

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

April 25, 2005

3:45 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Gabrielle LeDoux
Representative Bob Lynn
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

Representative Pete Kott
Representative Norman Rokeberg

COMMITTEE CALENDAR

HOUSE BILL NO. 249

"An Act relating to enhanced 911 surcharges imposed by a municipality."

- MOVED CSHB 249(L&C) OUT OF COMMITTEE

SENATE BILL NO. 137

"An Act providing that an institution providing accommodations exempt from the provisions of the Uniform Residential Landlord and Tenant Act may evict tenants without resorting to court proceedings under AS 09.45.060 - 09.45.160."

- HEARD AND HELD

CS FOR SENATE BILL NO. 139(L&C)

"An Act relating to termination and oversight of boards, commissions, and agency programs; extending the termination date of the Board of Marital and Family Therapy; and providing for an effective date."

- MOVED HCS CSSB 139(L&C) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 140(JUD)

"An Act relating to spyware and unsolicited Internet advertising."

- MOVED CSSB 140(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 249

SHORT TITLE: ENHANCED 911 SURCHARGES & SYSTEMS

SPONSOR(S): REPRESENTATIVE(S) HAWKER

04/04/05 (H) READ THE FIRST TIME - REFERRALS
04/04/05 (H) CRA, L&C
04/12/05 (H) CRA RPT CS(CRA) 3DP 2NR 1AM
04/12/05 (H) DP: CISSNA, OLSON, THOMAS;
04/12/05 (H) NR: LEDOUX, SALMON;
04/12/05 (H) AM: NEUMAN
04/12/05 (H) CRA AT 8:00 AM CAPITOL 124
04/12/05 (H) Moved CSHB 249(CRA) Out of Committee
04/12/05 (H) MINUTE(CRA)
04/22/05 (H) L&C AT 3:15 PM CAPITOL 17
04/22/05 (H) Heard & Held
04/22/05 (H) MINUTE(L&C)
04/25/05 (H) L&C AT 3:15 PM CAPITOL 17

BILL: SB 137

SHORT TITLE: EVICTIONS FROM UNIV. STUDENT HOUSING

SPONSOR(S): SENATOR(S) SEEKINS

03/08/05 (S) READ THE FIRST TIME - REFERRALS
03/08/05 (S) L&C, JUD
03/22/05 (S) L&C AT 1:30 PM BELTZ 211
03/22/05 (S) Heard & Held
03/22/05 (S) MINUTE(L&C)
03/24/05 (S) L&C AT 2:00 PM BELTZ 211
03/24/05 (S) Moved SB 137 Out of Committee
03/24/05 (S) MINUTE(L&C)
03/29/05 (S) L&C RPT 3DP
03/29/05 (S) DP: BUNDE, DAVIS, STEVENS B
04/05/05 (S) JUD RPT 3DP 1NR
04/05/05 (S) DP: SEEKINS, THERRIAULT, HUGGINS
04/05/05 (S) NR: GUESS
04/05/05 (S) JUD AT 8:30 AM BUTROVICH 205
04/05/05 (S) Moved SB 137 Out of Committee
04/05/05 (S) MINUTE(JUD)
04/12/05 (S) TRANSMITTED TO (H)
04/12/05 (S) VERSION: SB 137
04/13/05 (H) READ THE FIRST TIME - REFERRALS
04/13/05 (H) L&C, JUD
04/22/05 (H) L&C AT 3:15 PM CAPITOL 17
04/22/05 (H) <Bill Hearing Postponed to 4/25>

