obsolete provisions: Sections 17 and 18 delete, update, or repeal provisions that have become obsolete either through other legislative action or the passage of time.

Sections that correct errors or oversights: Sections 3, and 6 - 15 correct errors or oversights that can not be corrected editorially.

Sections that improve the form or substance of the law: Sections 1, 2, 4, and 5 propose amendments to improve the form or substance of the statute law of Alaska.

SECTIONAL ANALYSIS

Section 1. This section proposes a clarifying amendment to AS 09.38.015(a)(10), which includes an individual's permanent fund dividend in the items exempt from execution. Under current language there is some ambiguity, because it exempts "that portion" of a dividend exempted under AS 43.23.065(a). The exemption granted by

Representative Carl Moses

January 27, 1994

Page 3

Sec. 17. This amendment replaces an obsolete reference to a former division with a reference to the department.

Sec. 18. The repealers. The first two provisions proposed for repeal, AS 37.05.-140(b) and (c), are obsolete and probably should not have been codified in 1962. The third provision, AS 46.03.825(g)(13), defines a term that is not used in the section. The text of all repealed provisions is set out in an appendix attached to this memo.

Sec. 19. Makes secs. 6 - 15 retroactive to the effective date of ch. 18, SLA 1993.

Sec. 20. Provides an immediate effective date for the bill.

DRD:gc:lmb

94-029.lmb

Enclosure

Representative Carl Moses

January 27, 1994

Page 2

(a), however, is subject to certain restrictions set out in subsection (b). The proposed language restates the AS 09.38.015(a)(10) exemption to make it clear that the AS 09.38 exemption for dividends is the same as that granted under AS 43.23.065.

Sec. 2. In a recent decision, the Alaska Court of Appeals held that the definition of "property of another" found in AS 11.46.990 articulates the common law as expressed in a 1970 decision and applied that definition to the phrase as used in AS 11.41.520, establishing the crime of extortion. Woodward v. State, 855 P.2d 423 (Alaska App. 1993). The court noted that in the original draft revision of the criminal code, extortion was placed in the chapter dealing with crimes against property (AS 11.46). When, in a subsequent version, the crime was relocated to the chapter dealing with crimes against persons (AS 11.41), the legislature neither provided a new definition nor expressly made the definition in AS 11.46.990 applicable. The court suggested that this was an oversight rather than a deliberate legislative decision. This section of the revisor's bill codifies the court's decision by duplicating the definition in AS 11.46.990 in the extortion statute, AS 11.41.520.

Sec. 3. This amendment conforms the provisions for resident king salmon tags to the changes made by §§ 44 and 45, ch. 63, SLA 1993 (HCS CSSB 99(FIN) am H). The amendment was requested by the Department of Law.

Secs. 4 and 5. The two amendments simply change commissioner [of natural resources] to department to conform these two provisions to all others in AS 41.23.

Secs. 6 - 15. This series of amendments, made retroactive to August 11, 1993 by sec. 19, corrects drafting oversights in ch. 18, SLA 1993 (HCS CSSB 106(FIN)), that could not be corrected editorially. The need for the amendments was discovered immediately after adjournment of the first session. The amendments have been reviewed by the affected state agencies and the law has been administered as though the amendments were in place.

Sec. 16. In Executive Order No. 84, the powers and duties of the Alaska Women's Commission were transferred to a new Alaska Human Relations Commission and the Women's Commission was abolished. The Executive Order failed to amend or otherwise deal with AS 44.66.010(a)(12), which established the sunset review date for the Women's Commission. In this bill section, an amendment is proposed that changes the entry for the Women's Commission to one for the Human Relations Commission. The sunset date is not changed, and it would not be appropriate to do so in a revisor's bill. If the legislature chooses to make a change in the date, or do anything other than change the name or repeal the provision, this bill section should be deleted and another vehicle selected to accomplish the legislature's goal. The amendment is included in this draft at the request of the Department of Law.

APPENDIX - TEXT OF PROVISIONS TO BE REPEALED

AS 37.05.140(b) and (c):

(b) Accounting machines not otherwise needed by the agencies as determined by the Department of Administration that can be utilized by the Department of Administration shall be transferred to it on written direction after consultation with the head of the agency concerned, instead of the purchase of new machines.

(c) The calculable savings to the agencies resulting from the transfer of accounting functions to the Department of Administration shall be impounded and deposited in the general fund as part of the unappropriated balance. The calculable savings shall be used to offset these general fund appropriations made to the Department of Administration for purposes of performing centralized accounting, purchasing, and related functions. The calculable savings shall be determined by the department after consultation with the head of the agency concerned and shall be impounded from both general fund appropriations and from money from other funds available to the agencies involved in the transfer.

AS 46.03.825(g)(3):

(3) "registered" means registered under AS 46.04.035;

DRD:gc:lmb
94-029.lmb

HOUSE JOURNAL SUPPLEMENT

February 22, 1994

Tuesday

No. 12

**REVISOR OF STATUTES
SECTIONAL ANALYSIS FOR
CSHB 415(JUD)**

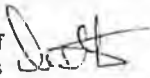
DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

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

MEMORANDUM

February 17, 1994

SUBJECT: CSIB 415(Judiciary) (1994 Revisor's Bill)
TO: Representative Brian Porter, Chair
House Judiciary Committee
FROM: David R. Dierdorff 
Revisor of Statutes

On February 17, 1994, your committee adopted a committee substitute for HB 415. This sectional analysis has been prepared to describe the changes made by your committee and provide a guide to the bill for other legislators and the public.

The changes made by your committee were: the addition of bill section 4; the deletion of former bill section 16; and the addition of AS 03.80.030(5) to the provisions proposed for repeal.

The revisor's bill is prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

*** shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of *** the statute law of this state.

To assist in understanding the bill, I have summarized the contents by listing sections that have similar purposes or effects.

Sections that delete, repeal, or update obsolete provisions: Sections 17 and 18 delete, update, or repeal provisions that have become obsolete either through other legislative action or the passage of time.

Sections that correct errors or oversights: Sections 3, 4, and 7 - 16 correct errors or oversights that can not be corrected editorially.

Representative Brian Porter
February 17, 1994
Page 2

Sections that improve the form or substance of the law: Sections 1, 2, 5, and 6 propose amendments to improve the form or substance of the statute law of Alaska.

SECTIONAL ANALYSIS

Section 1. This section proposes a clarifying amendment to AS 09.38.015(a)(10), which includes an individual's permanent fund dividend in the items exempt from execution. Under current language there is some ambiguity, because it exempts "that portion" of a dividend exempted under AS 43.23.065(a). The exemption granted by (a), however, is subject to certain restrictions set out in subsection (b). The proposed language restates the AS 09.38.015(a)(10) exemption to make it clear that the AS 09.38 exemption for dividends is the same as that granted under AS 43.23.065.

Sec. 2. In a recent decision, the Alaska Court of Appeals held that the definition of "property of another" found in AS 11.46.990 articulates the common law as expressed in a 1970 decision and applied that definition to the phrase as used in AS 11.41.520, establishing the crime of extortion. *Woodward v. State*, 855 P.2d 423 (Alaska App. 1993). The court noted that in the original draft revision of the criminal code, extortion was placed in the chapter dealing with crimes against property (AS 11.46). When, in a subsequent version, the crime was relocated to the chapter dealing with crimes against persons (AS 11.41), the legislature neither provided a new definition nor expressly made the definition in AS 11.46.990 applicable. The court suggested that this was an oversight rather than a deliberate legislative decision. This section of the revisor's bill codifies the court's decision by duplicating the definition in AS 11.46.990 in the extortion statute, AS 11.41.520.

Sec. 3. This amendment conforms the provisions for resident king salmon tags to the changes made by §§ 44 and 45, ch. 63, SLA 1993 (HCS CSSB 99(FIN) am 11). The amendment was requested by the Department of Law.

Sec. 4. This section amends AS 16.05.940(10), the definition of "domestic mammal" for the fish and game laws. Section 19 would make the amendment retroactive to May 16, 1992. In sec. 30 of the 1992 revisor's bill, which became ch. 30, SLA 1992, effective May 16, 1992, the definition of "domestic mammal" was amended to include elk. It was believed that this was a technical change required by the fact that elk could now be farmed under AS 16.40.050, enacted in 1987. Our legal opinion in 1992 was that the phrase "lawfully owned" meant that in order for an elk to be considered a domestic mammal, it had to be owned under an elk farming license. There is now some question about whether that is the case. Because revisor's bills should only change substantive law when that change is required to conform provisions and when the legislature is fully informed about the change, I believe that it is incumbent upon me to propose "undoing" the 1992 amendment and make that change retroactive to

Representative Brian Porter
February 17, 1994
Page 3

its effective date. This action was requested by the Department of Fish and Game and is supported by the Department of Law.

Secs. 5 and 6. The two amendments simply change commissioner [of natural resources] to department to conform these two provisions to all others in AS 41.23.

Secs. 7 - 16. This series of amendments, made retroactive to August 11, 1993 by sec. 20, corrects drafting oversights in ch. 18, SLA 1993 (HCS CSSB 106(FIN)), that could not be corrected editorially. The need for the amendments was discovered immediately after adjournment of the first session. The amendments have been reviewed by the affected state agencies and the law has been administered as though the amendments were in place.

Sec. 17. This amendment replaces an obsolete reference to a former division with a reference to the department.

Sec. 18. The repealers. The first provision proposed for repeal, AS 08.80.030(5), duplicates paragraph (4) of the same statute. The redundancy was brought to our attention by the regulations attorney in the Department of Law. The next two provisions proposed for repeal, AS 37.05.140(b) and (c), are obsolete and probably should not have been codified in 1962. The fourth provision, AS 46.03.825(g)(13), defines a term that is not used in the section. The text of all repealed provisions is set out in an appendix attached to this memo.

Sec. 19. Makes the amendment of AS 16.05.940(10) in sec. 4 retroactive to May 16, 1992, the effective date of ch. 30, SLA 1992.

Sec. 20. Makes secs. 7 - 16 retroactive to the effective date of ch. 18, SLA 1993.

Sec. 21. Provides an immediate effective date for the bill.

DRD:gc
94-134.glc

APPENDIX - TEXT OF PROVISIONS TO BE REPEALED

AS 09.80.030(5):

(1) adopt regulations to carry out the purposes of this chapter;

AS 37.05.140(b) and (c):

(b) Accounting machines not otherwise needed by the agencies as determined by the Department of Administration that can be utilized by the Department of Administration shall be transferred to it on written direction after consultation with the head of the agency concerned, instead of the purchase of new machines.

