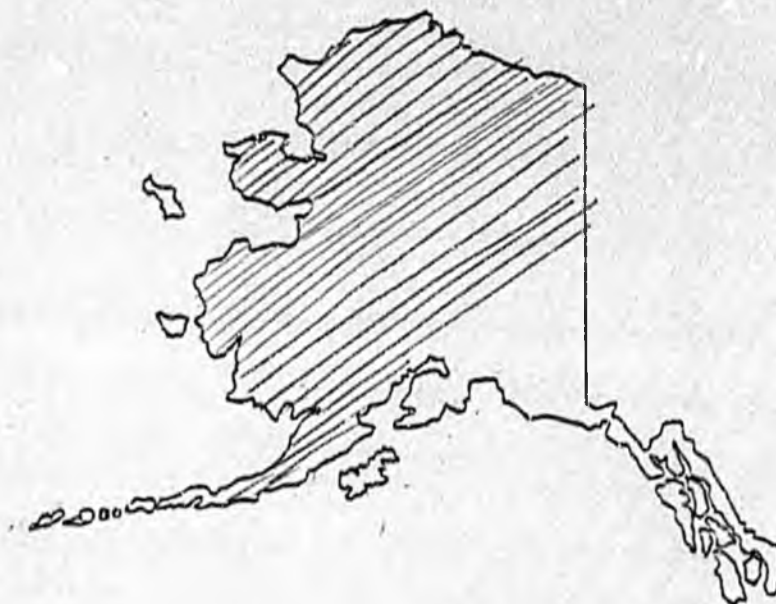


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# STATE OF ALASKA

## Sunset Review



**1979**

Department of Commerce and  
Economic Development  
Division of Occupational Licensing

SUNSET REVIEW

1979

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

Division of Occupational Licensing

Commissioner, Department of Commerce  
and Economic Development

Charles Webber

Deputy Commissioner, Department of  
Commerce & Economic Development

Bertram L. Wagon

Director, Division of Occupational  
Licensing

Ann Griqas

Prepared by: Elaine Garrett  
Management Analyst

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

POUCH D

JUNEAU, ALASKA 99811

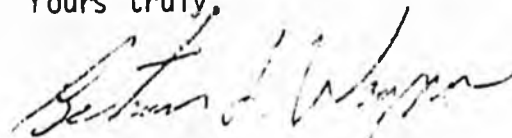
January 14, 1980

The Alaska State Legislature:

Transmitted herewith, pursuant to AS 44.66.050, are reports on the following State boards: the Board of Public Accountancy; Board of Barber Examiners; Collection Agency Board; Board of Hairdressing and Beauty Culture Examiners; Board of Electrical Examiners; State Board of Registration for Architects, Engineers and Land Surveyors; Guide Licensing and Control Board; Board of Marine Pilots; Real Estate Commission; and Board of Welding Examiners.

This evaluation, supplemental to the Department's testimony before the Legislature, serves to focus attention upon the questions of whether or not the board reviewed are best serving the interests of the public. Data as provided by the Division of Occupational Licensing, the board members, licensees and members of the public has been received, reviewed and evaluated.

Yours truly,



Bertram L. Wagnon  
Deputy Commissioner

### Philosophy of Evaluation

This review and evaluation has been undertaken to determine whether continued regulation of an industry or occupation under State auspices can be justified in terms of protection of public health, safety and welfare. State boards and regulatory agencies should be continually cognizant of the public's right to a government acting responsibly in licensing competent practitioners and doing so only in the best interests of the people. Evidence must clearly indicate that the primary goal of regulation is to promote the public good rather than that of the industry or profession. The absence of such evidence indicates cessation of State regulation. Where public benefit or a potential for benefit can be shown to exist, recommendations are made with respect to possible alternatives in the regulatory process which will serve to enhance public health, safety, welfare and accountability.

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STATE OF ALASKA  
Department of Commerce and Economic Development  
Division of Occupational Licensing

The Performance Review of the Division of Occupational Licensing (DOL), dated October 30, 1978, was accomplished by the Division of Legislative Audit in response to the sunset law calling for legislative review of boards and commissions with examination and/or licensing authority in professions. A number of recommendations were made regarding procedures and practices of the Division of Occupational Licensing, most of which were concurred with by DOL and most of which have been implemented.

According to the FY'78 Annual Report from the Department of Commerce and Economic Development, the goal of the Division of Occupational Licensing is to "provide preventive consumer protection in occupational areas where the potential harm is so great that the remedies available for recourse to general law will frequently be insufficient to compensate the aggrieved party."

The Division of Occupational Licensing is statutorily charged with administrative and investigative support services for twenty-one boards and commissions and three occupations which are regulated but have no board. Approximately one hundred and twenty-five members serve on the following boards and commissions:

Board of Chiropractic Examiners  
Board of Dental Examiners  
State Medical Board  
Board of Nursing  
Board of Dispensing Opticians

Board of Examiners in Optometry  
Board of Pharmacy  
Board of Veterinary Examiners  
Board of Psychologist and Psychological Associate Examiners  
Board of Nursing Home Administrators  
Physical Therapy Board  
Board of Public Accountancy  
Board of Barber Examiners  
Collection Agency Board  
Board of Hairdressing and Beauty Culture Examiners  
Board of Electrical Examiners  
State Board of Registration for Architects, Engineers and Land Surveyors  
Guide Licensing and Control Board  
Board of Marine Pilots  
Real Estate Commission  
Board of Welding Examiners

Professions regulated without a board are Mortuary Science, Construction Contractors, and Concert Promoters.

The Division has a total of twenty-one employees. Two investigators, two Executive Officers, and two administrative support persons comprise the Anchorage Field Office personnel. Juneau personnel consists of eight licensing examiners, one licensing supervisor, one chief investigator, one regulation specialist, one management analyst, three administrative support persons and the Director. The Executive Officer and Executive Secretary located in Anchorage are partially exempt positions and are providing administrative support to the Board of Nursing and the Real Estate Commission.

In FY '79, the Division's staff scheduled and coordinated approximately 71 board meetings and 52 examinations for 3,000 candidates, responded to more than 20,000 inquiries, processed and issued 2,742 new licenses and

8,000 renewal licenses, collected over \$717,000 in fees, and maintained more than 28,000 license files.

It should be stressed that DOL is statutorily mandated to provide administrative and budgetary services to boards and commissions; the Division has no authority or decision-making control over any individual board. Legal advice on board activities is provided by the Department of Law, when sought.

Almost without exception the licensing boards have declared their financial independence. That is, they have maintained that they are self-supporting, that revenues from fees charged exceed regulation expenses of their particular profession. Almost without exception this is not the case. Because revenues from all professions are deposited into the general fund, and all expenditures must be allocated from the Division's authorized budget, a penny-by-penny expenditure breakdown is simply not kept for individual boards. The following information was compiled by deducting figures for contractors and mortuary science (who have no board), deducting variables, and assigning administrative expenditures based on number of licensees in each profession in each fiscal year indicated.