04/25/05 (H) L&C AT 3:15 PM CAPITOL 17

BILL: SB 139

SHORT TITLE: OCCUPATIONAL BDS/AGENCIES

SPONSOR(S): RULES BY REQUEST OF LEG BUDGET & AUDIT

03/09/05 (S) READ THE FIRST TIME - REFERRALS
03/09/05 (S) L&C, FIN
03/31/05 (S) L&C AT 1:30 PM BELTZ 211
03/31/05 (S) Scheduled But Not Heard
04/05/05 (S) L&C AT 1:30 PM BELTZ 211
04/05/05 (S) Heard & Held
04/05/05 (S) MINUTE(L&C)
04/07/05 (S) L&C AT 1:30 PM BELTZ 211
04/07/05 (S) Moved CSSB 139(L&C) Out of Committee
04/07/05 (S) MINUTE(L&C)
04/08/05 (S) L&C RPT CS 5DP
SAME TITLE
04/08/05 (S) DP: BUNDE, DAVIS, ELLIS, SEEKINS,
STEVENS B
04/18/05 (S) FIN RPT CS(L&C) 4DP 1NR
04/18/05 (S) DP: GREEN, HOFFMAN, OLSON, STEDMAN
04/18/05 (S) NR: DYSON
04/18/05 (S) FIN AT 9:00 AM SENATE FINANCE 532
04/18/05 (S) Moved CSSB 139(L&C) Out of Committee
04/18/05 (S) MINUTE(FIN)
04/20/05 (S) TRANSMITTED TO (H)
04/20/05 (S) VERSION: CSSB 139(L&C)
04/21/05 (H) READ THE FIRST TIME - REFERRALS
04/21/05 (H) L&C, FIN
04/25/05 (H) L&C AT 3:15 PM CAPITOL 17

BILL: SB 140

SHORT TITLE: COMPUTERS & INTERNET

SPONSOR(S): SENATOR(S) THERRIAULT

03/10/05 (S) READ THE FIRST TIME - REFERRALS
03/10/05 (S) L&C, JUD
03/22/05 (S) L&C AT 1:30 PM BELTZ 211
03/22/05 (S) Heard & Held
03/22/05 (S) MINUTE(L&C)
03/24/05 (S) L&C AT 2:00 PM BELTZ 211
03/24/05 (S) Moved SB 140 Out of Committee
03/24/05 (S) MINUTE(L&C)
03/29/05 (S) L&C RPT 3DP
03/29/05 (S) DP: BUNDE, DAVIS, STEVENS B
04/07/05 (S) JUD AT 8:30 AM BUTROVICH 205

04/07/05	(S)	Scheduled But Not Heard				
04/08/05	(H)	JUD AT 8:00 AM CAPITOL 120				
04/08/05	(S)	Scheduled But Not Heard				
04/13/05	(H)	JUD AT 8:30 AM BUTROVICH 205				
04/13/05	(S)	Heard & Held				
04/13/05	(S)	MINUTE(JUD)				
04/14/05	(S)	JUD RPT CS 3DP 2NR				
		SAME TITLE				
04/14/05	(S)	DP: SEEKINS, HUGGINS, THERRIAULT				
04/14/05	(S)	NR: FRENCH, GUESS				
04/14/05	(S)	JUD AT 8:00 AM BUTROVICH 205				
04/14/05	(S)	Moved CSSB 140(JUD) Out of Committee				
04/14/05	(S)	MINUTE(JUD)				
04/19/05	(S)	TRANSMITTED TO (H)				
04/19/05	(S)	VERSION: CSSB 140(JUD)				
04/20/05	(H)	READ THE FIRST TIME - REFERRALS				
04/20/05	(H)	L&C, JUD				
04/25/05	(H)	L&C AT 3:15 PM CAPITOL 17				

WITNESS REGISTER

JOE MICHEL, Staff
to Senator Ralph Seekins
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented SB 137, on behalf of the sponsor,
Senator Seekins.

MICHAEL HOSTINA, Associate General Counsel
University of Alaska - Fairbanks
Fairbanks, Alaska
POSITION STATEMENT: Offered information regarding the need for
SB 137.

TOM MAHER, Staff
to Senator Gene Therriault
Legislative Budget & Audit Committee
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented SB 139 on behalf of the sponsor,
the Legislative Budget & Audit Committee that is chaired by
Senator Therriault.

PAT DAVIDSON, Legislative Auditor
Division of Legislative Audit
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During hearing of SB 139, answered questions.

DAVID STANCLIFF, Staff
to Senator Gene Therriault
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 140 on behalf of the sponsor, Senator Therriault.

BENJAMIN EDELMAN
(No address provided)

POSITION STATEMENT: During hearing of SB 140, provided information regarding spyware and similar legislation from other states.

ACTION NARRATIVE

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at [3:45:07 PM](#). Representatives Anderson, LeDoux, Lynn, Crawford, and Guttenberg were present at the call to order.

HB 249-ENHANCED 911 SURCHARGES & SYSTEMS

[3:45:52 PM](#)

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 249, "An Act relating to enhanced 911 surcharges imposed by a municipality."