(c) The calculable savings to the agencies resulting from the transfer of accounting functions to the Department of Administration shall be impounded and deposited in the general fund as part of the unappropriated balance. The calculable savings shall be used to offset those general fund appropriations made to the Department of Administration for purposes of performing centralized accounting, purchasing, and related functions. The calculable savings shall be determined by the department after consultation with the head of the agency concerned and shall be impounded from both general fund appropriations and from money from other funds available to the agencies involved in the transfer.

AS 46.03.825(g)(3):

(3) "registered" means registered under AS 46.04.135;

DRD:gc
91-134 glc

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

REPLY TO:

- 1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697
- KEY BANK BUILDING
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1588
FAX: (907) 456-1317
- P.C. BOX ~~110300~~ — STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 462-5205 *465-6735*

February 2, 1994

David Dierdorff, Revisor of Statutes
Div. of Legal Services
Legislative Affairs Agency
130 Seward Street
Goldstein Bldg., Rm. 414
Juneau, AK 99801

Dear Dave:

We have reviewed HB 415, the 1994 revisor's bill. We find no legal problems. We believe the bill makes important technical changes to improve Alaska statutes.

Thanks again for the opportunity to review this important bill.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: *Deborah E. Behr*
Deborah E. Behr
Assistant Attorney General

DEB:cl

cc: Raga Elim, Legislative Liaison
Office of the Governor

HB

417

STATE OF ALASKA
1994 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO

No. 2
Bill Version: CS83 417 f Jud.
(H) Publish Date: 2/24/94

Revision Date: _____ Dept. Affected: Public Safety
Title: Possession of Firearms in Schools BRU: Alaska State Troopers
Component: Detachments
Sponsor: Rep. Burda
Requestor: H. HES COMPONENT SERIAL NO. 799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 94) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact is anticipated to the Department of Public Safety.

COMMITTEE COPY

Prepared By: Lee Ann Lucas Phone: 485-4327
Division: Office of the Commissioner Date: 2/18/94

Approved by Commissioner: Richard

FISCAL NOTES

PREPARER TO PROVIDE ALL
For further distri

R'S LEGISLATIVE OFFICE
lative Office

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 417

ANALYSIS CONTINUATION:

First, this bill amends AS 11.51.220(a) to prohibit possession of a deadly weapon within the grounds of or on a parking lot immediately adjacent to a public or private preschool, elementary, junior high, or secondary school, within the crime of misconduct involving weapons in the third degree. The existing statute prohibits possessing a firearm under these circumstances. The bill also expands the existing prohibition to include postsecondary educational institutions.

Second, the bill amends AS 14.03 to permit school officials, in private and public schools and in private and public postsecondary institutions, to search and examine the contents of student lockers and other containers to determine compliance with school regulations and local, state, and federal laws. Schools would be required to post notices in prominent locations throughout a school two weeks before a search is conducted stating the right and the intention of a school to conduct a search or examination. The bill also provides that this requirement is satisfied if the notices are posted continuously.

These changes should not have a fiscal impact for the Department of Law. It is possible that schools could be liable for damages if they do not protect the privacy of students, by revealing the contents of lockers that are not the purpose of a search authorized by this bill.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

No. 1
Bill Version: CSHB 417 (Jud)
(H) Publish Date: 2/24/94

Revision Date: February 9 1994
Title: "...possession of deadly weapons...relating to school lockers..."
Sponsor: Representative Bunde
Requester: Representative Bunde

Department Affected: Department of Law
BRU: Prosecution
Component: All
COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL

REVENUE

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please

Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Division Date: February 9, 1994
Approved by Commissioner: Bruce M. Botelho Attorney General
Agency: Department of Law Date: February 9, 1994

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JUNEAU SCHOOL DISTRICT

CITY AND BOROUGH OF JUNEAU
OFFICE OF THE SUPERINTENDENT

10014 CRAZY HORSE DRIVE • JUNEAU, ALASKA 99801-8529 • (907) 463-1700 • FACSIMILE (907) 463-1712

April 5, 1994

Honorable Con Bunde
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Post-It™ brand fax transmittal memo 7671		# of pages ▶
To: <i>Con Bunde</i>	From: <i>Bob Van Slyke</i>	
Co.:	Co. <i>Juneau Schl Dist</i>	
Dept.:	Phone # <i>463-1700</i>	
Fax # <i>465-3871</i>	Fax #	

Dear Representative Bunde:

It has come to our attention that Committee Substitute for House Bill 417 will be up for consideration. We have reviewed the bill and are supportive of it and your efforts to control weapons on school property.

Sincerely,

Robert S. Van Slyke, Ed.D.
Superintendent



Lawrence A. Wiget, Ed.D.
Director, Government Relations/Legislative Liaison
1600 Debarr Road
P.O. Box 196614
Anchorage, Alaska 99519-6614
(W) 907 269-2255 (FAX) 907 269-2107

TO: REPRESENTATIVE CON BUNDE

SUBJECT: SUPPORT OF HB 417

DATE: MARCH 29, 1994

We support passage of House Bill 417. The Bill would provide statutory support for administrative procedures already in place in the Anchorage School District.

The section on notice for locker searches could be made more broad so as to allow notification through the student handbook and permanent posting of notices of the right to search in each school.

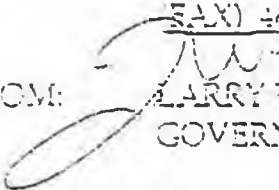
The Anchorage School District parent and students have discussed and approved of the concept of locker searches in the interest of safe schools.

ANCHORAGE SCHOOL DISTRICT
ANCHORAGE, ALASKA

LEGISLATIVE INFORMATION REQUEST

JANUARY 25, 1994

TO: REPRESENTATIVE CON BUNDE
C/O PATTI SWENSON
FAX) 464-3671

FROM:  LARRY WIGET, DIRECTOR
GOVERNMENT RELATIONS/LEGISLATIVE LIAISON

SUBJECT: ASD SUSPENSIONS/ WEAPONS INCIDENTS: 1993

Per our conversation relating to weapon incidents in the Anchorage School District, I am attaching the following documents:

ASD Memorandum #486 (92-93): Suspension Report - Elementary
ASD Memorandum #489(92-93): Secondary School Suspension Report
for the 1992-93 School Year

Elementary

Elementary students suspended during 1992-93 for weapons violations was one. In the "other" category, which includes such things as bringing knives to school, setting off fire alarms, racial slurs, rude gestures, pushing and hitting staff members, stealing, and making threatening remarks, 36 students were suspended.

The statistics for the 93-94 school year are currently being compiled and will be forwarded to you when available.

Secondary

A total of 106 suspensions for all types of weapons were reported for the year compared to 96 in 1991-92 and 69 in 1990-91. Suspensions related specifically to guns reached a total of 26 this year for various degrees of involvement in these incidents. A total of thirteen students were expelled for gun related incidents.

There were 10 firearm incidents, and 32 weapons incidents for the first quarter of the 1993-94 school year.

Enclosures

**BACKGROUND FROM THE
ANCHORAGE SCHOOL
DISTRICT**

ANCHORAGE SCHOOL DISTRICT
ANCHORAGE, ALASKA

MEMORANDUM

December 1, 1992

TO: ECE CHRISTAL
ACTING SUPERINTENDENT

FROM: BILL MELL, EXECUTIVE DIRECTOR
SECONDARY EDUCATION

SUBJECT: WEAPONS INCIDENTS - FIRST QUARTER, 1992

The rate of incidents is up over the past two school years. The level of concern at schools has not returned to the early level exhibited in 1990. That is attributed to the schools acting quickly on information received. There have been no gang related incidents except for the neo nazi confrontation at Service. The outcomes for the students in that incident is attached as a separate memo.

Given the growth in violence related incidents and the sharp drop in drug and alcohol suspension, the Secondary Division is preparing a proposal for providing alternatives to suspension and expulsion for students involved with weapons or gangs using existing program staff. The proposal will be ready for review by December 18, 1992.

A District-wide review of weapons, firearms and gang related incidents is summarized in the chart below.

First Quarter Incident Frequency Chart
December 1, 1992

Year	Weapons Other than Firearms	Firearms	Gang Related Incidents
1990-91	5	0	0
1991-92	11	5	0
1992-93	15	2	1

*Service neo nazi incident

Attachment, Service memo

Post-It™ brand fax transmittal memo 7671 (1 of pages) 2

To	Patti Swenson	From	ZARA WISE
Co.		Co.	ASD
Dept.		Phone #	269-2255
Fax #	465-3871	Fax #	269-2107

ANCHORAGE SCHOOL DISTRICT
ANCHORAGE, ALASKA

ASD MEMORANDUM #489 (92-93)

June 23, 1993

TO: SCHOOL BOARD

FROM: OFFICE OF THE SUPERINTENDENT *[Signature]*

SUBJECT: SECONDARY SCHOOL SUSPENSION REPORT FOR THE 1992-93 SCHOOL YEAR

*Weapons - 106*PERTINENT FACTS:

A summary of the suspension rates for the 1992-93 school year is attached as Attachment A. This document shows cumulative suspensions by category in the chart at the top of the page. Suspensions by school are shown on the chart on the bottom half of the page.

The overall suspension rate for this year compared to last year is essentially unchanged. Secondary student population increased by approximately 3.6 percent and the total number of suspensions is up by 3.5 percent. There is some variation in rates by category, however, most changes fall within the normal variations between years. Drug and alcohol suspensions remain constant at 25 percent of their peak in the mid 1980's. Fighting and weapon related suspensions are up 1,060 to 1,171 and 96 to 106 respectively. Vandalism and false fire alarms are down 66 to 31 and 11 to 3 respectively. At the same time, suspensions caused by refusal to cooperate with alternatives to suspension dropped from 650 to 413. Willful disobedience increased from 232 to 304 suspensions for the year.

Suspensions related to weapons have continued to increase even though they remain a small percentage of the total number of suspensions. A total of 106 suspensions for all types of weapons were reported for the year compared to 96 in 1991-92 and 69 in 1990-91. This is due, in part, to increased attention paid to the problem. Suspensions related specifically to guns reached a total of 26 this year for various degrees of involvement in these incidents. A total of thirteen students were expelled for gun related incidents. An additional eight students attended the Conflict Resolution pilot at REACH for serious weapons related incidents. The status of the weapons issue should continue to be judged as serious but is stable at this time. No gang related incidents other than graffiti were reported by the schools



Jermain Dunnagan & Owens, P.C.
LAW OFFICES

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1000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
TELEPHONE (907) 343-9844
FAX (907) 343-7322

March 31, 1994

OPINION OF COUNSEL

Bob Christal, Superintendent
Anchorage School District
P.O. Box 196614
Anchorage, AK 99519

Dear Bob:

You have requested an opinion on House Bill 417, relating to the possession of deadly weapons on school grounds and parking lots. I have reviewed the legislation and would strongly recommend that the District encourage Anchorage representatives to vote in favor of the measure.