	FY '76		FY '77		FY '78		FY '79	
	Revenues	Expen- ditures	Revenues	Expen- ditures	Revenues	Expen- ditures	Revenues	Expen- ditures
Board of Barber Examiners	\$ 4,087.00	\$ 2,489.19	\$ 4,970.54	\$ 2,913.27	\$ 4,400.18	\$ 2,933.76	\$ 4,274.00	\$ 4,381.59
Board of Chiropractic Examiners	320.00	2,838.78	1,910.00	2,377.00	1,070.00	4,218.07	3,047.00	4,709.43
Collection Agency Board	4,164.00	--	8,064.00	811.59	6,950.00	4,126.22	3,697.55	4,670.76
Board of Dental Examiners	10,769.40	8,654.19	14,437.00	6,400.79	5,970.24	8,775.88	16,937.00	15,480.40
Board of Electrical Examiners	7,857.00	2,645.49	28,359.00	7,895.32	15,437.14	6,666.42	36,746.00	6,791.03
Board of Registration for Architects, Engineers and Land Surveyors	101,377.00	17,876.76	31,056.00	19,323.14	110,870.75	21,250.48	26,388.43	23,827.90
Board of Hairdressing and Beauty Culture Examiners	23,075.00	5,096.55	21,963.00	5,944.05	21,821.00	4,512.32	26,970.00	5,989.43
Board of Marine Pilots	990.00	2,713.52	11,122.10	5,515.11	1,780.00	3,819.64	10,722.00	8,707.44
Medical Board	14,485.00	5,553.36	62,023.00	5,855.54	17,551.25	6,346.32	69,919.00	14,979.85
Board of Nursing	54,646.00	13,931.98	40,747.00	12,606.53	72,255.87	20,098.55	36,512.50	21,529.22
Board of Dispensing Opticians	2,720.00	1,728.34	1,060.00	2,091.32	2,190.00	1,910.81	2,210.00	2,287.85
Board of Optometry	530.00	2,578.19	2,625.00	1,920.03	795.00	5,704.41	3,245.00	4,413.32
Board of Pharmacy	13,848.00	5,854.45	8,249.00	4,655.23	16,482.00	4,901.40	6,734.00	5,725.01
Board of Psychologist and Psychological Associates	1,580.00	3,303.51	1,550.00	2,369.43	2,680.00	5,637.68	4,435.00	7,617.52
Board of Public Accountancy	20,777.00	12,325.49	15,135.00	15,138.70	38,675.00	17,248.81	21,186.00	20,174.93
Real Estate Commission	178,497.50	19,188.47	119,533.00	29,648.93	285,634.92	38,177.92	142,659.72	40,652.49
Board of Veterinary Examiners	705.00	1,706.94	4,186.50	1,110.19	1,160.00	1,640.42	5,685.00	2,076.94
Nursing Home Administrators	1,100.00	1,942.91	2,000.00	2,489.84	1,830.00	1,703.66	1,435.00	4,226.97
Physical Therapy Board	1,800.00	804.38	1,455.00	673.68	3,132.00	1,745.59	1,215.00	2,293.47
Guide Licensing and Control	38,300.00	10,070.31	38,695.50	10,257.33	41,617.00	16,828.17	40,996.00	14,249.25
Board of Welding Examiners	--	2,898.01	--	4,918.99	--	2,982.25	1,815.00	4,711.91
Construction Contractors	229,175.00	1,924.60	195,638.50	1,739.75	332,895.40	2,812.54	247,124.05	2,839.58
Mortuary Science	--	--	4,485.00	24.00	802.00	451.49	3,575.00	319.91
<b>TOTALS</b>	<b>\$711,382.90</b>	<b>\$126,125.42</b>	<b>\$619,264.14</b>	<b>\$146,679.76</b>	<b>\$986,009.77</b>	<b>\$184,492.81</b>	<b>\$717,523.25</b>	<b>\$222,256.20</b>
- direct expenditures	<u>126,125.42</u>		<u>146,679.76</u>		<u>184,492.81</u>		<u>222,256.20</u>	
	\$585,257.48		\$472,584.38		\$801,516.94		\$495,272.05	
DOL Budget (Actual Expenditures)	\$470,100.		\$648,000.		\$779,500.		\$901,072.	

FISCAL YEAR 1976

DOL Actual Expenditures:	\$478,100.00	
- Contractor Expenditures:	1,924.60	
- Licensing Examiner:	12,996.00	
- Executive Officers:	26,400.27	
	18,083.29	
- Direct Board Expenditures	<u>124,200.82</u>	
TOTAL:	\$294,495.02	÷ 12,601 Licenses = \$23.37 per license

BOARD	REVENUES	# OF LICENSES	ALLOCATION PER LICENSES	+	DIRECT EXPENDITURES	=	TOTAL COST PER BOARD
Board of Barber Examiners	\$ 4,097.00	275	\$ 6,426.75		\$ 2,489.19		\$ 8,915.94
Board of Chiropractic Examiners	320.00	31	721.47		2,838.78		3,563.25
Collection Agency Board	4,164.00	47	1,098.39		---		1,098.39
Board of Dental Examiners	10,769.40	365	8,530.05		8,654.19		17,184.24
Board of Electrical Examiners	7,857.00	241	5,632.17		2,645.49		8,277.66
Board of Registration for Architects, Engineers and Land Surveyors	101,377.00	2,418	56,508.66		17,876.76		74,385.42
Board of Hairdressing and Beauty Culture Examiners	23,075.00	1,415	33,068.55		5,096.55		38,165.10
Board of Marine Pilots	990.00	46	1,075.02		2,713.52		3,788.54
Medical Board	14,485.00	786	18,368.82		5,553.36		23,922.18
Board of Nursing	54,646.00	3,324	77,681.88		13,931.98		118,014.13
				(Exec. Sec.)	26,400.27		
Board of Dispensing Opticians	2,720.00	46	1,075.02		1,728.34		2,803.36
Board of Optometry	530.00	38	888.06		2,578.19		3,466.25
Board of Pharmacy	13,848.00	324	7,571.88		5,854.45		13,426.33
Board of Psychologist and Psychological Associates	1,580.00	32	747.84		3,303.51		4,051.35
Board of Public Accountancy	20,777.00	332	7,758.84		12,325.49		20,084.33
Real Estate Commission	178,497.50	1,754	40,990.98		19,188.47		78,262.74
				(Exec. Off.)	18,083.29		
Board of Veterinary Examiners	705.00	72	1,682.64		1,706.34		3,389.58
Nursing Home Administrators	1,100.00	15	350.55		1,942.91		2,293.46
Physical Therapy Board	1,880.00	76	1,776.12		804.38		2,580.50
Guide Licensing & Control	38,800.00	911	21,290.07		10,070.31		31,360.38
Board of Welding Examiners	---	53	1,230.61		2,898.01		4,136.62
TOTALS:		12,601	\$294,405.37		\$168,684.38		\$463,169.75

FISCAL YEAR 1977

DOL Actual Expenditures:	\$548,000.00		
- Contractor Expenditures:	1,739.75		
- Licensing Examiner:	13,644.00		
- Mortuary Sciences:	24.00		
- Executive Officers:	32,339.29		
	29,331.19		
- Direc Board Expenditures:	144,916.01		
<b>TOTAL:</b>	<b>\$426,005.76</b>	<b>÷</b>	<b>14,566 Licenses = \$29.24 per license</b>

BOARD	REVENUES	# OF LICENSES	ALLOCATION PER LICENSES	DIRECT EXPENDITURES	TOTAL COST PER BOARD
Board of Barber Examiners	\$ 4,970.54	252	\$ 7,368.48	\$ 2,913.27	\$ 10,281.75
Board of Chiropractic Examiners	1,910.00	30	877.20	2,377.00	3,254.20
Collection Agency Board	8,064.00	50	1,462.00	811.59	2,273.59
Board of Dental Examiners	14,437.00	316	9,239.84	6,400.79	15,640.63
Board of Electrical Examiners	28,359.00	252	7,368.48	7,895.32	15,263.80
Board of Registration for Architects, Engineers and Land Surveyors	31,056.00	2,725	79,679.00	19,323.14	99,002.14
Board of Hairdressing and Beauty Culture Examiners	21,963.00	1,638	47,895.12	5,944.05	53,839.17
Board of Marine Pilots	11,122.10	49	1,432.76	5,515.11	6,947.87
Medical Board	62,023.00	844	24,678.56	5,855.54	30,534.10
Board of Nursing	40,747.00	3,469	101,433.56	12,606.53 (Exec. Sec.) 32,339.29	146,379.38
Board of Dispensing Opticians	1,060.00	49	1,432.76	2,091.32	3,524.08
Board of Optometry	2,625.00	55	1,608.20	1,920.03	3,528.23
Board of Pharmacy	8,249.00	388	11,345.12	4,655.23	16,000.35
Board of Psychologist and Psychological Associates	1,550.00	38	1,111.12	2,369.43	3,480.55
Board of Public Accountancy	15,135.00	402	11,754.48	15,138.70	26,893.18
Real Estate Commission	119,533.00	2,833	82,836.92	29,648.93 (Exec. Off.) 29,331.19	141,817.04
Board of Veterinary Examiners	4,186.50	82	2,397.68	1,110.19	3,507.87
Nursing Home Administrators	2,000.00	30	877.20	2,489.84	3,367.04
Physical Therapy Board	1,455.00	82	2,397.68	673.68	3,071.36
Guide Licensing & Control	38,695.50	927	27,105.48	10,257.33	37,362.81
Board of Welding Examiners	---	55	1,608.20	4,918.99	6,527.19
<b>TOTALS:</b>		<b>14,566</b>	<b>\$425,909.84</b>	<b>\$206,506.49</b>	<b>\$632,496.33</b>