CHAIR ANDERSON reminded the committee that he had held HB 249 upon the request of the Alaska Telephone Association. Although there is still analysis [forthcoming], he said that he didn't want to delay the legislation and thus wanted to move HB 249 out of committee.

[3:46:31 PM](#)

REPRESENTATIVE LYNN moved to report CSHB 249, Version 24-LS0853\F, Cook, 4/21/05, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 249(L&C) was reported from the House Labor and Commerce Standing Committee.

[3:46:58 PM](#)

CHAIR ANDERSON, in response to Representative Guttenberg, explained that the committee had been waiting for the Alaska Telephone Association's [analysis] regarding the amount of the fee, \$1.50 versus \$2.00. However, he related that he has been told that the association doesn't want to oppose [the current fee] because it would delay the legislation. In response to Representative Lynn, Chair Anderson said that HB 249 doesn't have any other committee of referral. Chair Anderson indicated that if there are any problems, the legislation could be addressed in the House Rules Standing Committee.

SB 137-EVICTIONS FROM UNIV. STUDENT HOUSING

[3:48:18 PM](#)

CHAIR ANDERSON announced that the next order of business would be SENATE BILL NO. 137, "An Act providing that an institution providing accommodations exempt from the provisions of the Uniform Residential Landlord and Tenant Act may evict tenants without resorting to court proceedings under AS 09.45.060 - 09.45.160."

JOE MICHEL, Staff to Senator Ralph Seekins, Alaska State Legislature, informed the committee that Senator Seekins sponsored this legislation upon the request of the University of Alaska. The legislation stems from a few cases in which disruptive students have used the court system to stall eviction from a unit until a time more convenient for the student. The infractions of these students were beyond what was allowed under their student housing contract. Therefore, the university needed to remove the students from the housing before their disruptive behavior impacted other students. He explained, "The Uniform Residential Landlord and Tenant Act (ULTA) was designed to alleviate injustices inflicted on residential renters by unscrupulous private landlords." The State of Alaska's Act is taken almost verbatim from the federal act. Mr. Michel specified that the intent of SB 137 is to fix the discrepancy between the legislative intent of the ULTA and recent lower court decisions regarding the eviction and removal of individuals residing in residential housing such as [dormitories at a university].

[3:50:00 PM](#)

MR. MICHEL then highlighted AS 34.03.330, which specifies that public service institutional entities aren't compatible with the

heightened protections designed for residential renters under ULTA. Therefore, these larger institutions aren't in the business of long-term residential housing and have been exempted. For example, a hospital shouldn't be required to obtain a court order to remove a patient who no longer needs its services. Furthermore, a student expelled from school shouldn't be able to insist on remaining in student housing until a court order is obtained for his/her removal. Mr. Michel noted that he has reviewed the university's housing policies and has determined that it's a lengthy process of reviews and appeals prior to eviction. The university is requesting this legislation because going to court is costly, he related.

[3:51:27 PM](#)

CHAIR ANDERSON said that he liked the idea behind SB 137. However, he inquired as to whether SB 137 includes sideboards so that an individual who is treated unfairly would have an avenue for redress.

MR. MICHEL answered that there aren't sideboards, per se. However, the contract the individual signs contains rules and specifications that the facility wouldn't be able to violate.

CHAIR ANDERSON surmised then that an individual could be evicted, but if that individual feels that he/she is being treated unfairly he/she could seek an injunctive relief or sue the [facility] on a contract basis.

[3:54:03 PM](#)

REPRESENTATIVE LYNN noted that he liked the idea of getting unruly students out of universities because it isn't fair for someone to be disruptive to the point of impacting others. However, this legislation would also include nursing homes and thus he asked whether a [disruptive] individual with dementia living in a nursing home could be evicted without a court order.

MR. MICHEL answered that technically, institutions [such as nursing homes] could evict someone, but there is a contract by which the institution must abide. Mr. Michel clarified that this is already in statute; the problem has arisen with lower court decisions that haven't applied it to cases involving students living in the university dormitories.

[3:55:41 PM](#)

REPRESENTATIVE LYNN said that he had no problem evicting a problem student out of a university dormitory. However, he inquired as to how those residents in a nursing home who can be very difficult can be protected.