During the past year, we have advised the District in numerous situations involving possession of weapons by students and non-students on school grounds and parking lots. Many of these situations involve former students or young adults who do not attend school. In most of these situations, school personnel have been left to deal with the situation without the aid or assistance of local law enforcement agencies. Law enforcement agencies are not able to assist or intervene to help school officials until some altercation breaks out or the school administrator makes a citizen's arrest for trespass under local ordinances. Obviously, once situations have escalated to the point of arresting someone for trespass or an altercation has occurred, a substantial risk of endangerment to the safety of school personnel and students has already arisen. Yet, local law enforcement agencies have no criminal law to enforce until situations escalate to the point of being out of control and dangerous. The proposed law would be a meaningful remedy and aid to school administrators. If the bill is passed into law, school officials would be able to call for assistance from local law enforcement agencies and they would be able to intervene to enforce the possession of a deadly weapon law. Moreover, such a law would eventually have a deterrent impact, particularly on the non-students who come on to school grounds with weapons in their possession.

Regarding the provision on school lockers, the proposed law would grant broad authority for school officials to conduct general random searches of school lockers with advanced notice. While I have not done an exhaustive constitutional analysis of this measure, some recent cases have greatly expanded the authority of school officials to conduct general random searches. Isiah B. v. State of Wisconsin, 500 N.W. 2d 637 (Wis. 1993). The proposed law would undoubtedly serve as a significant deterrent to students bringing weapons, drugs, or alcohol with them to school. If school districts adopt appropriate policies to implement this provision, I am confident the legislation could be applied in a constitutional manner.

3-31-94 THU 13:00
SENT BY: JDO

LEGISLATIVE LIAISON
: 3-31-94 : 12:50PM :

FAX NO. 9072692107
JDO-

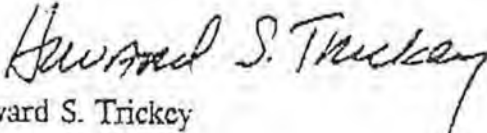
P. 03
9072692107:= 3/ 3

March 31, 1994
Page 2

If you have any further questions regarding this matter, please do not hesitate to contact me.

Sincerely,

JERMAIN, DUNNAGAN & OWENS, P.C.


Howard S. Trickey

HST/jh

cc: Larry Wiget, Legislative Liaison

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

COPY

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

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

MEMORANDUM

March 8, 1994

SUBJECT: Sectional Summary of CSHB 417(HES)
(Work Order No. 8-LS1589R)

TO: Representative Con Bunde
Attn: Patty

FROM: Jerry Luckhaupt
Legislative Counsel

You have asked for a sectional summary of the above-described bill. Please be advised that a sectional summary is not an authoritative statement of the contents of a bill - the bill itself is the best statement of its contents.

Section 1 of the bill amends AS 11.61.210(a) by providing that a person commits the crime of misconduct involving weapons in the fourth degree if a person possesses a deadly weapon^{1/} or a defensive weapon,^{2/} on school grounds or the parking lot of a preschool, elementary, junior high, or secondary school, in certain situations or while participating in a school sponsored event. Violation of this section is a class A misdemeanor.^{3/} AS 11.61.220(g). The possession of firearms and defensive weapons is currently prohibited at schools and their grounds under AS 11.61.220-(a)(4) which is being repealed in sec. 3 of this bill.

Section 2 of the bill provides that a peace officer may possess a deadly weapon on school grounds.

^{1/} "Deadly weapon" is defined at AS 11.81.900(b)(13) as:

firearm, or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckles, or an explosive . . .

^{2/} "Defensive weapon" is defined at AS 11.81.900(b)(16).

*"A loaded gun, in case to dispense
Mace or a similar chemical agent that is not
designed to cause death or serious physical injury."*

^{3/} A class A misdemeanor is punishable as provided in AS 12.55.135 (imprisonment) and 12.55.035 (fine).

Section 3 of the bill amends AS 11.61.220(a) to correspond with the change made in sec. 1 of the bill.

Section 4 of the bill amends AS 14.03 by adding a new section that provides for the search and examination of school lockers by school officials. Subsection (c) of that section, provides that this grant of authority does not diminish any separate authority to search that might exist.

Section 5 of the bill amends AS 14.45 by adding a new section that permits private schools to search school lockers as provided in AS 14.03.105 (added by sec. 4 of the bill).

GPL:lmb
94-077.lmb



SPONSOR STATEMENT

SCSCSHB 417(STA)

“An Act relating to the possession of deadly weapons within the grounds of or on the parking lot of preschools, elementary, junior high and secondary schools; and relating to school lockers and other containers provided in a public or private school by the school or the school district.”

Our responsibility as lawmakers is to establish public policy. We need to anticipate problems and offer solutions to those problems before they become overwhelming burdens. Our highest priority should be safe schools that allow students the opportunity to learn and provide teachers an environment in which to teach.

School districts throughout the state currently search lockers for a variety of prohibited items. However, these searches are not backed up by the force of law. The intent of HB 417 is to enhance the ability of school districts throughout the state to avoid potentially fatal occurrences with deadly weapons. This bill will give school districts needed statutory authority to search lockers and other containers on school grounds for firearms, defensive weapons and deadly weapons.

Educational institutions already possess some right to conduct searches but the boundaries of that right are unclear, variable, and subject to constant constitutional challenges based on the argument that students have a “legitimate expectation of privacy” in their lockers. A school might believe that it needed a separate legal clearance for every locker search. Section 4 of HB 417 clarifies the conditions of locker searches.

Section 4 would announce that educational institutions could generally conduct or authorize the searches so long as students are warned ahead of time not to expect their lockers are private. Subsection (b) clarifies that advance warning must consist of the posting of notices throughout the school before the searches occur. Schools wishing to conduct a policy of continual searches could keep notices permanently posted.

The amount of violence in schools throughout our state is escalating. If we do not take strong measures to curb the trend our students will pay the price. Schools will become places of fear instead of learning. Our standard of education will drop as teachers are forced to dedicate more of their scarce time to protecting students and themselves. This bill will provide the necessary back-up for a tool that is already in use by our schools and it will send a strong message to our students. I urge your support for HB 417.

From fistfights to gunfights

For educational excellence to be achieved, schools must be safe and hospitable places for teachers and students. Yet, in an ever-increasing number of our schools, students and teachers are expected to endure violence, fear and intimidation on a daily basis.

Violence within the schools of America has increased dramatically over the past decade and continues to escalate at an alarming rate. Gang encroachment, drug and alcohol abuse, poverty, child abuse and neglect, overcrowded classrooms and lack of parental supervision and discipline have rendered the once "safe harbor" of the classroom a microcosm of today's social ills.

In a case heard by the U.S. Supreme Court, *New Jersey v. T.L.O.*, Justice Powell commented on the growing problem of violence in schools. He wrote:

Without first establishing discipline and maintaining order, teachers cannot begin to educate their students. And apart from education, the school has the obligation to protect pupils from mistreatment by other children, and also to protect teachers themselves from violence by the few students whose conduct in recent years has promoted national concern.

Most people equate school violence with large urban areas such as New York, Chicago or Los Angeles. While there has been ample reporting of the violence plaguing big-city schools, violence has invaded suburban and rural schools with little notice by the national media.

A bill introduced into the House of Representatives of the U.S. Congress (H.R. 4538, "Classroom Safety Act of 1992") summarized the rising tide of violence in America's schools thusly:

• Nearly 3,000,000 crimes occur on or

near school campuses every year;

- One fourth of the major school districts now use metal detectors in an attempt to reduce the number of weapons introduced into the schools by students;
- Twenty percent of teachers in schools have reported being threatened with violence by a student;
- The despair brought on by poverty and disenfranchisement that affects millions of our youth is rapidly entering the schools;
- Schools are being asked to take on responsibilities that society as a whole has neglected, forcing teachers to referee fights rather than teach;
- Teachers are staging walk-outs to protest the violence which denies interested students the opportunity to learn.

Teachers and administrators require special skills to cope with potentially explosive situations and violent students. Yet, they are not receiving those skills in their university preparation programs. The California Legislature, believing that "certificated school personnel often are not prepared effectively in their professional programs to cope with potentially violent situations or with violent youth," amended the California Education Code (California Senate Bill 2460, Green, 1990). The revised code will require the California Commission on Teacher Credentialing (CTC), the state agency that regulates teacher preparation and licensing, to undertake leadership activities directed toward establishing appropriate standards of preparation for teachers and other certificated personnel concerning violent behavior by students.

Anticipating that a requirement for training teachers and principals in handling violence in schools would be forthcoming from the CTC, Pepperdine University began developing a violence

prevention curriculum to be included in the training of future teachers and administrators.

In June of 1992, a grant from the Pacific Telesis Foundation enabled the teacher preparation program to begin developing and field testing a model curriculum for creating a safe school environment. The model curriculum will be designed to be presented in an applied, hands-on, interactive mode. The training will focus on skills that teachers need to maintain a safe, secure and welcoming school climate. The curriculum will also address skills teachers need to help build confidence, self-esteem and pride in their students — attitudes crucial to creating and maintaining a positive and cohesive campus climate.

In addition to the faculty of Pepperdine's Graduate School of Education and Psychology, curriculum developers will draw upon the resources of the Pepperdine School of Law and the National School Safety Center, a resource center administered by Pepperdine University and funded by the U.S. Departments of Education and Justice.

The model curriculum will be field tested with the teachers at Broadway Elementary School in the Los Angeles Unified School District, a partnership school with Pepperdine University. Broadway School serves a diverse student population in an area plagued with social problems. Poverty, crime and racial tension severely inhibit the instructional process. In the past year, two parents of Broadway students have been killed in gang-related incidents.

After further development and field testing, the model curriculum will be made available to other universities for use in teacher and administrator preparation programs. The target date for completion of the model curriculum is January 1, 1993.

H. Woodrow Hughes, Ph.D., is the Associate Dean for Education in the Graduate School of Education and Psychology, Pepperdine University.