ISCAL YEAR 1978

DOL Actual Expenditures:		\$779,500.00			
- Contractor Expenditures:		2,812.54			
- Licensing Examiner:		14,832.00			
- Mortuary Sciences:		451.49			
- Executive Officers:		23,807.99			
- Direct Board Expenditures:		30,310.73			
		181,228.78			
TOTAL:		\$526,056.47	÷	17,376 Licenses = \$30.27 per license	
BOARD	REVENUES	# OF LICENSES	ALLOCATION PER LICENSES	+ DIRECT EXPENDITURES	= TOTAL COST PER BOARD
Board of Barber Examiners	\$ 4,400.18	267	\$ 8,092.09	\$ 2,933.76	\$ 11,015.85
Board of Chiropractic Examiners	1,070.00	44	1,331.88	4,218.07	5,549.95
Collection Agency Board	6,950.00	54	1,634.58	4,126.22	5,760.80
Board of Dental Examiners	5,970.24	383	11,593.41	8,775.88	20,369.29
Board of Electrical Examiners	15,437.14	305	9,232.35	6,666.42	15,898.77
Board of Registration for Architects, Engineers and Land Surveyors	110,870.75	2,941	89,024.07	21,250.48	110,274.55
Board of Hairdressing and Beauty Culture Examiners	21,821.00	1,878	56,847.06	4,512.32	61,359.38
Board of Marine Pilots	1,780.00	85	2,572.95	3,819.54	6,392.59
Medical Board	17,551.25	910	27,545.70	6,346.32	33,892.02
Board of Nursing	72,265.87	4,245	128,496.15	20,098.55	172,402.69
				(Exec. Sec.) 23,807.99	
Board of Dispensing Opticians	2,190.00	54	1,634.58	1,910.81	3,545.39
Board of Optometry	795.00	63	1,907.01	5,704.41	7,611.42
Board of Pharmacy	16,482.00	414	12,531.78	4,901.40	17,433.18
Board of Psychologist and Psychologist Associates	2,680.00	44	1,331.88	5,637.68	6,969.56
Board of Public Accountancy	38,675.00	482	14,590.14	17,248.81	31,838.95
Real Estate Commission	285,634.92	3,615	109,426.05	38,177.92	177,914.70
				(Exec. Off.) 30,310.73	
Board of Veterinary Examiners	1,160.00	93	2,815.11	1,640.42	4,455.53
Nursing Home Administrators	1,830.00	37	1,119.99	1,703.66	2,823.65
Physical Therapy Board	3,132.00	102	3,087.54	1,745.59	4,833.13
Guide Licensing & Control	41,617.00	1,295	39,199.65	16,828.17	56,027.82
Board of Welding Examiners	---	65	1,967.55	2,982.25	4,949.80
TOTALS:		17,376	\$525,971.52	\$235,347.50	\$761,319.02

*Do not correlate to figures in all sections.*

FISCAL YEAR 1979

DOL Actual Expenditures:	\$901,072.00	
- Contractor Expenditures:	2,839.58	
- Licensing Examiner:	15,102.00	
- Mortuary Sciences:	319.91	
- Executive Officers:	32,196.12	
	34,324.92	
- Direct Board Expenditures:	219,096.71	
TOTAL:	\$597,192.76	19,477 Licenses = \$30.66 per license

BOARD	REVENUES	# OF LICENSES	ALLOCATION PER LICENSES	DIRECT EXPENDITURES	TOTAL COST PER BOARD
Board of Barber Examiners	\$ 4,274.00	276 <i>244</i>	\$ 8,462.16	\$ 4,381.59	\$ 12,843.75
Board of Chiropractic Examiners	3,047.00	54	1,655.64	4,709.43	6,365.07
Collection Agency Board	3,697.55	61 <i>48</i>	1,870.26	4,670.76	6,541.02
Board of Dental Examiners	16,937.00	419	12,846.54	15,480.40	28,326.94
Board of Electrical Examiners	36,746.00	378 <i>812</i>	11,589.48	6,791.03	18,380.51
Board of Registration for Architects, Engineers and Land Surveyors	26,388.43	3,119 <i>3,095</i>	95,628.54	23,827.90	119,456.44
Board of Hairdressing and Beauty Culture Examiners	26,970.00	2,037 <i>1,774</i>	62,454.42	5,989.43	68,443.85
Board of Marine Pilots	10,722.00	88 <i>52</i>	2,698.08	8,307.44	11,005.52
Medical Board	69,919.00	1,001	30,690.66	14,979.85	45,670.51
Board of Nursing	36,512.50	4,832	148,149.12	21,529.22	
				(Exec. Sec.) 32,196.12	201,874.46
Board of Dispensing Opticians	2,210.00	59	1,808.94	2,287.85	4,096.79
Board of Optometry	3,245.00	72	2,207.52	4,413.32	6,620.84
Board of Pharmacy	6,734.00	429	13,153.14	5,725.01	18,878.15
Board of Psychologist and Psychological Associates	4,435.00	50	1,533.00	7,617.52	9,150.52
Board of Public Accountancy	21,186.00	562 <i>401</i>	17,230.92	20,174.93	37,405.85
Real Estate Commission	142,659.72	4,202 <i>8,758</i>	128,833.32	40,652.49	
				(Exec. Off.) 34,324.92	203,810.73
Board of Veterinary Examiners	5,685.00	107	3,280.62	2,076.94	5,357.56
Nursing Home Administrators	1,435.00	39	1,195.74	4,226.97	5,422.71
Physical Therapy Board	1,215.00	125	3,832.50	2,293.47	6,125.97
Guide Licensing & Control	40,996.00	1,467 <i>- 858</i>	44,978.22	14,249.25	59,227.47
Board of Welding Examiners	1,815.00	100 <i>- 63</i>	3,066.00	4,711.91	7,777.91
TOTALS:		19,477	\$597,164.82	\$285,096.71	\$882,782.57

With respect to specific recommendations made by the Division of Legislative Audit, appropriate steps for implementation have been taken in most instances.

Recommendation No. 1: The Division of Occupational Licensing's investigation unit should be transferred to the Department of Public Safety.

*Unconstitutional  
or against  
some  
law*

As of this date, a thorough analysis of such a transfer is continuing. The feasibility of an RSA between the Department of Commerce and Economic Development and the Department of Public Safety is a valid option that may have considerable merit in that the functions could be assumed by the Department of Public Safety in an expedited time frame. If our review indicates a transfer of the unit is merited, the transfer would take place prior to February 15, 1980.

Improvements have been made in this unit within the past year. Complaints are now being screened and prioritized, and reports by investigative staff are being made to the boards. Approximately 1,700 cases were purged from the Division files in the fall of 1978; these are pending board approval for closure due to age, lack of jurisdiction, or no apparent violation. Effective December, 1979, approximately 400 have been closed. The Division is in the process of organizing all investigative files and forwarding appropriate material to the State archives; this is expected to be completed by the end of January, 1980.

The Division's enforcement staff received 298 complaints for investigation in FY '79, ranging in priority from urgent public harm to minor technical violations. In FY '79, 44 cases were closed due to one of the following reasons: no jurisdiction, no violation, voluntary compliance or age. Charges were filed against 27 which required process for hearing. Out of the 27 litigation cases, 3 licenses were revoked, 1 license was suspended, 2 licenses were denied, 1 case was dropped due to no violation, 2 closed with the stipulation that they retake the board examination and pass, 1 applicant was allowed to resubmit an application after

1 year, and license was granted with the other 16 litigation cases still pending. As of December 10, the Division had 307 open cases on file.

Recommendation No. 2: Statutory amendments are needed to assure that appropriate action is taken on consumer complaints against licensed persons.

The Office of the Governor has indicated that appropriate amendments to AS 45.50.471, and its application, are being pursued.

Recommendation No. 3: The Office of the Governor should keep the appointments of members of the occupational licensing boards current.

We agree with this recommendation; the Division has solicited and submitted recommendations for board appointments.

Recommendation No.4: Legislation should be enacted limiting the length of service for all board members to two consecutive terms.

We agree with this recommendation and the reasoning supporting it.