[3:56:45 PM](#)

MICHAEL HOSTINA, Associate General Counsel, University of Alaska - Fairbanks (UAF), opined that there are a variety of safeguards in place for most university students, hospital residents, and nursing home residents. In the case of a nursing home resident, there are specific laws as well as an ombudsman for the elderly to help safeguard the rights of the patient. He further opined that most nursing homes wouldn't think to resort to an eviction process to remove a patient. The nursing home would simply discharge the patient. However, if the patient objected, the nursing home would have to seek injunctive relief to enforce the contract. This proposed law wouldn't change much of that, save that a patient wouldn't be able to claim that an eviction was necessary. He noted that the courts could still address the merits of any injunctive action.

MR. HOSTINA informed the committee that at UAF there have been one or two students who have been dorm room lawyers with lots of time on their hands. In those cases, the students have a ready argument that the university has to [go through the eviction process]. In a couple of cases with UAF, the courts agreed with that argument. Mr. Hostina suspected that the university is the major beneficiary of this legislation because the other categories of institutions aren't likely to face the aforementioned argument.

[3:58:44 PM](#)

REPRESENTATIVE LYNN inquired as to the difference between a discharge and an eviction for a patient; either way the individual is not residing in the facility. Representative Lynn expressed concern that perhaps SB 137 is casting too large of a net. Therefore, he asked if the legislation could include some protections for the categories beyond those addressing the university students.

[3:59:12 PM](#)

CHAIR ANDERSON urged Mr. Michel to obtain an opinion from Legislative Legal and Research Services on Representative Lynn's

concern. However, Chair Anderson said he didn't think that there was any need to delay the bill.

REPRESENTATIVE LEDOUX echoed the same discomfort with SB 137 as did Representative Lynn. Therefore, she said she would feel more comfortable adopting a conceptual amendment that would eliminate the [nursing homes and hospitals] from this proposal.

[4:01:01 PM](#)

CHAIR ANDERSON related his understanding that ULTA doesn't apply to [a private] nursing home.

[4:01:35 PM](#)

MR. HOSTINA confirmed Chair Anderson's understanding, and added that the university, hospital, nursing homes, and prisons are already excluded from ULTA. However, because the university provides housing, it made for an easy argument for a student to say that he/she must be evicted rather than merely removed from housing. Although he reiterated that he didn't believe such an argument would come up, he would favor addressing it with respect to institutions beyond the university. He specified that SB 137 is merely requesting a clarification of ULTA.

[4:03:05 PM](#)

CHAIR ANDERSON pointed out that perhaps the confusion has arisen from the text in the sponsor statement that specifies that this legislation would apply to nursing homes and hospitals. Therefore, he suggested that it would be appropriate to check on this question with Legislative Legal and Research Services.

[4:03:35 PM](#)

REPRESENTATIVE ROKEBERG stated that ULTA doesn't apply to [hospitals and nursing homes] under AS 34.03.330(b)(1). He characterized the situation that SB 137 is addressing as one in which rogue judges aren't enforcing the law.

[4:04:50 PM](#)

REPRESENTATIVE ROKEBERG clarified that this legislation is not an amendment to ULTA, rather it's an amendment to actions relating to real property.

MR. HOSTINA agreed.

REPRESENTATIVE ROKEBERG further clarified that SB 137, through its amendment to actions relating to real property, makes it crystal clear to the courts that [the university shouldn't have to go through an eviction process for a student].

CHAIR ANDERSON asked whether the title of the legislation is accurate.

REPRESENTATIVE ROKEBERG replied, "It's actually probably more than accurate because ... they're providing the exemptions under the Landlord/Tenant Act ... and that they can't resort to proceedings under the real property to make the ... eviction. They can't use a court action to recover possession."

[4:06:10 PM](#)

MR. HOSTINA, in response to Representative Rokeberg, confirmed that [the university] used a trespass action rather than an eviction action. He explained that the ULTA unlawful detainer action wasn't used because those take 10-20 days to remove someone from housing. In the case of the disruptive student, the student had went through the university's process and the university understood the law to mean that there was no reason to resort to forcible entry and detainer action. Therefore, the university understood the law to allow simple notification of a trespass and an arrest could ensue if the student insisted on remaining. However, the courts disagreed and insisted that the university go through a forcible entry and detainer action.

[4:06:56 PM](#)

REPRESENTATIVE ROKEBERG surmised then that the university wished to remove the student sooner than under the unlawful detainer process because the student was destructive to the population of the dormitory.