WEAPONS AND VIOLENCE RELATED SUSPENSIONS
Incident Report 2nd Quarter 1991-1994

Category	1991-92	1992-93	1993-94
Firearms	0	0	3
Weapons	20	39	36
Gang Related	0	0	16
Fighting	238	266	267

INCIDENT REPORT 1993-94
QUARTER 1 & 2

Category	Quarter 1	Quarter 2
Firearms	10	3
Weapons	32	36
Gang Related	5	16
Fighting	354	267

State courts, statutes, and local practice vary widely on the question of when students' lockers and desks can be searched. But one thing is certain: School officials have fewer restrictions on searching lockers and desks than on searching persons, and in many places they are much freer.

In one New York case a vice-principal conducted a search at the direction of a police officer who suspected the student possessed drugs; the court upheld the search on the ground that the student had no reasonable expectation of privacy since he knew the principal had a master key to all the locks.²⁰ Other courts have said schools can conduct locker searches triggered by drug-detecting dogs, because the school exercises control over the lockers.²¹

In contrast, the California Supreme Court makes no distinction between personal searches and searches of lockers; in both situations it requires reasonable and individualized suspicion.²² Like California, New Jersey insists there be definite grounds for suspicion in order to search a locker. The New Jersey Supreme Court ruled that it was unlawful to search a locker in a case where a police officer had received an anonymous call from someone claiming to be the parent of another student and naming a certain student as a drug dealer. The officer passed this information on to the school and an assistant principal searched the student's locker. The court found the information did not amount to reasonable suspicion and ruled that reasonable suspicion was required for a locker search if, as in this case, the student was justified in believing that the master key to the locker would be employed only at his request or convenience.²³ If the school had a publicized policy of regularly inspecting student lockers, the suspected student might not have had the same expectation of privacy.

A number of states have statutes insisting upon reasonable suspicion before lockers can be searched but do not require search warrants. Louisiana law, for instance, states that any teacher, principal, or administrator can search any "building, desk, locker, area or grounds" for contraband "when he has articulable facts which lead him to a reasonable belief that the items sought will be found."²⁴

Similarly, both Florida and Maryland permit searches of student lockers if there is reasonable suspicion that a prohibited object is contained in the area to be searched. Both states

require schools to notify students that these places are subject to search. Maryland limits such searches to items illegal under state law and requires that a third party be present when a locker is searched.²⁵

Many local school districts have written policies on locker searches which may or may not protect your privacy. The Detroit Board of Education Policy on Discipline and Student Rights permits locker searches but states "there must be reason to believe that the student is using his/her locker, desk or other property in such a way as to endanger his/her own health or safety or the health, safety and rights of other persons." In contrast, the Jackson, Mississippi, policy states that "desks and lockers are public property and school authorities may conduct an inspection for any reason related to school administration." Whether or not you have a reasonable expectation of privacy in your locker or desk may depend on the stated policy of your particular school.

Can schools require students to submit to blood and urine tests for drugs?

No. As more school districts impose such tests in an attempt to combat drug and alcohol use, there is bound to be litigation challenging their legality. Already, a federal district court has ordered the Arkadelphia, Arkansas, school board to stop its use of urinalysis testing of students and prohibited the board from using test results to discipline students.²⁶ The Arkadelphia policy had authorized schools to test any student they suspected of drug or alcohol use, whatever the reason for that suspicion, and to expel any student found to have even a trace of drugs, alcohol, paint or glue in his or her system. After a challenge by the New Jersey Civil Liberties Union, a New Jersey school district dropped a plan to give all students urine tests for drugs without any pretense of individualized suspicion as part of an annual physical. The judge ruled that even if the purpose was solely medical the test would violate the reasonable privacy expectations of children.²⁷ A federal court in Washington, D.C., has ruled that a school bus attendant has a reasonable expectation of privacy from search by mandatory urine testing for drugs if such testing is conducted without probable cause or individualized suspicion. The court stated that this privacy expectation outweighed public safety considerations.²⁸

Post-1 st brand fax transmittal memo 7671	# of pages > /
To P. SWANSON	From R. BANNING
Co. Rep. on BANNING TRK	Co. REELEN ACLA

HB

429

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 429

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: "An Act relating to the special education service agency." BRU: Administrative Services
 Sponsor: Representative James Component: Governor's Council on Disabilities and Special Education
 Requester: _____ COMPONENT SERIAL NO. 321

Expenditures/Revenues:	(Thousands of Dollars)					
OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES

CHANGES IN REVENUES

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:
 FULL-TIME _____
 PART-TIME _____
 TEMPORARY _____

Estimate of current year (FY94) impact: _____

ANALYSIS: (Attach a separate page if necessary)

HB 429 presents no fiscal impact on the Department.

Prepared by: David Maltman, Executive Director Phone: 563-5355
 Division: Governor's Council on Disabilities & Special Education Date: 02/15/94
 Approved by Commissioner: Margaret R. Lowe Date: 2-15-94
 Agency: Department of Health & Social Services

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Alaska State Legislature

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House of Representatives

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SPONSOR STATEMENT

HOUSE BILL 429

February 10, 1994

House Bill 429 is intended to enhance the operation of the state's Special Education Service Agency. The agency makes special education services accessible to children with severe, unusual disabilities who need specialized services not normally found in the district. In general, SESA assures that qualified specialists are available to assist remote districts to increase their ability to deliver required services.

The legislation will repeal the requirement for the Governor's Council on Disabilities and Special Education to govern the organization. The mission of the Governor's Council is to plan, evaluate, and promote services to people with disabilities. It should not govern part of the service system that it is supposed to evaluate and critique.

Instead of the Council, SESA will create a consumer-driven governing board. The new board will include people from rural areas and representatives of organizations who use the agency's services.

There is no cost for this action, and the legislation will improve the agency's responsiveness to the public.

SPONSOR STATEMENT

HB 429

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

Background

The special education service agency is a public organization established in 1986 (sec. 2, ch. 112, SLA 1986). One of the functions of the organization was to provide "...itinerant outreach services to deaf, deaf-blind, mentally retarded, hearing impaired, blind and visually impaired, orthopedically handicapped, other health-impaired, severely emotionally disturbed, and multi-handicapped students;" (ref. AS 14.30.630(b)(1)(A)). Due to the nature of their purpose, the governing board of the special education service agency (SESA) was delegated to the Governor's Council on Disabilities and Special Education (AS 14.30.610 and AS 47.80.090(12)).

Discussion

The mission of the Governor's Council on Disabilities and Special Education (Council) is to plan, evaluate, and promote services to individuals with disabilities (defined in (AS 47.80.090). The Council is currently required to govern a public organization that the Council also has to evaluate. HB 429 removes from the Council the responsibility of governing SESA. SESA will continue to exist and operate under the guidelines originally established in AS 14.30.600 -- 14.30.660. This could result in the establishment of a more consumer oriented governing board.

Position

The Department supports HB 429. Passage of the bill will remove the potential conflict of the Council having to evaluate or critique an organization that it also governs.

Margaret R. Lowe

Margaret R. Lowe, M.Ed., Ed.S.
Commissioner

2-15-94

Date

BY-LAWS

SPECIAL EDUCATION SERVICE AGENCY, INC.

A NON-PROFIT CORPORATION

ARTICLE I

NAME AND OFFICES

Section 1. Name:

The name of this organization is the "Special Education Service Agency, Inc."; hereinafter known as "SESA."

Section 2. Place of Incorporation:

SESA is incorporated as a public non-profit corporation under the laws of the State of Alaska.

Section 3. Offices:

SESA shall maintain its principal office in the city of Anchorage, Alaska, and may maintain such other offices as the Board of Directors deem necessary to conduct the business of the corporation.

Section 4. Registered Office and Agent:

SESA shall continuously maintain a registered office in the jurisdiction in which it is incorporated. All official records shall be maintained at this office. The Board of Directors may change the registered office and/or appoint the registered agent as necessary.

Proposed Bylaws: May 12, 1993

ARTICLE II

MISSION AND OBJECTIVES

Section 1. Mission:

The mission of the SESA is to develop and improve special education services to rural Alaskan children and students who experience low incidence disabilities.

Section 2. Objectives:

The primary objective of SESA is to increase the ability of schools and other local service systems to provide needed services in a least restrictive environment without regard to the remoteness of their location in the state.

Secondary objectives include:

- a. The provision of special education services in a seamless progression;
- b. The involvement of parents and families in the education and development of the child; and,
- c. Ensuring that all programs for persons with low incidence disabilities are functional and involve the total family, school, community and cultural environments.

ARTICLE III

MANAGEMENT AND CONTROL

Section 1. Management Authority:

The management and control of the affairs of this corporation are vested in its Board of Directors. The Board has the authority to hire an Executive Director who oversees the daily operation of the organization, within the policy and procedural guidelines established by the Board. SESA staff shall serve as staff to the Board. Members of the Board of Directors shall not give direction to any employees of the corporation except through the Executive Director.

Section 2. Management and Control of Funds:

Any funds or property contributed to and accepted by the corporation shall be held, administered and disbursed or disposed of as the contributor may direct, provided that any such direction is consistent with the purposes of the corporation. In the absence of any such specific direction, such funds or proceeds shall be held, administered and disbursed or disposed of solely for the purposes of the corporation as set forth in the Articles of Incorporation of these by-laws.

The fiscal year for SESA shall begin on the first day of July and end on the thirtieth day of June of each year.

Section 3. Contracts:

The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 4. Checks, Drafts, Etc.:

All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation, shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the board of directors.

Section 5. Deposits:

All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the Board of Directors may select.

Section 6. Composition of the Board of Directors:

The Board of Directors shall consist of nine members who represent the following interests in the numbers indicated:

- a. Two primary or secondary consumers from rural areas (level 1 through 3 communities as defined by the Governor's Council on Disabilities and Special Education (GCDSE);
- b. Two members from the Governor's Council on Disabilities and Special Education;
- c. One Superintendent from a rural school district (level 1 through 3 communities as defined by the GCDSE);
- d. Two Special Education Directors who are users of SESA services (one from a rural district and one from a medium to large district at the time of the appointment);
- e. One classroom teacher (level 1 through 3 communities);
- f. One member at large;
- g. One representative from the Alaska Department of Education who shall be the individual having major responsibility for Special Education or their representative and who shall serve as an ex-officio (non voting member); and,
- h. The Executive Director of the Governor's Council on Disabilities and Special Education shall serve as an ex-officio (non-voting) member.

At no time shall a person serve on the Board of Directors while representing employees of the SESA in collective bargaining. No former member of the Board of Directors is eligible for employment with the agency for a period of six months after their tenure on the Board of Directors is ended.