Recommendation No. 5: The Department of Commerce and Economic Development should improve the operation, security and internal control of the 3M-Linolex minicomputer system.

To designate a data entry person is a valid recommendation, however, budget restrictions do not allow us to hire one individual solely to enter data. This would be very costly.

The Division is currently locking all copied data diskettes in its fire proof safe. These disks are kept current by creating new copies to replace the old ones after 20 changes have been made to any one master disk. It would be very difficult for a person to come into the office and be able to open a data disk without prior training. The State also maintains security personnel who walk the floors constantly and who question any individual working in the offices after hours. If, by chance, a disk was ruined we would have a current backup disk in the safe.

It is felt that if we prenumbered the blank licenses, it would add to more confusion to the licensee. This would have to be a four digit number, which is the same number of digits in a license number. The cost is also high.

A system utilization log has been established and is maintained daily.

The only operating procedures manual at this time is the one distributed by 3M. For data entry it is very good, for correcting errors on disks caused by power failure and/or fluctuations, it is poor. Time has not allowed us to complete a manual at present.

Recommendation No.6: The Department of Commerce and Economic Development should review the license fee structure of all boards and seek appropriate revisions.

Agreed. The Division has reintroduced legislation (SB 94 in the Senate Finance Committee) which would allow the Department to set fees after consultation with the boards. This request was also made to the 1978 Legislature but no action was taken.

Recommendation No. 7: The Department of Commerce and Economic Development should include the goals, objectives and quantifiable measures of each board in the Division of Occupational Licensing's budget documents and submit performance reports for each board as required by AS 37.07.

In April of 1979, all boards and commissions were contacted by the Division and requested to submit goals and objectives for inclusion in the FY '81 budget documents; 15 boards complied. Boards were also requested to submit performance reports for FY '79; 14 boards complied with this request.

Recommendation No. 8: The Division of Occupational Licensing should collect, record and maintain, for five year periods, files, and statistics of license and testing applicants, and related workload of the licensing examiners.

For the past year, monthly activity reports have been maintained by the Division containing information on board activities and examiner workload. Examiners are also submitting interim reports to the boards which outline licensure activity between meetings. This encourages feedback from the boards regarding staff performance.

Recommendation No. 9: The Department of Commerce and Economic Development, in conjunction with the Office of the Governor, should prepare a board member orientation booklet, including a code of conduct.

A manual for board members was prepared by the Department of Law and was distributed to all members. In addition to this manual, new board members receive information regarding complaint handling and the board's role in investigation and adjudication, an application packet for the regulated profession, appropriate statutes and regulations, a copy of the Administrative Procedure Act, information on the availability of teletype service, a listing of other members' names and address on the particular board, and a listing of Division employees.

Recommendation No. 10: The 11 health-related boards, in conjunction with the Division of Occupational Licensing, should review their applications for licensure and delete any questions which could lead to discrimination against applicants.

All 21 boards and commissions are cognizant of the need to ensure against appearances or charges of discrimination, and of their responsibilities in this area. The process of application review is time consuming for most boards due to the infrequency of meetings; however, all boards have, or will, consider this recommendation, with assistance from the Division.

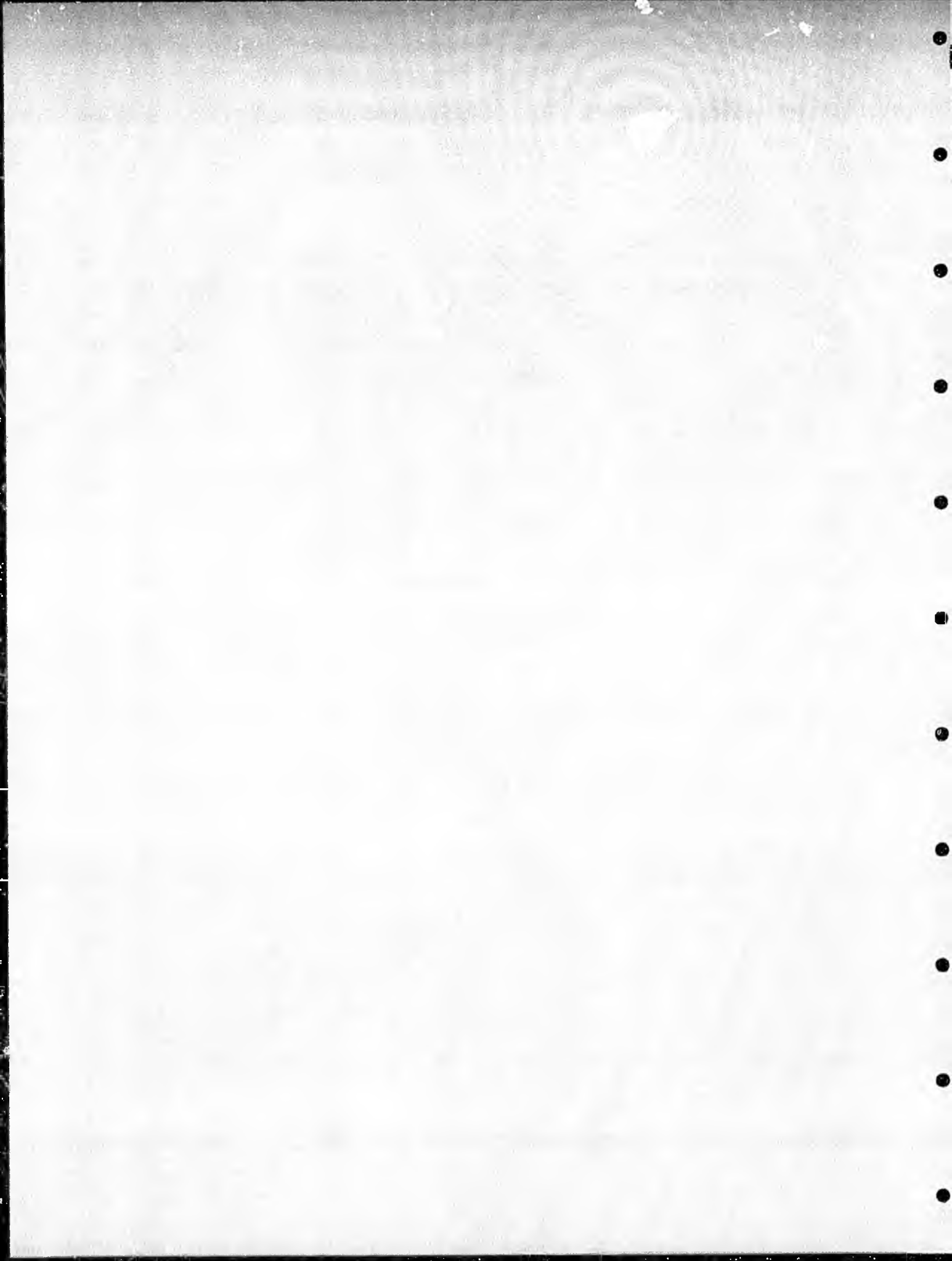
Recommendation No. 11: The Department of Commerce and Economic Development should improve formal board minutes.

The Division has been implementing this recommendation and will continue to do so. A decrease in licensing examiner turnover has resulted in substantial improvements to board minutes preparation.

Recommendation No. 12: The Department of Commerce and Economic Development and all licensing boards should ensure that public notices of examinations are sufficiently and timely advertised.

Public notices for board meetings and examinations are advertised according to legal requirements.

In conclusion, the DOL wishes to ensure the Legislature and the public that every effort is being made within available resources to accomplish the directives outlined in Title 8. The recommendations made as a result of the Sunset process, in addition to any other appropriate suggestions from any source, have been and will continue to be evaluated.



A

STATE OF ALASKA  
BOARD OF WELDING EXAMINERS  
May, 1979

Findings

The Board of Welding Examiners was created in 1968 and was charged at that time with numerous responsibilities regarding regulation of the welding profession. While it is felt that quality assurance is needed within the industry, the review process indicates that the Board is duplicating the standards and efforts of the American Welding Society (AWS) and is only minimally active in carrying out its statutory duties.

We believe that the existence of this board and State licensing is inappropriate as a matter of public interest.