MR. HOSTINA agreed, and added that generally these students have been given plenty of notice regarding the need to change their behavior. Even if the student continues to be disruptive, the university provides yet another process such that he/she has a right of appeal within the university if the individual believes his/her constitutional rights have been violated. The student can appeal to superior court. After the aforementioned, the university doesn't want to have to go through a court process for an eviction. Mr. Hostina agreed with Representative Rokeberg that currently the ULTA doesn't apply in any of these

cases, this legislation merely clarifies that the forcible entry and detainer action shouldn't be required of those institutions for the same reasons.

[4:08:26 PM](#)

REPRESENTATIVE CRAWFORD commented that he is becoming more and more confused. He expressed concern because when his father who was living in a nursing home was diagnosed with Alzheimer, the nursing home said that it didn't take care of Alzheimer's patients. Therefore, Representative Crawford was told that he would have to find another residence for his father. Upon finding a Veterans' Administration hospital, his father had to wait until there was an opening. Fortunately, in Louisiana his father was protected from being evicted from the nursing home. He asked if this legislation would provide nursing homes the ability to evict people in the aforementioned situation if the Alzheimer patient becomes disruptive. Representative Crawford opined that it seems like there are two different questions. He further opined that the committee would probably support the legislation in relation to cases involving a disruptive university student. However, he expressed interest in obtaining more information on the appeals process.

CHAIR ANDERSON related his understanding that Representative Crawford was interested in knowing who this legislation encompasses and how it would apply in the various types of institutions.

REPRESENTATIVE LYNN suggested limiting the legislation to apply only to student housing.

CHAIR ANDERSON related his belief that the sponsor wanted the legislation to be more expansive than merely student housing.

[4:11:03 PM](#)

MR. MICHEL reminded the committee that SB 137 isn't changing [Alaska's Landlord Tenant Act], the legislation merely addresses the court decisions [that are incongruent with the Act]. He offered to obtain information regarding the questions asked today.

[4:11:31 PM](#)

REPRESENTATIVE ROKEBERG pointed out that SB 137 changes the civil procedures for real estate actions. He suggested that perhaps, this legislation is too broad [as written].

REPRESENTATIVE GUTTENBERG acknowledged that the disruptive student situations have been problematic over the years. Therefore, Representative Guttenberg inquired as to why the student housing contract doesn't address the ramifications of a disruptive student in regards to his/her housing.

[4:13:17 PM](#)

MR. HOSTINA answered that it is addressed in the housing contracts. In fact, some of the housing contracts are terminable at will. Still, the courts have read such contracts and the Code of Civil Procedure under Title 9 to require an eviction to recover possession of the student housing unit. Therefore, the university was arguably prevented from doing anything other than going to court to recover possessions. From that case it would seem that it doesn't matter what the contracts include, he opined.

[4:14:40 PM](#)

REPRESENTATIVE LEDOUX requested a copy of the decision in such cases.

[4:15:42 PM](#)

REPRESENTATIVE CRAWFORD referred to the following language in the sponsor statement, which read: "A hospital should not be required to obtain a court order to remove a patient who no longer needs its services." He questioned who decides when a patient no longer needs its services. Representative Crawford expressed the need to be sure what this legislation actually does.

[4:16:31 PM](#)

CHAIR ANDERSON announced that SB 137 would be held over.

SB 139-OCCUPATIONAL BDS/AGENCIES

CHAIR ANDERSON announced that the next order of business would be CS FOR SENATE BILL NO. 139(L&C), "An Act relating to termination and oversight of boards, commissions, and agency

programs; extending the termination date of the Board of Marital and Family Therapy; and providing for an effective date."

TOM MAHER, Staff to Senator Gene Therriault, Legislative Budget & Audit Committee, Alaska State Legislature, explained that CSSB 139(L&C) stems from recommendations contained in two reports by the Division of Legislative Audit. Section 1 of the legislation extends the sunset date of the Board of Marital and Family Therapy from June 30, 2005, to June 30, 2010, as recommended by the audit included in the committee packet. The legislation also incorporates recommendations from the audit of the "Alaska Sunset Process and Selected Investigative Issues". Sections 2 and 4 of this legislation clarify that for those boards that are terminated, the transfer of authority for regulatory and disciplinary powers to the Department of Commerce, Community, & Economic Development (DCCED). Although DCCED has assumed the responsibility for administering the regulated occupation after a board has terminated, the statutes do not clearly provide the department the authority to do so. Mr. Maher expressed the hope that this change will address the uncertainty.