Section 7: Selection and Appointment of New Members to the Board of Directors:

All new members of the Board of Directors shall be selected by the Board of Directors at the annual meeting of the Board. New Board members shall be selected from a slate of nominees presented by the Executive Committee at the annual meeting by majority vote of existing Board members. Appointments shall proceed as follows:

a. **Consumers and Member at Large:**

The two consumers from rural areas (level 1 through 3 communities) and a member at large (from any place within the State of Alaska) shall be recommended to the Board of Directors by the Executive Committee which acts as a nominating committee.

b. **Members from the Governor's Council on Disabilities and Special Education:**

The two members from the Governors Council are recommended by that body to SESA's Executive Committee who presents them to the Board of Directors with their recommendations regarding appointment.

c. **Superintendent from a Rural School District:**

The Superintendents Association shall present a list of up to three nominees for the Board to the Executive Committee who shall make their recommendations to the Board of Directors in order of preference. (Exceptions may be made by a majority vote of the Board of Directors.)

d. **Special Education Director:**

The Association of Administrators of Special Education shall present a list of up to three nominees for the Board to the Executive Committee who shall make their recommendations to the Board of Directors in order of preference. (Exceptions may be made by a majority vote of the Board of Directors).

e. **Classroom Teacher:**

Three classroom teachers (who are special education teachers) will be recommended by the Council on Exceptional Children to the Executive Committee who shall make their recommendations to the Board of Directors in order of preference.

New members are inducted onto the Board at the first full board meeting following the Annual Spring Meeting of the Board.

Section 8. Tenure of Board Members:

Members of the Board of Directors shall be appointed for a term of three years. No member may serve more than two (2) three year terms in succession.

Three members of the Board shall be rotated from the Board each year and three new members shall be appointed.

At the annual meeting in the calendar year following the adoption of these by-laws, all existing Board members shall be selected by random to serve either one, two or three year terms on the Board. Rotation of Board members shall begin at the annual meeting in 1994, at which time the three new Board appointees will be seated and will be expected to serve for three years. Thereafter all appointments shall be for a three year period.

Section 9. Removal of Board Members:

Any Board member elected or appointed by the Board of Directors may be removed by two-thirds vote of the entire Board when (EVER) the best interests of the corporation would be served thereby, however, such removal shall be without prejudice to the contract rights, if any, of the person so removed.

A Board member may be removed if that member misses three consecutive meetings without prior approval of the President of the Board.

Section 10. Selection of Persons to Fill Vacancies on the Board of Directors:

Any vacancies occurring on the Board of Directors shall be filled at the next full meeting of the Board. An individual who represents the same interests will be selected and appointed by the Board of Directors using the same process, inasmuch as possible, as outlined for the selection and appointment of new members of the Board.

ARTICLE IV

MEETINGS

Section 1: Types of Meetings:

The SESA Board of Directors shall ensure that meetings are held regularly for the purpose of considering and adopting policies and procedures and guiding the organization. In order to accomplish these responsibilities, three types of meetings are held:

a. Annual Meetings:

The Board of Directors shall have an annual meeting during the second calendar quarter of each year. During this meeting, new members of the Board will be elected and appointed. The Board will also establish and adopt a schedule of meetings to be held during the succeeding twelve months.

b. Regular Meetings

The Board of Directors will meet at least bi-monthly in a regular meeting. These meetings may be by teleconference or face-to-face; however, it is required that the Board hold a face-to-face meeting at least once in each calendar quarter. An exception to this requirement and/or the requirement for bi-monthly meetings is allowed with a two-thirds vote of the full Board.

HB

420

Alaska State Legislature

REPRESENTATIVE
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House District 33

House Of Representatives

HB 420: "An act relating to limited liability companies; and providing for an effective date."

Sponsor: Representative Gene Therriault

Sponsor Statement:

The limited liability company is a relatively new, hybrid form of business structure that combines the tax advantages of a partnership and the liability safeguards of a corporation. Although a combination of these two business structures is currently allowed in statute through formation of an S corporation, this structure has limitations that are avoided by LLCs. For example, S corporations do not allow ownership by certain types of shareholders.

Under current law, corporate earnings are subject to double taxation through the payment of corporate taxes and personal taxes after distribution of dividends. LLCs avoid this double taxation by allowing earnings to flow through to individual owners in the same manner partnership income is handled. Although businesses can be organized through an S corporation to avoid double taxation and encompass some of the advantages of partnerships, they do not enjoy all the advantages of partnerships when it comes to allocating income and deductions.

One of the greatest advantages is, as the name implies, the limited liability offered by the LLC structure. With LLC's, as with regular corporations, only the company's assets, and not the owner's personal assets, are at risk in business-related lawsuits. In partnerships, so-called limited partners enjoy such protection, but general partners don't. And limited partners face restrictions on how active they can be in the business. LLCs are designed to protect all members while imposing no limits on their involvement in operation of the business.

Thirty-four states now permit limited liability companies, and passage in most of the remaining states is expected. Wyoming passed the first LLC act in 1977. Other states slowly followed suit until 1988, when the Internal Revenue Service issued Rev. Rul. 88-76, which classified a Wyoming LLC as a partnership for federal tax purposes, even though none of the members or managers were personally liable for any debts of the company. Following the ruling, formation

of LLCs burgeoned, with two states adopting LLC acts in 1990, four in 1991, 10 in 1992 and more than 20 states introducing measures in 1993.

LLCs have tended to be family businesses, professional service firms, venture capital companies, real estate businesses and startups. I believe the LLC will provide these business owners with an efficient and flexible investment vehicle that allows both limited liability, and federal income tax treatment as a partnership. The bill is based on a prototype American Bar Association draft, with changes to conform the bill specifically to Alaska.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 420

Revision Date: _____
Title: An Act relating to limited liability companies
Sponsor: Representative Theriault
Requestor: House Labor & Commerce

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

Expenditures/Revenues:

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUND SOURCE

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 94) cost: \$ 0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director
Division: Banking, Securities and Corporations

Phone: 465-2521
Date: 2/16/94

Approved by Commissioner: Paul Fuhs
Agency: Commerce and Economic Development

Date: 2-17-94

PREPARER TO P
For

FISCAL NOTE

RNOR'S LEGISLATIVE OFFICE
Legislative Office

CSSSHB 420: "An Act relating to limited liability companies; and providing for an effective date."

The department strongly supports the concept of Limited Liability Company Legislation. The primary goal for the state to adopt this legislation is to offer increased business opportunities in the State of Alaska. Limited Liability Companies (LLC) offer individual liability protection to its members and managers while avoiding the restrictions placed upon subchapter "S" corporations. LLC's also avoid the multi-level taxation of "C" corporations. This type of arrangement is especially attractive to individuals, corporations, and other enterprises interested in establishing joint ventures, both domestically and with foreign countries.

Having initially expressed concerns over HB 420, the department unequivocally endorses CSSSHB 420. The department has had a staff member of the Division of Banking, Securities, and Corporations working on the subcommittee which drafted many of the amendments, and is now fully satisfied that all concerns expressed earlier have been addressed.



Paul Fuhs, Commissioner

4-15-94

Date

8-LS1245D
Bannister
4/25/94

SENATE CS FOR CS FOR SS FOR HOUSE BILL NO. 420(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES THERRIAULT, Mulder, James

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to limited liability companies; and providing for an effective
2 date."

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

4 * Section 1. AS 10 is amended by adding a new chapter to read:
5 CHAPTER 50. LIMITED LIABILITY COMPANY ACT.

6 ARTICLE 1. PURPOSES AND ACTIVITIES.

7 Sec. 10.50.010. AUTHORIZED PURPOSES. A limited liability company may
8 be organized under this chapter for any lawful purpose.

9 Sec. 10.50.015. COMPLIANCE WITH OTHER LAWS. If an activity of a
10 limited liability company or the purpose for which a limited liability company is
11 organized is subject to another provision of law, the company shall also comply with
12 the other provision of law.

13 ARTICLE 2. NAME; REGISTERED OFFICE AND AGENT;
14 SERVICE OF PROCESS.

1 Sec. 10.50.020. LIMITED LIABILITY COMPANY NAME. (a) The name
2 of a limited liability company stated in the company's articles of organization must
3 contain the words "limited liability company" or the abbreviation "L.L.C.," or "LLC".
4 The word "limited" may be abbreviated as "Ltd.," and the word "company" may be
5 abbreviated as "Co."

6 (b) The name of a city, borough, or village may be used in a limited liability
7 company name; however, the name may not contain the word "city," "borough," or
8 "village" or otherwise imply that the company is a municipality.

9 (c) A person may not adopt a name that contains the words "limited liability
10 company" unless the person is organized under this chapter or is registered as a foreign
11 limited liability company under this chapter.

12 Sec. 10.50.025. DISTINGUISHABLE NAMES. The name of a limited
13 liability company must be distinguishable on the records of the department from

14 (1) the name of a limited liability company, limited partnership, or
15 corporation organized under the laws of this state;

16 (2) the name of a foreign limited liability company that is registered
17 under this chapter;

18 (3) the name of a foreign corporation that is authorized to transact
19 business in this state;

20 (4) a name reserved or registered under AS 10.06.110 - 10.06.145 or
21 this chapter; or

22 (5) a name reserved under AS 10.35.

23 Sec. 10.50.030. RIGHT TO RESERVE NAME. The exclusive right to use a
24 name may be reserved by a

25 (1) person intending to organize a limited liability company and to
26 adopt the name;

27 (2) person intending to organize a foreign limited liability company and
28 to register under this chapter;

29 (3) limited liability company, or a foreign limited liability company
30 registered under this chapter, that intends to change its name; or

31 (4) foreign limited liability company that intends to register under this

1 chapter and to adopt the name.

2 Sec. 10.50.035. APPLICATION TO RESERVE COMPANY NAME.

3 Reservation of a name under AS 10.50.030 is made by filing an application with the
4 department. If the department finds that the name is available for use by a limited
5 liability company, and is not a reserved or registered business name under AS 10.35
6 or this chapter, the department shall reserve it for the exclusive use of the applicant
7 for a period of 120 days.

8 Sec. 10.50.038. TRANSFER OF RESERVED NAME. The holder of a name
9 reserved under AS 10.50.030 may transfer the right to the exclusive use of the name
10 to another person by filing a notice of transfer with the department, signed by the
11 holder of the name, and specifying the name and address of the transferee.

12 Sec. 10.50.040. REGISTRATION OF COMPANY NAME. A limited liability
13 company or a foreign limited liability company may register its name if the name is
14 distinguishable on the records of the department from the names identified under
15 AS 10.50.025.

16 Sec. 10.50.043. USE OF NONDISTINGUISHABLE NAME. Organization or
17 registration under this chapter, or registration of a name under this chapter, gives the
18 person who has organized or registered under this chapter, or registered a name under
19 this chapter, exclusive right to the use of the name. The person may enjoin the use
20 of a name that is not distinguishable from the name to which the person has the
21 exclusive right and the person has a cause of action for damages against a person who
22 uses a name that is not distinguishable from the name to which the person has the
23 exclusive right.