/ Sunset

I. General Information

A. Regulated Parties

1. Welding Inspectors
2. Testing Facilities (by statute)

B. Definitions

"(16) 'welder' means welder, welding, welding operator and tacker;

(17) 'welding' means the metal joining process used in making welds;

(20) 'welding procedure' means a written document specifying the essential variables as listed in the appropriate welding or engineering code or both;" (12 AAC 72.900)

C. Nature and Composition of Board

1. Board members and terms:

Five-year term (no restrictions on consecutive terms or numbers of terms).

Tim Farrell	ends December 16, 1983
Peter Millar	ends December 16, 1979
Don Lockman (Chairman)	ends December 16, 1981
Don Delk	ends December 16, 1980
Philip Davis	ends December 16, 1983
J.C. Wingfield	ends December 16, 1983
George Fox	ends December 16, 1983

2. Representation:

Profession = 7  
Public = 0

3. Qualifications:

"Each member of the board shall be a citizen of the United States and a resident of the state. At least three members shall be persons with engineering degrees or registration as an engineer and each engineer member shall have at least five years engineering experience. All members shall have extensive experience in welding." (AS 08.99.050)

Members are appointed from a list prepared by the Alaska Chapter of the American Welding Society and the Alaska Society of Professional Engineers.

D. Licensing Data

Current licenses (effective May, 1979)

in-State = 37  
out-of-State = 26  
Total = 63

E. Fees

1. welding inspector application \$25.00  
2. annual renewal 10.00

Total subsidy  
\$10 x 63 =  
\$630.00  
←

F. Board Revenues and Expenditures

	FY ' 76	FY '77	FY '78	FY '79
Receipts	\$ -	\$ -	\$ -	\$1,830.00
- refunds	-	-	-	15.00
Total	-	-	-	\$1,815.00
Expenditures				
Transportation	815.24	1,151.11	1,020.43	1,486.36
Per Diem	1,583.43	1,711.40	1,564.25	2,004.90
Phone	34.03	90.08	196.75	335.66
Printing, Adver. & Postage	448.46	1,907.80	200.82	482.64
Fees & Services	16.85	58.60	-	250.00
Rents, Leases & Other	-	-	-	152.35
Total	<u>2,898.01</u>	<u>4,918.99</u>	<u>2,982.25</u>	<u>4,711.91</u>
Surplus	-	-	-	-
Deficit	\$2,898.01	\$4,918.99	\$2,982.2F	\$2,896.91

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

Year	Received	Closed	To Litigation
1975	0	0	0
1976	1	0	0
1977	4	0	0
1978	0	5	0
1979	1	0	0
(through April)			

Pending: 1 complaint against five individuals

The five cases closed in 1978 were closed due to age. Only one complaint was received from a member of the public and none alleged harm to the public.

#### H. Qualifications

Trade school or vocational training.

#### II. Analysis

- A. To what extent has the Board of Welding Examiners operated in the public interest?

---

The Board of Welding Examiners is statutorily required (AS 08.99.080(a)(1)) to establish rules and regulations concerning certification of welders in the State. The Board has done this indirectly by licensing a form of middle man, the "welding inspector," who in turn certifies welders and welding procedures in accordance with standards established by the industry nationwide and designated by the project engineer and/or designer. The certification procedure involves a practical demonstration of welding competence supervised by a licensed inspector. Inspector licensure is granted on the basis of Alaska Welding Society (AWS) certification and proof of all position welding qualification. [Procedurally, an applicant must apply for examination and qualify for certification through the American Welding Society prior to application for State licensure.]

A national AWS test is utilized; it is monitored by the licensing examiner from the Division of Occupational Licensing, usually by one or two Board members, and by an Alaska Chapter representative of the

Society. Tests are well secured and are graded by the Society. The State does not have access to its contents nor to individual scores; only "pass or fail" information is attainable if requested. Candidates for testing are charged a \$50.00 fee by the American Welding Society.

As of April, 1979, the Society is also requesting that the State pay \$250.00 for each use of the examination in addition to expenses for one of its representatives to travel to Alaska and ensure that the test is being administered properly. The AWS test is given four times a year in accordance with 12 AAC 72.085.

*Elave!*

*which is this the national or state?*

It is suggested that if the Board and/or licensing is retained, the function of AWS testing be eliminated as a State responsibility.

"Welders" are not certified, licensed or registered by the Board or the State. "Welding Inspectors" are licensed based on authorization of the American Welding Society. The applicant for State licensure must submit only a copy of his American Welding Society certificate and All Position Welding Qualification. These documents are merely photocopies; they are not certified. The All Position Welding Qualification may come in many forms from many sources all over the country with nonverifiable signatures. The requirements for a welding inspector license, with one exception, are exact requirements of AWS certification. The application upon which qualifications are enumerated is submitted to AWS, not to the State, yet these qualifications appear in Board regulations as State requirements. State licensure should be indicative of compliance with criteria established to protect the health, safety and welfare of its citizens. It is questionable whether such a significant government authorization should be based on two photocopies of "presumed" validity or solely upon authorization from a national society.

*Licensure*

§ 080(a)(2) requires that the Board "establish and define certification tests as they apply to various types and categories of work done in or for the state." This provision is accomplished by adherence to national

applicable codes and standards which define certification tests and procedures. These procedures may also be developed by weld testing facilities.

§ 080(a)(3) requires the Board to "work with federal and private agencies and specifying engineers to establish uniform testing and certifying methods" for welders. Again, this is determined by national codes and standards of the industry.

§ 080(a)(4) requires that the Board "work with federal agencies and the agencies of other states to establish reciprocity agreements." *Reciprocity* Reciprocity agreements mandate licensure contingent upon formal interstate concurrence rather than utilization of individual qualification criteria. Such agreements have not been formulated nor are they appropriate to the nature of this industry. Under present board operation all applicants meeting the qualifications are licensed in Alaska without regard to place of residency or licensure in another jurisdiction.

§ 080(a)(5) provides that the Board "set up criteria and define experience and documentary requirements which may be accepted in lieu of physical certification tests." The Board has done this to the extent that welders need not be recertified if continuously employed on the process for which certification was obtained. Continuous employment is defined as employment without interruption of more than 90 consecutive days, unless otherwise specified by an applicable code. Certification and recertification expenses are normally borne by the prospective employer.

*fees.*

§ 080(a)(6) requires the Board to "set the fees for the welder certification tests." This has not been done, nor is it felt to be appropriate. Testing costs may vary depending on facility equipment or location and fees charged should remain within the industry.

§ 080(a)(7) obligates the Board to "examine, certify, and renew" certification. This is done by the Board insofar as it examines and licenses welding inspectors. No examination, certification or renewal is done by the Board with respect to welders.

*Reports of Board*

§ 080(a)(8) mandates submission of an annual report to the governor and the legislature. The Board reports that this has been complied with, however, no information of this type has been received by the administrative agency.

§ 080(a)(9) concerns promulgation of regulations regarding weld and welder qualifications and designation of reporting procedures which certify compliance. The Board has adopted the AWS qualifications set for the industry. There is no record of designated reporting procedures, however, the function of welding inspectors is to certify compliance of welders to welding processes.

§ 080(a)(10) provides that the Board shall "designate and approve persons qualified to administer welding tests," and "designate and approve" testing facilities. The Board is approving persons qualified to administer welding tests -- almost to the exclusion of all else. This appears to be one area of statutory authority which the Board is actively involved in. It has adopted lengthy and detailed regulations outlining the qualifications and responsibilities of an inspector, most of which is duplication of AWS standards.

Several testing facilities were approved by the Board during the years 1974 through 1976. One was approved in November of 1977. Once approval is given, facilities are under no further review or renewal process to insure on-going compliance with standards or approval criteria. At least one facility is now operating in the State without Board approval. Apparently, with the advent of welding inspectors, the Board decided it no longer needed to approve facilities as required.

The Board of Welding Examiners is comprised of seven members and as of May, 1979, regulates 63 welding inspectors. The Board meets four times a year, most often for one to three hours. Members may be appointed only from nominations submitted by the Alaska Chapter of AWS and the Alaska Society of Professional Engineers. Some members of the industry have expressed a desire to serve on the Board but felt this nomination method constituted a barrier. Some also indicated that they felt nominations submitted are subject to Board endorsement. Members of the industry also expressed concern that the Board not be weighted with representatives from testing facilities, or any one facet of welding. This is recommended for any board to avoid the appearance of conflicting interests.