MR. MAHER continued by pointing out that Sections 3 and 5 change the standard sunset period for occupational boards in AS 08.03.020(c) and nonoccupational boards in AS 44.66.010(c) from "not to exceed four years" to "not to exceed eight years". Increasing the standard sunset period allows for better use of audit staff, committee time, and makes the sunset process less consuming for boards and regulatory agencies. Mr. Maher highlighted that since Alaska's sunset process has matured, most of the sunset reviews are less about eliminating boards and commissions and more about operational performance. In fact, 12 states have either repealed or suspended their sunset process. The most common standard is for an extension of 10 years, although Alaska and three other states have maintained a four-year extension standard. He noted that the legislature will still be able to set whatever time limit it deems appropriate, regardless of this statutory change.

MR. MAHER specified that to focus on operational performance, this legislation requires specific analysis of efficiency effectiveness and the avoidance of duplication of functions during the sunset review. In Section 6 two criteria that must be considered during the course of the sunset review by the auditors is added to statute. "First, the extent to which the board, commission, or agency has effectively attained its objectives and the efficiency with which it has operated; and second, the extent to which the board, commission, or agency

duplicates the activities of another governmental agency or the private sector," he said. Therefore, expanding the criteria assures that auditors will measure the efficiency and effectiveness of the entities under review. He informed the committee that the Senate Labor and Commerce Standing Committee approved an amendment offered by the administration, which inserted the language "all statutory authority of the board is transferred to the department" in Section 2. Furthermore, Section 4, which further defines the transition of board regulation when a board is terminated, was added. He then noted that there is one fiscal note from the Division of Occupational Licensing and explained: "passage of this legislation will incur no additional cost, the outlying years of the fiscal note merely show the cost of continuing this board at the current level, as already included in the budget."

[4:20:42 PM](#)

CHAIR ANDERSON surmised then that the legislation maintains the current status in which fees cover the cost. He further surmised that the legislation extends the board to 2010 and the amendment in the Senate merely codifies that the department takes over if a board sunsets.

MR. MAHER agreed with the chair's understanding.

CHAIR ANDERSON noted that he liked [paragraphs] (10) and (11) on page 3 of the legislation. Those paragraphs seem to insert missions and measures to ensure that the board, commission, or agency attains its objectives and does so efficiently. Chair Anderson opined that such isn't the case for any other board or commission renewal.

REPRESENTATIVE ROKEBERG pointed out that the paragraphs would apply to all boards and commissions.

[4:22:28 PM](#)

REPRESENTATIVE GUTTENBERG turned attention to page 2, lines 13-14, which transfer statutory authority of the board to the department. Representative Guttenberg related his understanding that after an entity sunsets, the language establishing the entity remains in statute. Therefore, he surmised that the only way to prevent the department from administering a commission that the legislature has (indisc.) is through the budget process.

PAT DAVIDSON, Legislative Auditor, Division of Legislative Audit, Alaska State Legislature, explained that currently if a board is sunset, the regulations implementing the statute become void because the board is given powers. However, the statutes remain and thus statutes may conflict with the current licensing. For example, statutes may specify only a licensed professional can perform a certain occupation, but that occupation is no longer being licensed. Therefore, there is no effective mechanism to totally shut down an occupation. This language was intended to place the onus on the department to make the statutory changes that change it to a regulation under the division or alternatively eliminating the licensing function altogether. She highlighted that under current statute it does happen automatically.

REPRESENTATIVE GUTTENBERG posed a situation in which it's a commission without any powers, duties, and responsibilities.

MS. DAVIDSON replied, "To the extent that there's any regulation in place that makes the agency happen, those regulations, when the board sunsets, are voided." Therefore, the department couldn't necessarily do anything. In further response to Representative Guttenberg, Ms. Davidson said that a commission without any written regulations would continue.

[4:24:58 PM](#)

REPRESENTATIVE ROKEBERG said that he didn't entirely understand Section 2 because it would seem that transferring the statutory authority of a [sunset] board would keep its regulatory and statutory scheme of enforcement alive.

[4:25:57 PM](#)

CHAIR ANDERSON pointed out that this is an extension to 2010 and thus he surmised that if the extensions continue, Section 2 will never apply.