24 Sec. 10.50.048. PROCEDURE FOR REGISTRATION OF COMPANY
25 NAME. Registration of a name under AS 10.50.040 is made by filing with the
26 department

27 (1) a signed application for registration setting out the name of the
28 company, the state or territory under the laws of which it is organized, the date of
29 organization, a statement that it is conducting affairs, and a brief statement of its
30 principal activities; and

31 (2) proof from the jurisdiction where the company is organized that

1 indicates that the company is organized in that jurisdiction if the company is a foreign
2 limited liability company.

3 Sec. 10.50.050. DURATION OF REGISTERED NAME. The registration of
4 a name under AS 10.50.040 is effective until the close of the calendar year in which
5 the application for registration is filed.

6 Sec. 10.50.053. RENEWAL OF REGISTERED NAME. (a) The registration
7 of a name under AS 10.50.040 may be renewed each year by

8 (1) filing an application for renewal setting out the facts required in an
9 original application for registration;

10 (2) filing proof of organization required for an original registration; and

11 (3) paying a fee established by the department.

12 (b) An application for renewal shall be filed between October 1 and December
13 31 in each year. The renewal extends the registration for the following calendar year.

14 Sec. 10.50.055. REGISTERED OFFICE AND REGISTERED AGENT. A
15 limited liability company shall continuously maintain in this state a registered agent
16 and a registered office. The registered office may be the same as the office of the
17 company. The registered agent may be either an individual resident of this state whose
18 business office is the same as the registered office, or a domestic or foreign
19 corporation authorized to transact business in this state whose business office is the
20 same as the registered office.

21 Sec. 10.50.060. CHANGE OF REGISTERED OFFICE OR AGENT. (a) A
22 limited liability company may change its registered office, agent, or both, by filing
23 with the department a verified signed statement that includes

24 (1) the name of the company;

25 (2) the address of its registered office;

26 (3) the address of its new registered office if the registered office is to
27 be changed;

28 (4) the name of its registered agent;

29 (5) the name of its new registered agent, if the registered agent is to
30 be changed; and

31 (6) a statement that the change is authorized by the company's

1 manager, or, if the company is not managed by a manager, by the members.

2 (b) If the department finds that the verified statement complies with this
3 chapter, the department shall file it in the department's office. The change becomes
4 effective when the statement is filed.

5 Sec. 10.50.063. CHANGE OR RESIGNATION OF REGISTERED AGENT.

6 (a) A registered agent of a limited liability company may change the location of the
7 agent's office from one address to another in this state. The agent may change the
8 registered office for each company for which the person is acting as registered agent
9 by filing in the department a statement setting out the name of the agent, the address
10 of the agent's office before change, the address to which the office is changed, and a
11 list of companies for which the person is the registered agent. The statement shall be
12 executed by the registered agent in the individual name of the agent or, if the agent
13 is a corporation, it shall be executed and verified by its president or a vice-president.
14 The statement shall be delivered to the department and the limited liability company
15 and if the department finds that the statement complies with this chapter, the
16 department shall file it. The change becomes effective when the statement is filed.

17 (b) A registered agent may resign by filing a written notice and an exact copy
18 of the notice with the department. The written notice of resignation must set out the
19 latest address of the principal office of the company and the name, address, and title
20 of the manager, or, if the company is managed by its members, the names and
21 addresses of the members of the company known by the agent. The department shall
22 immediately mail a copy of the notice to the company at its principal office. The
23 resignation becomes effective 30 days after the filing of the written notice, unless the
24 company sooner appoints a successor registered agent, as provided in AS 10.50.060.

25 Sec. 10.50.065. SERVICE OF PROCESS ON COMPANY. (a) The registered
26 agent of a limited liability company is an agent upon whom process, notice, or demand
27 required or permitted by law to be served upon the company may be served.

28 (b) If a limited liability company fails to appoint or maintain a registered agent
29 in this state, or if its registered agent cannot, with reasonable diligence, be found at the
30 registered office, the commissioner is an agent of the company upon whom the
31 process, notice, or demand may be served. A person may serve the commissioner

1 under this subsection by

2 (1) serving on the commissioner or the designee of the commissioner
3 a copy of the process, notice, or demand, with any papers required by law to be
4 delivered in connection with the service, and a fee established by the department by
5 regulation;

6 (2) sending to the company being served by certified mail a notice that
7 service has been made on the commissioner under this subsection and a copy of the
8 process, notice, or demand and accompanying papers; notice to the company shall be
9 sent to

10 (A) the address of the last registered office of the company as
11 shown by the record on file in the department; and

12 (B) the address, the use of which the person initiating the
13 proceedings knows or, on the basis of reasonable inquiry, has reason to believe
14 is most likely to result in actual notice; and

15 (3) filing with the appropriate court or other body, as part of the return
16 of service, the return receipt of mailing and an affidavit of the person initiating the
17 proceedings that this section has been complied with.

18 (c) The commissioner shall keep a record of processes, notices, and demands
19 served upon the commissioner under this section.

20 (d) This section does not affect the right to serve process, notice, or demand
21 required or permitted by law to be served upon a company in any other manner
22 permitted.

23 ARTICLE 3. ORGANIZATION AND DURATION.

24 Sec. 10.50.070. ORGANIZERS. Two or more persons may organize a limited
25 liability company by signing articles of organization and delivering the signed articles
26 to the department for filing. A person who organizes a limited liability company may
27 be a person who is not a member of the company when the company is organized or
28 after the company is organized.

29 Sec. 10.50.075. CONTENTS OF ARTICLES OF ORGANIZATION. The
30 articles of organization of a limited liability company must state

31 (1) the name of the company;

1 (2) the purpose for which the company is organized, which may be
2 stated to be, or to include, the conduct of any or all lawful affairs for which a limited
3 liability company may be organized under this chapter;

4 (3) the mailing address of the company's registered office and the name
5 of the company's registered agent;

6 (4) if an election has been made that the existence of the company will
7 continue until a certain date or event, a statement of the election and the date or event;

8 (5) if applicable, that the company will be managed by a manager; and

9 (6) any other provision for the regulation of the internal affairs of the
10 company that is consistent with this chapter and the laws of this state if the persons
11 organizing the company elect to include the provision in the articles of organization.

12 Sec. 10.50.078. DISCLOSURE OF COMPANY PURPOSES. The organizers
13 delivering articles of organization under AS 10.50.070 shall deliver with the articles
14 a separate statement of the codes from the identification codes established under
15 AS 10.06.870 that most closely describe the activities in which the company will
16 initially engage.

17 Sec. 10.50.080. EFFECTIVE DATE OF ORGANIZATION. A limited liability
18 company is organized when the articles of organization for the company that conforms
19 to the filing requirements of this chapter are delivered to the department for filing
20 under AS 10.50.820.

21 Sec. 10.50.085. ELECTION OF DURATION. (a) If an election to continue
22 the existence of a limited liability company until a certain date or event is made and
23 stated in the articles of organization, the company's existence continues until the date
24 or event unless the company is dissolved under AS 10.50.400 for a reason that can
25 cause dissolution while the election is in effect.

26 (b) An election under (a) of this section may not be revoked unless the
27 election is revoked by the persons, if any, who are identified in the election at the time
28 the election is made as having the power to revoke the election.

29 (c) An election under (a) of this section may expressly limit the membership
30 terminations that can cause dissolution under AS 10.50.400(3).

31 Sec. 10.50.090. CONCLUSIVE EVIDENCE OF COMPLIANCE. A copy of

1 the articles of organization that is stamped "filed" and marked with the filing date is
2 conclusive evidence that the organizers of the limited liability company have complied
3 with all conditions precedent required to be performed by the organizers and that the
4 company has been organized under this chapter.

5 Sec. 10.50.095. OPERATING AGREEMENT. The members of a limited
6 liability company may adopt an operating agreement for the company and may amend
7 and repeal the agreement. The articles of organization may restrict or eliminate the
8 power of the members to adopt, amend, or repeal an operating agreement.

9 ARTICLE 4. AMENDMENT OF ARTICLES.

10 Sec. 10.50.100. AMENDMENT OF ARTICLES. (a) A limited liability
11 company may amend its articles of organization in any respect if the articles as
12 amended contain only the provisions that are required or permitted by this chapter to
13 be included in the original articles of organization at the time of the amendment.

14 (b) A limited liability company may amend its articles of organization by filing
15 articles of amendment with the department. The articles of amendment must state the

- 16 (1) name of the company;
- 17 (2) date the articles of organization were filed; and
- 18 (3) amendment adopted by the company.

19 Sec. 10.50.105. RESTATEMENT OF ARTICLES. A limited liability
20 company may restate its articles of organization at any time. The company shall file
21 its restated articles with the department. The restated articles of organization must be
22 specifically designated as restated articles in the title to the restated articles. It
23 state, either in the title or in an introductory paragraph, the

- 24 (1) company's present and, if the name is changed, all of the
25 company's former names; and
- 26 (2) date of the filing of the company's original articles of organization.

27 ARTICLE 5. MANAGEMENT.

28 Sec. 10.50.110. MANAGEMENT GENERALLY. (a) Except as otherwise
29 provided in the company's articles of organization, the members of a limited liability
30 company manage the affairs and make the decisions of the company. Management by
31 the members is subject to a provision in an operating agreement or this chapter

1 limiting or increasing the management rights and duties of the members, including
2 limits or increases placed on a class of members or an individual member.

3 (b) If a limited liability company is managed by a manager, the manager has
4 the exclusive power to manage the affairs of the company to the extent authorized by
5 the operating agreement.

6 Sec. 10.50.115. APPOINTMENT, REMOVAL, AND REPLACEMENT OF
7 MANAGERS. Except as otherwise provided in an operating agreement of a limited
8 liability company, a manager of the company may not be appointed, removed, or
9 replaced, unless more than one-half of all of the members of the company authorize
10 the appointment, removal, or replacement.

11 Sec. 10.50.120. MANAGER ELIGIBILITY. Unless otherwise provided in an
12 operating agreement of the company, a manager of a limited liability company may
13 be a person who is not an individual or a member of the company. A company may
14 have more than one manager.

15 Sec. 10.50.125. TENURE OF MANAGER. (a) Unless otherwise provided in
16 an operating agreement of the company, a manager of a limited liability company
17 holds office until the manager's successor is elected and qualified, unless the manager
18 resigns or is removed earlier.