Barrier to get onto the board.

Finally, Board statutes address compliance with and enforcement of regulations, rules and orders. There is apparently some question regarding authority. AS 08.99.080(b) has been interpreted by opinion of the Department of Law as providing for enforcement by the Department of Labor and by the Department of Commerce and Economic Development. Due to some confusion among the concerned parties regarding this matter, it is suggested that the advice given to "work out an arrangement" be followed (see Appendix A).

deal power for enforcement  
see page 30

As previously mentioned, Board regulations and activities have concentrated directly on licensure of welding inspectors rather than on certification of welders. The Board has adopted almost verbatim and in its

entirety the "Standard for Qualification and Certification of Welding Inspectors" of the American Welding Society as its own regulations. State licensure is contingent upon AWS certification. Thus, current Board operation is redundant in its exclusive reliance on industry established criteria.

*NO  
Teeth.*

No statutory prohibition against noncertified or nonlicensed activity exists. The Board has accomplished this through its regulations. Welders who are tested and perform satisfactorily are certified by the inspector and must remain "continuously employed" on that particular process to maintain certification. Interrupted employment of more than 90 days requires recertification unless otherwise cited in the project specifications.

Compliance documents are submitted to AWS, not to the State. Only the "all position welding qualification" is a State imposed and regulated requirement. State licensure in this instance amounts to notice that the inspector is AWS qualified. The services of welders and welding inspectors are utilized by members of the industry (eg., contractors and engineers), who are responsible for the work done and who are well able to judge for themselves the competence and qualifications of welders.

*are  
regulated.*

*NOT  
Regulated*

Inspection and regulation of the type of establishment the average consumer may do business with (eg., small welding shops and marina repair facilities) is not taking place.

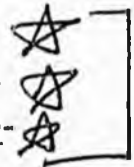
There is no question that weldment failure can and has involved "hazard to life or property." However, the State is not active in inspection of work performed. There is no requirement for inspection of a welding operation in which weldment failure would involve hazard to life and

property, only that if one does inspect, one must be licensed. Liability for damages resulting from weldment failure is usually against the contractor; the "welding inspector" is only liable to his employer, if he has one. It is also noted that a "welding inspector" is not required to be an active welder while the designer/engineer who specifies the welding procedures to be used may not inspect them for compliance unless licensed by the State as an inspector.

In reviewing the August, 1978 regulations, one might conclude that those regulations and the current operation of the Board have, in practice and in fact, supplanted the statutes, albeit not necessarily by specific design. The statutory responsibilities of the Board would be monumental tasks given the nature of the industry and other restrictions such as time and budgeting. (Enforcement and regulation in the manner which is statutorily mandated indicates effort by a body of well-trained, well-qualified and well-paid individuals to carry out the tasks of inspection, certification, governmental interaction, and rule-making.

We believe that the Board and State regulation should be allowed to terminate on June 30, 1980 thereby letting the industry rely on AWS, national codes, and national standards. Oklahoma is the only other state to license welding inspectors. It should be noted, however, that individuals holding AWS certification are exempt from licensure requirements while this is the major criteria by which Alaska licenses. The Oklahoma Department of Labor, Boiler Inspection Department, has administrative responsibility for this occupation (see Appendix B). Another option is to create an information/public relations position to verify that welders throughout the State are indeed certified.

If the Board of Welding Examiners is continued, consideration also should be given to representative membership, to allowance of nominations from any and all sources, and to limiting numbers of terms which may be served.



} Board  
Comparison

B. To what extent has the operation of the Board of Welding Examiners been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

The Board. { A major impediment to Board operation has been the prodigious nature of its statutory responsibilities. Given the number of Board members, frequency and duration of meetings, inadequate financial resources, and limited support services, a Board of this nature would find it difficult to comply with all of its obligations. It could, however, accomplish more toward its objectives than is presently the case. The administrative agency will be working with the Board to establish objectives and improve its operations.

? { The Board of Welding Examiners has experienced some difficulty with respect to personnel and budgetary restrictions. Support staff is provided by the Division of Occupational Licensing and is presently adequate. Employee turnover has, in the past, impeded continuity and follow through on Board requests. Fees and revenues for all boards and commissions under the jurisdiction of the Division of Occupational Licensing are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct board revenues and expenses may be determined. Although this Board has been in existence since 1968 and was actively licensing, no fees were charged and no revenues collected until FY '79.

The Board has encountered some problems with respect to investigative services provided by the administrative agency. During FY '78 two investigator positions were vacant; as a result, one position was abolished by the Legislature. At the present time, two investigators are located in Anchorage with a Chief Investigator located in Juneau. An additional investigator position was approved in the FY '80 budget

but will probably not be filled immediately due to vacancy factors incorporated into the personal service category of the budget. Procedural constraints of the administrative adjudication article of the Administrative Procedure Act (AS 44.62.330-630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints.

Nominations for membership on the Board should be allowed from any source rather than just the Alaska Chapter of the American Welding Society and the Alaska Society of Professional Engineers. At least two public members should be included on the Board without increasing total membership. Consideration should be given to decreasing the number of Board members to five and to methods of ensuring representation from different areas of the industry.

BOARD  
Composition  
See page 9  
"ARTICLE"

Statutory changes which would facilitate Board functions would be desirable. The Division will continue to work with the Board to establish reasonable alternatives to the present statutes.

C. To what extent has the Board of Welding Examiners recommended statutory changes which are generally of benefit to the public interest?

Board functions  
not carried  
out.

No statutory amendments have been made to AS 08.99 since 1970.

Board minutes from the past three years reflect no recommended statutory changes, whether specifically in the public interest or otherwise. The Board has concentrated most of its efforts on the regulations which went into effect in August of 1978. These regulations were two years in the making with considerable industry controversy and testimony.

- D. To what extent has the Board of Welding Examiners encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

---

Participation and interest in services, regulations and decisions of the Board is from the industry. As previously noted, recent regulations effected considerable industry interest and concern. Board meetings are routinely attended by a few members of the industry. Very little, if any, "public" interest has been shown in the form of attendance at meetings, hearings, or as written input. Positive steps could be taken to make the general public aware of the existence and functions of the Board. However, the field of welding is somewhat technical and complex and members of the public may not wish to concern themselves without a particular reason for doing so.

Public interests are felt to be furthered by the presence of public members on professional boards. The Board of Welding Examiners has no public members. "In recent years a number of states have added one or more public members (citizens with no particular interest in the occupation or profession governed by the board) to licensing boards in an effort to ensure that the interests of the public would be represented in decisionmaking."<sup>1</sup> The State of California, which provides for a one-third public membership on health care boards and a public majority on others, has indicated that its experience with public members has been highly rewarding.

*California Law!*

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<sup>1</sup>Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, pg. 20

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Welding Examiners processed and resolved?

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Complaints received regarding this occupation have been from the industry for unlicensed activity. None alleged harm or danger to the public.

No formal complaints have been filed against the Board or its members although allegations regarding conflict of interest (members owning testing facilities) are found in agency files.

F. To what extent does the Board of Welding Examiners present qualified applicants to serve the public?

Board not meeting  
Responsibility.

---

None. Applicant qualifications are determined and certified to by the American Welding Society.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Welding Examiners in its own activities, and in its area of activity or interest?

---

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (also responsible for services to another very large regulated occupation) who is hired through the State Personnel System and is subject to affirmative action.

Welding Inspector licenses are issued on the basis of AWS certification without consideration to affirmative action requirements.

H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Board of Welding Examiners to better serve the interests of the public?

---

The administrative agency will be working with the Board in an attempt to delineate realistic objectives and functions. However, until and unless its statutory duties are changed, the Board should take positive action to comply with them.

Board composition should be reviewed in terms of representation and total membership. Source of nominations for appointment should also be considered. The Board should consider a regulatory amendment to make licenses renewable on a biennial basis rather than annually. It also should refuse renewal to those licentiates not meeting renewal requirements, specifically, evidence of having passed an eye examination (or change the requirements).

Fees. Board and administrative expenses outweigh revenues collected through regulation of this profession. The current fee schedule, \$25 for license application and \$10 for license renewal, is established by Board regulations and the Board has indicated a reluctance to consider raising fees. Fees collected are not adequate to cover transportation and per diem for meetings and examinations, and Division of Occupational Licensing administrative overhead, such as staff salaries and examination expenses.