MS. DAVIDSON clarified that Section 1 is a stand-alone provision that extends the Board of Marital and Family Therapy. The other sections change the licensing statutes overall. In response to Representative Rokeberg's earlier question, Ms. Davidson agreed that [Section 2] would allow the department to continue the regulation of an activity. However, there is not an effective way to shut it down because the statutes don't "go away." The desire, she opined, is to transfer the authority of eliminating the statutes [of entities that have sunset] and have a smoother

transition. For instance, according to statutes one can't sell eyeglasses or contact lenses without being a physician, optometrist, or dispensing optician. The recommendation was to change the Board of Dispensing Opticians to a registration process while continuing to allow people to sell eyeglasses. However, that result doesn't occur with a sunset.

REPRESENTATIVE ROKEBERG acknowledged the administration's position in that it dislikes boards and commissions. Therefore, he said he wasn't sure that he agreed with the legislature transferring legislative authority over boards and commissions to the administration.

REPRESENTATIVE GUTTENBERG asked if the result of the new language in Section 2 would be a case in which the authority is transferred to the department, which phases out the entity and the division brings forth cleanup language.

[4:29:35 PM](#)

MS. DAVIDSON replied, "In general terms, yes." She explained that the goal is to avoid statutory conflict between a sunset board with no regulations while a licensing requirement remains. Therefore, the agency or the department would take steps to introduce legislation to either "shut down" licensing or change the statutes. She noted that it could also be done by the legislature. However, there is the need for statutory changes. "It's just that the sunset is too blunt an instrument to necessarily get to what that end goal is," she said.

REPRESENTATIVE ROKEBERG pointed out that although it may be a messy process, it has worked for 40 years. He highlighted that when an entity is sunset, there is a wind-down year in which to address the entity.

REPRESENTATIVE CRAWFORD announced that he's not in favor of the legislation as it is now. Furthermore, he recalled that the Board of Marital and Family Therapy is one of the six boards that House [legislation] attempts to extend.

[4:32:04 PM](#)

MS. DAVIDSON clarified that the Board of Marital and Family Therapy wasn't included in that legislation. She explained that the Legislative Budget & Audit Committee usually addresses any board extension that wasn't addressed near the end of session.

4:32:44 PM

MS. DAVIDSON informed the committee that within the audit, the notion of combining behavioral health boards was reviewed. However, the professional counselors were strongly opposed to combining with marital and family therapists. Furthermore, there had already been legislation put forth to extend the Board of Professional Counselors as a single entity.

REPRESENTATIVE ROKEBERG pointed out that in the audit report, the recommendation was to change extensions from four to eight years. He inquired as to why eight years was chosen.

MS. DAVIDSON said that many factors were considered when eight years was chosen, including the standard extensions in other states. While 10 years is the most frequent extension standard, past practice has shown that double extensions under Alaska's current four-year standard have passed. Ms. Davidson reminded the committee that the eight years is the number of years that an extension cannot exceed. However, any legislator can request a review of any governmental operation.

CHAIR ANDERSON opined that four years is an appropriate amount of time because it's not too extensive.

4:35:19 PM

REPRESENTATIVE LEDOUX, recalling Representative Rokeberg's earlier comment, inquired as to why this process should be changed after it has worked well for 20 years.

MS. DAVIDSON informed the committee that since approximately 1980, 18 entities have been terminated and 23 have been reestablished. The "Guide Board" was probably the most problematic and was a situation in which the department stepped in to regulate the occupation, although it had no legal authority to do so. Therefore, past practices were reviewed in an attempt to determine a way to smooth the process a bit.

4:37:22 PM

CHAIR ANDERSON noted his desire to forward the legislation.

REPRESENTATIVE ROKEBERG pointed out that the legislature speaks through not acting some times, which he indicated was the case in relation to the "Guide Board". If this legislation is adopted, then the power to regulate the profession is given to

the governor and it's taken out of the hands of the boards and commissions and the legislature.

CHAIR ANDERSON announced then that he would hold SB 139. [SB 139 was taken up at the end of this meeting.]

SB 140-COMPUTERS & INTERNET

[4:38:42 PM](#)

CHAIR ANDERSON announced that the final order of business would be CS FOR SENATE BILL NO. 140(JUD), "An Act relating to spyware and unsolicited Internet advertising."