19 (b) A manager of a limited liability company may resign by giving written
20 notice to the other managers, or, if there is only one manager for the company, to the
21 members of the company. The resignation is effective when the notice is given, unless
22 the notice specifies a later time for the effectiveness of the resignation. If the
23 resignation is effective at a future time, a successor may be selected to take office
24 when the resignation becomes effective.

25 Sec. 10.50.130. LIMITATION OF MEMBER FIDUCIARY DUTY. Unless
26 otherwise provided in an operating agreement of the company, if a person is a member
27 of a limited liability company that is managed by a manager and if the person is not
28 a manager, the person does not have the fiduciary duty of a manager to the company
29 or to the other members of the company when the person acts solely in the capacity
30 of a member.

31 Sec. 10.50.135. DUTY OF CARE. (a) A person who is a manager or a

1 managing member of a limited liability company shall perform the duties of
2 management in good faith, in a manner the person reasonably believes to be in the best
3 interests of the company, and with the care, including reasonable inquiry, that an
4 ordinarily prudent person in a like position would use under similar circumstances.
5 Except as provided in (b) of this section, the person is entitled to rely on information,
6 opinions, reports, or statements, including financial statements and other financial data,
7 in each case prepared or presented by

8 (1) an employee of the company whom the person reasonably believes
9 to be reliable and competent in the matters presented; or

10 (2) counsel, public accountants, or other professionals or experts as to
11 matters that the person reasonably believes to be within the professional's or expert's
12 competence.

13 (b) A person is not acting in good faith under (a) of this section if the person
14 has knowledge concerning the matter in question that makes reliance otherwise
15 permitted by (a) of this section unwarranted.

16 Sec. 10.50.140. CONFLICTS OF INTEREST. (a) A contract or other
17 transaction between a limited liability company and a manager or managing member
18 of a limited liability company, or between a limited liability company and a limited
19 liability company, foreign limited liability company, corporation, firm, or association
20 in which a manager or managing member of the company has a material financial
21 interest, is not void or voidable because the manager or managing member or the other
22 company, corporation, firm, or association are parties or because the manager or
23 managing member is present at the meeting that authorizes, approves, or ratifies the
24 contract or transaction, if the material facts as to the transaction and as to the interest
25 of the manager or managing member are fully disclosed or known to the members and
26 the contract or transaction is approved by the members in good faith, with the
27 interested manager or managing member not being entitled to vote.

28 (b) The fact that a manager or managing member of a limited liability
29 company is a manager or managing member of another entity involved in the
30 transaction does not alone constitute a material financial interest within the meaning
31 of this section. A manager or managing member is not interested within the meaning

1 of this section in a decision fixing the compensation of another manager or managing
2 member as a manager or managing member of the company, notwithstanding the fact
3 that the first manager or managing member is also receiving compensation from the
4 company.

5 (c) A contract or other transaction between a manager or managing member
6 and a limited liability company or association of which one or more managers or
7 managing members of the company are managers or managing members is not void
8 or voidable because the managers or managing members are present at the meeting that
9 authorizes, approves, or ratifies the contract or transaction, if the material facts of the
10 transaction and the manager's or managing member's other management position are
11 fully disclosed or known to the members and the members authorize, approve, or ratify
12 the contract or transaction in good faith by a sufficient vote without counting the vote
13 of the common manager or managing member or the contract or transaction is
14 approved by the members in good faith. This subsection does not apply to contracts
15 or transactions covered by (a) of this section.

16 (d) Nothing in this section affects the prohibitions or restraints imposed by
17 AS 45.50.562 - 45.50.596.

18 Sec. 10.50.145. LOANS TO MANAGERS, MANAGING MEMBERS, AND
19 EMPLOYEES. (a) A loan may not be extended by a limited liability company to an
20 employee without authorization by the company's managers or managing members.
21 A loan may not be extended to a manager or a managing member of a limited liability
22 company without the approval of two-thirds of the company's members. An employee
23 who is also a manager or managing member is considered a manager or managing
24 member for purposes of this section. A member is not disqualified from voting on a
25 loan to a member as a manager or managing member because of personal interest.

26 (b) A loan to a manager, managing member, or employee and a loan secured
27 by the limited liability company interests of the company may not be made unless the
28 loan would be permissible as a distribution under AS 10.50.290 - 10.50.345. A loan
29 under this subsection impairs the retained earnings or paid-in capital accounts to the
30 extent of the loan.

31 (c) For purposes of this section, a loan may consist of cash, securities, or

1 personal or real property.

2 (d) If a limited liability company acts as a guarantor on a loan to a manager,
3 managing member, or employee, the guarantee is treated as a loan under this section.

4 (e) A manager, managing member, or employee of an affiliated limited liability
5 company is a manager, managing member, or employee of the lending company for
6 purposes of this section.

7 (f) A loan is to be judged by the duties of managers and managing members
8 to act in good faith in a manner reasonably believed to be in the best interests of the
9 company and with the care, including reasonable inquiry, that an ordinarily prudent
10 person in a like position would use under similar circumstances.

11 Sec. 10.50.148. INDEMNIFICATION OF MANAGERS, MANAGING
12 MEMBERS, EMPLOYEES, AND AGENTS; INSURANCE. (a) A limited liability
13 company may indemnify a person who was, is, or is threatened to be made a party to
14 a completed, pending, or threatened action or proceeding, whether civil, criminal,
15 administrative, or investigative, other than an action by or in the right of the company,
16 by reason of the fact that the person is or was a manager, managing member,
17 employee, or agent of the company, or is or was serving at the request of the company
18 as a manager, managing member, employee, or agent of another limited liability
19 company, partnership, joint venture, trust, or other enterprise. Indemnification may
20 include reimbursement of expenses, attorney fees, judgments, fines, and amounts paid
21 in settlement actually and reasonably incurred by the person in connection with the
22 action or proceeding if the person acted in good faith and in a manner the person
23 reasonably believed to be in or not opposed to the best interests of the company, and,
24 with respect to a criminal action or proceeding, the person had no reasonable cause to
25 believe the conduct was unlawful. The termination of an action or proceeding by
26 judgment, order, settlement, conviction, or upon a plea of nolo contendere or its
27 equivalent, does not create a presumption that the person did not act in good faith and
28 in a manner which the person reasonably believed to be in or not opposed to the best
29 interests of the company, and, with respect to a criminal action or proceeding, the
30 person had reasonable cause to believe that the conduct was unlawful.

31 (b) A limited liability company may indemnify a person who was, is, or is

1 threatened to be made a party to a completed, pending, or threatened action by or in
2 the right of the company to procure a judgment in its favor by reason of the fact that
3 the person is or was a manager, managing member, employee, or agent of the
4 company, or is or was serving at the request of the company as a manager, managing
5 member, employee, or agent of another limited liability company, partnership, joint
6 venture, trust, or other enterprise. Indemnification may include reimbursement for
7 expenses and attorney fees actually and reasonably incurred by the person in
8 connection with the defense or settlement of the action if the person acted in good
9 faith and in a manner the person reasonably believed to be in or not opposed to the
10 best interests of the company. Indemnification may not be made in respect of any
11 claim, issue, or matter as to which the person has been adjudged to be liable for
12 negligence or misconduct in the performance of the person's duty to the company
13 except to the extent that the court in which the action was brought determines upon
14 application that, despite the adjudication of liability, in view of all the circumstances
15 of the case, the person is fairly and reasonably entitled to indemnity for expenses that
16 the court considers proper.

17 (c) To the extent that a manager, managing member, employee, or agent of a
18 limited liability company has been successful on the merits or otherwise in defense of
19 an action or proceeding referred to in (a) or (b) of this section, or in defense of a
20 claim, issue, or matter in the action or proceeding, the manager, managing member,
21 employee, or agent shall be indemnified against expenses and attorney fees actually
22 and reasonably incurred in connection with the defense.

23 (d) Unless otherwise ordered by a court, indemnification under (a) or (b) of
24 this section may only be made by a company upon a determination that
25 indemnification of the manager, managing member, employee, or agent is proper in
26 the circumstances because the manager, managing member, employee, or agent has
27 met the applicable standard of conduct set out in (a) and (b) of this section. The
28 determination shall be made by the members.

29 (e) The company may pay or reimburse the reasonable expenses incurred in
30 defending a civil or criminal action or proceeding in advance of the final disposition
31 in the manner provided in (d) of this section if

1 (1) in the case of a manager or managing member, the manager or
2 managing member furnishes the company with a written affirmation of a good faith
3 belief that the standard of conduct described in AS 10.50.135(a) has been met;

4 (2) the manager, managing member, employee, or agent furnishes the
5 company a written unlimited general undertaking, executed personally or on behalf of
6 the individual, to repay the advance if it is ultimately determined that an applicable
7 standard of conduct was not met; and

8 (3) a determination is made that the facts then known to those making
9 the determination would not preclude indemnification under this chapter.

10 (f) The indemnification provided by this section is not exclusive of any other
11 rights to which a person seeking indemnification may be entitled. The right to
12 indemnification continues as to a person who has ceased to be a manager, managing
13 member, employee, or agent, and inures to the benefit of the heirs, executors, and
14 administrators of the person.

15 (g) A limited liability company may purchase and maintain insurance on behalf
16 of a person who is or was a manager, managing member, employee, or agent of the
17 company, or is or was serving at the request of the company as a manager, managing
18 member, employee, or agent of another limited liability company, partnership, joint
19 venture, trust, or other enterprise against any liability asserted against the person and
20 incurred by the person in that capacity, or arising out of that status, whether or not the
21 company has the power to indemnify the person against the liability under the
22 provisions of this section.

23 Sec. 10.50.150. AUTHORIZATION OF COMPANY AFFAIRS. (a) Unless
24 otherwise provided in an operating agreement of the company, the company's articles
25 of organization, or by this chapter, if the company is not managed by a manager, the
26 consent of more than one-half of all of the members of a limited liability company is
27 required to decide the affairs of the company.

28 (b) Unless otherwise provided in an operating agreement of the company or
29 by this chapter, the consent of more than one-half of the number of managers of a
30 limited liability company is required to decide the affairs of the company.

31 (c) Notwithstanding (a) and (b) of this section, and unless another level of

1 member consent is required in an operating agreement of the company, the consent of
2 two-thirds of the members of a limited liability company is required to

- 3 (1) amend the articles of organization;
4 (2) amend an operating agreement of the company; or
5 (3) authorize a manager or member to perform an act on behalf of the
6 company that contravenes an operating agreement of the company, including an act
7 that contravenes a provision of the operating agreement that expressly limits the
8 purposes, affairs, or conduct of the affairs of the company.