## Chapter 99. Board of Welding Examiners

### Section

10. Creation and membership of board
20. Term of office
30. Source of appointments
40. Removal from office
50. Qualifications of board members
60. Meetings
70. Quorum
80. Powers and duties of the board
90. Applicability of Administrative Procedure Act
100. Expenses
110. Codes
120. Penalty

Sec. 08.99.010. Creation and membership of board. There is created the Board of Welding Examiners, consisting of seven members appointed by the governor. (F 1 ch 151 SLA 1968)

Sec. 08.99.020. Term of office. Board members serve a term of five years. However, of the members first appointed, one shall be appointed for a term of one year, one for two years, one for three years, one for four years, and three for terms of five years. (§ 1 ch 151 SLA 1968)

Sec. 08.99.030. Source of appointments. The governor shall appoint board members from a list of persons prepared by the Alaska Chapter of the American Welding Society and the Alaska Society of Professional Engineers and submitted at least 30 days before the expiration of a term and not more than 60 days after a vacancy occurs in an unexpired term. The list shall contain not less than two recommended candidates for each appointment. The governor shall make appointments within 30 days after receiving the list. (§ 1 ch 151 SLA 1968; am § 1 ch 151 SLA 1970)

Sec. 08.99.040. Removal from office. Each member holds office at the pleasure of the governor notwithstanding the member's term. (§ 1 ch 151 SLA 1968)

Sec. 08.99.050. Qualifications of board members. Each member of the board shall be a citizen of the United States and a resident of the state. At least three members shall be persons with engineering degrees or registration as an engineer and each engineer member shall have at least five years engineering experience. All members shall have extensive experience in welding. (§ 1 ch 151 SLA 1968; am § 2 ch 151 SLA 1970)

Sec. 08.99.060. Meetings. The board shall meet at least once a year. (§ 1 ch 151 SLA 1968)

Sec. 08.99.070. Quorum. A majority of the board constitutes a quorum. (§ 1 ch 151 SLA 1968)

Sec. 08.99.080. Powers and duties of the board. (a) The board shall

(1) establish and promulgate rules and regulations concerning certification of welders in the state;

(2) establish and define certification tests as they apply to various types and categories of work done in or for the state;

(3) work with federal and private agencies and specifying engineers to establish uniform testing and certifying methods for all welders throughout the state;

(4) work with federal agencies and the agencies of other states to establish reciprocity agreements;

(5) set up criteria and define experience and documentary requirements which may be accepted in lieu of physical certification tests in the state;

(6) set the fees for the welder certification tests;

(7) examine, certify, and renew the certification of qualified applicants;

(8) keep a record of its proceedings, and submit annual reports to the governor and the legislature;

(9) promulgate regulations concerning the quality of welds and qualifications of welders required in specific areas of industry and construction and designate reporting procedures necessary to certify compliance with these quality standards;

(10) designate and approve persons qualified to administer welding tests, and designate and approve shops, laboratories, or other establishments qualified for testing coupons and weldments.

(b) The board may request technical personnel from the Department of Labor for the purpose of reviewing and analyzing reports and may request field inspection by the department for the purpose of assuring compliance with, and enforcement of the regulations, rules and orders promulgated under §§ 10 - 110 of this chapter. (§ 1 ch 151 SLA 1968; am §§ 3 - 5 ch 151 SLA 1970)

Sec. 08.99.090. Applicability of Administrative Procedure Act. The board shall comply with the Administrative Procedure Act (AS 44.62). (§ 1 ch 151 SLA 1968)

Sec. 08.99.100. Expenses. Members of the board are entitled to the per diem and travel expenses allowed by law. (§ 1 ch 151 SLA 1968)

Sec. 08.99.110. Codes. The United States of America Standards Institute Codes listed below are established as the piping codes for the state:

- (1) B 31.10.0 - 1967 power piping;
- (2) B 31.2 - 1968 fuel gas piping;
- (3) B 31.8 - 1968 gas transmission and distribution piping system;
- (4) B 31.3 - 1966 petroleum refining piping;
- (5) B 31.4 - 1966 and B 31.4a - 1968 liquid petroleum transportation piping systems. (§ 6 ch 151 SLA 1970)

Sec. 08.99.120. Penalty. A person who violates a regulation adopted under §§ 10-110 of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$500. (§ 7 ch 151 SLA 1970)

CHAPTER 72.  
BOARD OF WELDING EXAMINERS

## Article

1. Codes
2. Welders
3. Welding Inspectors
4. General Provisions

ARTICLE 1.  
CODES

## Section

5. Rating
10. (Repealed)

12 AAC 72.005. RATING FOR WELDERS. Ratings for welders shall be governed by the code requirements in the job specifications. In the absence of code requirements, welders shall be certified in accordance with the applicable American Welding Society Code. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1),(2) and (9)

12 AAC 72.010. CERTIFICATE REQUIRED. Repealed. (8/21/78, Reg. 67)

ARTICLE 2.  
WELDERS

## Section

15. Welder qualification certificate required
20. (Repealed)
25. Requirements for welder qualification certificate
30. (Repealed)
35. Welder qualification certificate issued
40. (Repealed)
45. Requirements for maintaining a current welder qualification certificate

12 AAC 72.015. WELDER QUALIFICATION CERTIFICATE REQUIRED. A person may not perform a welding operation in the state for compensation, in which weldment failure would involve hazard to life or property unless he or she holds a current, valid welder qualification certificate in the appropriate rating. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1),(2),(5) and (9)

12 AAC 72.020. DURATION AND RENEWAL. Repealed. (8/21/78, Reg. 67)

employed on the welding process for which he is certified.

12 AAC 72.025. REQUIREMENTS FOR WELDER QUALIFICATION CERTIFICATE.

(b) The expiration or revocation of one rating does not affect any remaining rating. (Eff. 8/21/78, Reg. 67)

(a) Testing of welders shall be done under the direct supervision of a licensed welding inspector.

Authority: AS 08.99.080(a)(1),(5) and (10)

(b) An applicant for a welder qualification certificate or a company desiring to have a welder qualified shall

ARTICLE 3.  
WELDING INSPECTORS

(1) submit to the welding inspector the welding procedure specifications or the welding performance specifications, or both when indicated, for the appropriate rating; and

Section

- 50. (Repealed)
- 55. Welding inspector license required
- 60. (Repealed)
- 65. Requirements for welding inspector license
- 70. (Repealed)
- 75. Application for welding inspector license
- 80. (Repealed)
- 85. Examination for welding inspector license
- 90. (Repealed)
- 95. Welding inspector license issued
- 105. Welding inspector license expiration and renewal
- 115. Duties and responsibilities of welding inspector
- 125. Prohibited conduct of welding inspector

(2) complete the welding test for the appropriate rating according to the terms of the welding procedure specifications or the welding performance specifications, or both when indicated.

(c) Prequalified procedure specifications may be used for test administration according to applicable codes. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1),(2),(5) and (9)

12 AAC 72.030. TEST SELECTION. Repealed. (8/21/78, Reg. 67)

12 AAC 72.050. TEST FACILITIES. Repealed. (8/21/78, Reg. 67)

12 AAC 72.035. WELDER QUALIFICATION CERTIFICATE. The welding inspector shall issue the welder qualification certificate in the appropriate rating to the applicant or company upon the applicant's successful completion of the examination. (Eff. 8/21/78, Reg. 67)

12 AAC 72.055. WELDING INSPECTOR LICENSE REQUIRED. A person may not test a welder for the purpose of issuing a welder qualification certificate or inspect a welding operation in the state in which weldment failure would involve hazard to life or property unless he or she holds a current, valid welding inspector license. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1),(7) and (10)

Authority: AS 08.99.080(a)(7) and (10)

12 AAC 72.040. QUALIFICATION. Repealed (8/21/78, Reg. 67)

12 AAC 72.060. WELDER QUALIFIER. Repealed. (8/21/78, Reg. 67)

12 AAC 72.045. REQUIREMENTS FOR MAINTAINING A CURRENT WELDER QUALIFICATION CERTIFICATE. (a) A welder qualification certificate is valid if