DAVID STANCLIFF, Staff to Senator Gene Therriault, Alaska State Legislature, explained that Alaska is one of 10 states that is trying to provide a better threshold for people to have recourse when their computer has been invaded or rendered inoperable. Therefore, the legislation before the committee had the advantage of reviewing the models of 10 other states. Mr. Stancliff explained that the goal of SB 140 is to begin to unwind the serious web with spyware. Beyond the trade and commerce aspect of this legislation, the more serious problem is that an expensive investment, one's computer, can be rendered useless.

[4:41:29 PM](#)

BENJAMIN EDELMAN informed the committee that he is a graduate student working on a degree in economics at Harvard after just completing law school. He noted that on the side he has been testing spyware writing about what he has found. He further noted that he has been honored by serving as the expert in some cases trying to "put a check on spyware companies." Mr. Edelman agreed with Mr. Stancliff that there is much software on a typical PC, whether located in an office or a home. Some of the spyware programs track the user's name, e-mail address, credit card numbers, etcetera while other spyware programs focus on advertising. Although the later would seem to be less nefarious, it has turned out to be fairly profitable. These pop-up programs are a large part of the spyware problem and new legislation can address that, he opined. However, there is legislation already in place for those individuals stealing credit card numbers and thus there's no need to pass yet another law on that subject.

MR. EDELMAN explained that the pop-up companies operate in what seems to be a gray area. In fact, some courts have said that these extra pop-ups might be legally permissible. Therefore, scores of companies have tried to use pop-ups. This legislation puts an end to the aforementioned and specifies that it's not fair game. He likened a pop-up advertisement to one's cell phone company playing an advertisement for a specific airline when one used the phone to call another airline. Mr. Edelman said that although some courts may have said that pop-up advertisements are acceptable under existing law, legislatures have the right to say otherwise.

[4:46:11 PM](#)

MR. EDELMAN turned to the differing approaches various legislatures have followed. California passed legislation last year that's now under consideration in at least six other states. California's law specifies about a dozen specific tactics that are prohibited. However, Mr. Edelman opined that California's approach is quite ineffective because the tactics prohibited aren't those used by the largest, prominent, and most profitable companies but rather those tactics used by the "little guys that we can't even find." In fact, not much has changed for the better since the passage of California's legislation. He noted that there a couple of pieces of legislation in Washington, D.C., that are being put forth, although they too seem to address infractions that only impact tens of thousands of users not tens of millions. He informed the committee that last year Utah passed legislation with important similarities to SB 140. Mr. Edelman noted his surprise with the number of companies presenting false information regarding what Utah's legislation would do, although there was no legitimate basis for the allegations. Therefore, he sensed that software companies don't like governments instructing them with regard to how they can do business. He opined that software companies view their actions on a computer as not having a basis for any government oversight at all. However, he disagreed.

[4:49:43 PM](#)

REPRESENTATIVE GUTTENBERG asked if there is another way to address spyware. He asked if a computer that detects spyware could then send a notice to the spyware companies informing them they are being charged for installation.

MR. EDELMAN said that there's no way to send such a message to the spyware company. "Consumers just aren't in a good position to impose their terms on the makers of software," he highlighted.

[4:52:32 PM](#)

CHAIR ANDERSON, upon determining no one else wished to testify, closed public testimony.

[4:53:10 PM](#)

REPRESENTATIVE LEDOUX moved to report CSSB 140(JUD) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, it was so ordered.

SB 139-OCCUPATIONAL BDS/AGENCIES

CHAIR ANDERSON returned the committee's attention to CS FOR SENATE BILL NO. 139(L&C), "An Act relating to termination and oversight of boards, commissions, and agency programs; extending the termination date of the Board of Marital and Family Therapy; and providing for an effective date."

CHAIR ANDERSON moved that the committee adopt Amendment 1, as follows:

Delete Sections 2 and 4.

REPRESENTATIVE ROKEBERG objected, and inquired as to the reason for deleting Section 4.

[4:54:11 PM](#)

TOM MAHER, Staff to Representative Gene Therriault, Legislative Budget and Audit Committee, Alaska State Legislature, explained that Section 4 [proposes the same thing - to transfer statutory authority of the board to the department] as the new language in Section 2.

REPRESENTATIVE ROKEBERG removed his objection.

There being no further objections, Amendment 1 was adopted.

REPRESENTATIVE KOTT moved to report CSSB 139(L&C), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB

139(L&C) was reported from the House Labor and Commerce Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at [4:55:06 PM](#).