9 (d) For the purposes of (c) of this section, the required level of consent
10 established by an operating agreement may not be less than a majority of the members.

11 **ARTICLE 6. ADMISSION AND WITHDRAWAL OF MEMBERS.**

12 **Sec. 10.50.155. ADMISSION OF MEMBERS.** A person may become a
13 member in a limited liability company if the person acquires a limited liability
14 company interest

- 15 (1) directly from the limited liability company
16 (A) in compliance with an operating agreement of the company;
17 or
18 (B) with the written consent of all of the members of the
19 company if an operating agreement of the company does not provide for
20 acquiring an interest directly from the company; or

21 (2) by assignment of the interest by a company member in compliance
22 with AS 10.50.165.

23 **Sec. 10.50.160. EFFECTIVE DATE OF ADMISSION.** The effective date of
24 the admission of a member to a limited liability company is the later of the date

- 25 (1) when the company is organized;
26 (2) established in an operating agreement of the company; or
27 (3) when the person's admission is reflected in the records of the
28 company if an operating agreement of the company does not establish an effective
29 date.

30 **Sec. 10.50.165. AUTHORIZATION FOR ASSIGNEE TO BECOME**
31 **MEMBER.** (a) Unless otherwise provided in an operating agreement of the company,

1 an assignee of a limited liability company interest may not become a member unless
2 all other members consent.

3 (b) An operating agreement of the company may specify the manner for
4 evidencing the consent required by (a) of this section. If an operating agreement does
5 not specify the manner for evidencing the consent, the consent is evidenced by a
6 written instrument that is dated and signed by the members.

7 Sec. 10.50.170. RIGHTS, POWERS, AND LIABILITIES OF ASSIGNEE
8 WHO BECOMES A MEMBER. (a) An assignee who becomes a member has, to the
9 extent assigned, the rights and powers of a member under the articles of organization,
10 an operating agreement, and this chapter, and is subject to the restrictions and
11 liabilities of a member under the articles of organization, an operating agreement, and
12 this chapter.

13 (b) In addition to the liabilities imposed under (a) of this section, an assignee
14 of a limited liability company interest who becomes a member of the company is liable
15 for an obligation of the assignor to make a contribution under AS 10.50.280 that is not
16 imposed by the articles of organization, an operating agreement, or otherwise by this
17 chapter.

18 (c) Notwithstanding (a) and (b) of this section, an assignee who becomes a
19 member is not liable for liabilities that are unknown to the assignee when the assignee
20 becomes a member and that cannot be determined from the written records of the
21 company maintained under AS 10.50.360.

22 Sec. 10.50.180. RIGHTS OF ASSIGNOR WHEN ASSIGNEE BECOMES A
23 MEMBER. Unless otherwise provided in an operating agreement of the company,
24 when an assignee of a member's limited liability company interest becomes a member
25 of the company with respect to the assignor's entire interest, the assignor ceases to be
26 a member or to have the power to exercise the rights of a member.

27 Sec. 10.50.185. VOLUNTARY TERMINATION OF MEMBERSHIP. (a) A
28 person's membership in a limited liability company terminates if the person withdraws
29 voluntarily from the company.

30 (b) Unless an operating agreement of the company provides that a member
31 may not withdraw voluntarily from the company, a member of a limited liability

1 company may withdraw as a member voluntarily at any time by giving 30 days'
2 written notice to the other members, or by giving other notice that is established by
3 an operating agreement of the company.

4 Sec. 10.50.190. WITHDRAWAL BEFORE END OF TERM OR
5 UNDERTAKING. Unless otherwise provided in an operating agreement of the
6 company, if a limited liability company has a definite term or particular undertaking,
7 the withdrawal of a member of the company before the end of the term or the
8 accomplishment of the undertaking is a breach of the operating agreement.

9 Sec. 10.50.195. REMEDIES FOR WRONGFUL WITHDRAWAL. (a) If the
10 voluntary withdrawal of a member with the power to withdraw from the company
11 breaches an operating agreement of the company, or if the withdrawal occurs as a
12 result of otherwise wrongful conduct of the member, a limited liability company may
13 recover from the withdrawing member damages that are for the breach of the operating
14 agreement or that result from the wrongful conduct, including the reasonable costs of
15 obtaining replacement of any services the withdrawn member was obligated to
16 perform.

17 (b) A limited liability company may offset the damages authorized under (a)
18 of this section against the amount that is otherwise distributable to the withdrawing
19 member, and may pursue other remedies allowed in an operating agreement of the
20 company or otherwise available under applicable law.

21 Sec. 10.50.205. REMOVAL OF MEMBER. (a) A person's membership in
22 a limited liability company may not be terminated by removal except as provided by
23 (b) or (c) of this section.

24 (b) Except as provided in (c) of this section, a person's membership in a
25 limited liability company terminates if the person assigns all of the person's interest
26 in the company and if a majority of the members who have not assigned their interests
27 in the company authorize the removal of the person as a member.

28 (c) If an operating agreement of the company provides for the removal of a
29 member with or without cause, a person's membership in a limited liability company
30 terminates if the person is removed as a member in the manner and under the
31 circumstances provided in the agreement.

1 Sec. 10.50.210. EFFECT OF DEATH OR INCOMPETENCY ON
2 MEMBERSHIP. Unless otherwise provided in an operating agreement or by the
3 written consent of all of the members at the time, the membership of a member of a
4 limited liability company who is an individual terminates if the member dies, or if a
5 court of competent jurisdiction enters an order adjudicating the member incompetent
6 to manage the member's person or property.

7 Sec. 10.50.215. TERMINATION OF TRUST OR DISTRIBUTION OF
8 INTEREST BY ESTATE MEMBERSHIP. (a) Unless otherwise provided in an
9 operating agreement of the company or by the written consent of all of the members
10 of the company at the time, the limited liability company membership held by a trust
11 or trustee terminates when the trust terminates. In this subsection, "terminates" does
12 not include the substitution of a new trustee.

13 (b) Unless otherwise provided in an operating agreement of the company or
14 by the written consent of all of the members of the company at the time, the limited
15 liability company membership held by an estate terminates when the estate's entire
16 limited liability company interest is distributed by the fiduciary of the estate.

17 Sec. 10.50.220. TERMINATION ON DISSOLUTION OF MEMBER. (a)
18 Unless otherwise provided in an operating agreement of the company or by the written
19 consent of all of the members of the company at the time, a limited liability company
20 membership of a member that is a separate limited liability company terminates when
21 the member dissolves and begins to wind up its affairs.

22 (b) Unless otherwise provided in an operating agreement of the company or
23 by the written consent of all of the members of the company at the time, a limited
24 liability company membership of a member that is a corporation terminates when the
25 corporation is dissolved and 90 days lapse without reinstatement.

26 Sec. 10.50.225. OTHER EVENTS TERMINATING MEMBERSHIP. (a)
27 Unless otherwise provided in writing in an operating agreement of the company or
28 authorized by the written consent of all of the members of the company at the time,
29 a person's membership in a limited liability company terminates when the person

30 (1) makes an assignment for the benefit of creditors;

31 (2) files a voluntary petition in bankruptcy;

1 (3) is adjudicated a bankrupt or insolvent;

2 (4) files a petition or answer seeking for the person a reorganization,
3 arrangement, composition, readjustment, liquidation, dissolution, or similar relief under
4 law;

5 (5) files an answer or other pleading admitting or failing to contest the
6 material allegations of a petition filed against the member in a proceeding in the nature
7 of (1) - (4) of this subsection; or

8 (6) seeks, consents to, or acquiesces in the appointment of a trustee,
9 receiver, or liquidator of the person or of all or a substantial part of the person's
10 property.

11 (b) Unless otherwise provided in writing in an operating agreement of the
12 company or consented to in writing by all of the members of the company at the time,
13 a person's membership in a limited liability company terminates when

14 (1) a proceeding against the person seeking reorganization,
15 arrangement, composition, readjustment, liquidation, dissolution, or similar relief is not
16 dismissed within 120 days after the commencement of the proceeding; or

17 (2) an appointment, without the person's consent, of a trustee, receiver,
18 or liquidator of the person or of all or a substantial part of the person's property is not
19 vacated or stayed within 120 days after the appointment or after the expiration of the
20 stay.

21 (c) The members of a limited liability company may provide in writing in an
22 operating agreement that other events terminate a membership.

23 Sec. 10.50.240. EFFECT OF ELECTION. If an election to continue a limited
24 liability company until a certain date or event is made under AS 10.50.085(a),
25 10.50.185 - 10.50.225(a) and (b) do not apply to the termination of the membership
26 of a member unless the member is also a manager of the company.

27 ARTICLE 7. RELATIONSHIP TO THIRD PARTIES.

28 Sec. 10.50.250. AGENCY POWER OF MEMBERS AND MANAGERS. (a)
29 Except as provided in (b) and (c) of this section, a member of a limited liability
30 company is an agent of the company for the purpose of conducting the company's
31 affairs. A member's act, including the execution of an instrument in the name of the

1 company, that appears to be performed in the usual and customary way of conducting
2 business, binds the company, unless the member does not in fact have the authority to
3 act for the company in the particular matter and the person with whom the member
4 is dealing knows that the member does not have the authority to act for the company
5 in the particular matter.

6 (b) If a limited liability company is managed by a manager, a member is not,
7 solely by reason of being a member, an agent of the company.

8 (c) If a limited liability company is managed by a manager, a manager is an
9 agent of a limited liability company for the purpose of conducting its affairs, and a
10 manager's act, including the execution of an instrument in the name of the company,
11 that appears to be performed in the usual and customary way of conducting business
12 binds the company, unless the manager does not in fact have the authority to act for
13 the company in the particular matter and the person with whom the manager is dealing
14 knows that the manager does not have the authority to act for the company in the
15 particular matter.

16 (d) A limited liability company manager's or member's act that does not
17 appear to be performed in the usual and customary way of conducting business does
18 not bind the company, unless the act is authorized by an operating agreement of the
19 company when the act is performed or at another time.

20 (e) A limited liability company manager's or member's act that contravenes
21 a restriction on the manager's or member's authority does not bind the company with
22 regard to persons who know about the restriction.

23 Sec. 10.50.255. ADMISSIONS OF MEMBERS AND MANAGERS. (a)
24 Except as provided in (b) of this section, an admission or representation made by a
25 member of a limited liability company about the affairs of the company is evidence
26 against the company if the admission or representation is within the scope of the
27 member's authority under this chapter.

28 (b) If a limited liability company is managed by a manager, an admission or
29 representation made by a

30 (1) manager about the affairs of the company is evidence against the
31 company if the admission or representation is within the scope of the manager's