12 AAC 72.065. REQUIREMENTS FOR WELDING INSPECTOR LICENSE. (a) An applicant for a welding inspector license must

(1) it is kept current in compliance with the code under which it is issued unless stated otherwise in the job specification; and

(1) be a high school graduate or hold a state or military approved high school equivalency diploma;

(2) the welder has been continuously

(2) have no less than five years' experience at the technical level in an occupational function that directly involved

(A) design experience such as preparation of plans and drawings for weldment construction according to a code, standard or specification;

(B) construction experience such as actual construction or fabrication and erection of weldments in accordance with a code, standard, specification or drawing;

(C) maintenance experience such as detection and measurement of weld inadequacies or discontinuities in accordance with specified procedures; and

(D) repair experience such as repair or replacement of welds that were determined inadequate or defective by reference to a code, standard, specification or drawing;

(3) be familiar with and understand the fundamentals of shielded metal arc welding, stud arc welding, submerged arc welding, flux cored arc welding, gas metal arc welding, gas tungsten arc welding, electroslag welding, oxyfuel gas welding, brazing, thermal cutting and mechanical cutting;

(4) be capable of writing clear and concise reports and maintaining records;

(5) pass an eye examination to prove natural or corrected near distance acuity for reading J-1 letters at a distance of not less than 12 inches on Jaeger's standard test type chart for near vision, or equivalent test, and natural or corrected far distance acuity of 20/40 as evidenced by a written, signed statement from a physician or an optometrist;

(6) pass a closed book test on welding inspection fundamentals such as welding processes, nondestructive testing methods, and interpretation;

(7) pass an open book test on general code or standard requirements such as fabrication tolerances and preheat requirements;

(8) pass a demonstration of competency in

the use of tools, gauges, and instruments pertaining to weld inspection; and

(9) submit evidence of having previously passed an all position welding qualification test in at least one welding process.

(b) The requirements of (a)(3) - (8) of this section will be waived for an applicant possessing a current welding inspector certificate issued by the American Welding Society in accordance with AWS QC 1-77, "Standard for Qualification and Certification of Welding Inspectors."

(c) An applicant may substitute up to two years of post-high-school education for two years of the five-year experience relevant to any of the functions covered by (a)(2) of this section and approved by the board. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(5) and (10)

12 AAC 72.070. TEST FEES. Repealed. (8/21/78, Reg. 67)

12 AAC 72.075. APPLICATION FOR WELDING INSPECTOR LICENSE. Application for a welding inspector license must be made to the department on a form provided by the department and must be accompanied by a fee of \$25. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(6) and (10)

12 AAC 72.080. CODES. Repealed. (8/21/78, Reg. 67)

12 AAC 72.085. EXAMINATION FOR WELDING INSPECTOR LICENSE. Examinations for welding inspector licenses will be conducted four times a year. Additional examinations may be conducted if the applicant furnishes all necessary facilities and pays all expenses incurred by the examiners. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1),(2), (7) and (10)

12 AAC 71.090. DEFINITIONS. Repealed. (8/21/78, Reg. 67)

12 AAC 72.095. WELDING INSPECTOR LICENSE ISSUED. The department will issue a welding inspector license to an applicant who

meets the requirements of sec. 65 of this chapter. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(7) and (10)

**12 AAC 72.105. WELDING INSPECTOR LICENSE EXPIRATION AND RENEWAL.** (a) A welding inspector license is valid until March 1 of each year unless revoked for reasons stated in sec. 125 of this chapter.

(b) Application for renewal of a welding inspector license must be made to the department on a form provided by the department no later than February first of each year and must be accompanied by a fee of \$10.

(c) An application for renewal of a welding inspector license must contain

(1) evidence of compliance with the requirement of sec. 65(a)(5) of this chapter; and

(2) evidence of employment as a welding inspector in the form of

(A) a signed statement of an employer;

(B) payroll records indicating the position held; or

(C) affidavits of two fellow employees attesting to employment activity of the applicant.

(d) Application for renewal of a welding inspector license which has lapsed is considered a new application. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(7) and (10)

**12 AAC 72.115. DUTIES AND RESPONSIBILITIES OF A WELDING INSPECTOR.** (a) A welding inspector shall, when applicable

(1) keep the department advised of his current address for the mailing of renewal notices;

(2) verify that the work inspected conforms to the requirements of the applicable codes, standards and job specifications;

(3) verify that the base materials and consumable welding materials conform to the

specification requirements and that the specified welding filler metals are used on each base metal or combination of base metals;

(4) verify that the welding equipment to be used for the work is that which is specified in the welding procedure and has the capability to produce the specified welds;

(5) verify that the welding procedures are as specified, and are qualified and available to the welders for reference;

(6) verify that the welders have been properly qualified in accordance with the applicable codes and standards and that their qualification authorizes them to use the welding procedures specified for the work;

(7) observe the qualification tests when qualifying welders;

(8) verify that only specified and properly qualified welding procedures are used for the work;

(9) verify that the joint preparation and fit-up meets the requirements of the welding procedure and drawings;

(10) verify that the specified filler metals are used and that the filler metals are maintained in proper condition for use as specified;

(11) observe the technique and performance of each welder;

(12) examine the work for conformance to the requirements of the applicable codes, standards, specifications and drawings;

(13) identify the work inspected with specified marking methods or appropriate records;

(14) perform the necessary visual inspections;

(15) verify that the required visual and other nondestructive examinations have been performed by qualified personnel in the specified manner and review the resulting information to assure that the results are complete;

(16) perform nondestructive examinations that are specified, if he or she is qualified in accordance with the specified requirements;

(17) prepare clear and concise reports and keep necessary records of the welding procedure, the welding procedure qualifications, the welder qualifications, the control of welding materials and the results of inspections and tests:

(18) act with complete integrity in professional matters and be forthright and candid to the board or its representative on matters pertaining to this standard;

(19) to preserve the health and well-being of the public by performing the duties required of weld inspection in a conscientious and impartial manner to the full extent of his or her responsibilities and qualifications;

(20) undertake and perform assignments only when qualified by training, experience, and capability;

(21) be objective, thorough and factual in any written report, statement or testimony of the work and include all relevant or pertinent information in such communiques or testimonials;

(22) sign only for work that he or she has inspected, or for work over which he or she has personal knowledge through direct technical control; and

(23) conscientiously avoid conflict of interests with the employer or client and disclose any business association, interests, or circumstances that might be so considered.

(b) If there is evidence that the welder's work does not conform to the requirements of the applicable code, standard or specification, the welding inspector may require requalification of the welder. The welding inspector shall require a requalification of a welder if that person's qualification is not current by the requirements of the applicable codes, standards or specifications.

(c) If the welding inspector is to perform nondestructive examinations other than visual, and there are no specified qualification

requirements, he or she must be qualified and certified in accordance with the Recommended Practice No. SNT-TC-1A, "Personnel Qualification and Certification for Nondestructive Testing," June 1975. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(7),(9) and (10)

**12 AAC 72.125. PROHIBITED CONDUCT OF WELDING INSPECTOR.** (a) A welding inspector licensed under this chapter is prohibited from performing acts including

(1) signing a blank welder qualification certificate;

(2) issuing a welding qualification certificate to a welder not tested under his or her direct supervision;

(3) delegating his or her responsibility in testing of welders;

(4) paying, soliciting, or offering, directly or indirectly, any bribe or commission for professional employment with the exception of the usual commission required by employment agencies;

(5) falsifying, exaggerating, or indulging in the misrepresentation of personal academic and professional qualifications, past assignments, accomplishments, and responsibilities or those of his or her associates;

(6) issuing statements, criticisms, or arguments on weld inspection matters connected with public policy which are solicited or paid for by an interested party or parties, without first identifying the party and the speaker and disclosing any possible pecuniary interest;

(7) expressing an opinion on a weld inspection subject unless it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence pertinent to the subject and upon honest conviction of the accuracy and propriety of the statement;

(8) accepting compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties or their authorized agents;

(9) soliciting or accepting gratuities, directly or indirectly, from any party or parties dealing with the client or employer in connection with the welding inspector's work; and

(10) associating with or knowingly participating in a fraudulent or dishonest venture.

(b) The board will suspend, refuse renewal of or revoke the welding inspector's license, place the license holder on probation, or reprimand the holder, if he or she is found to have engaged in prohibited conduct. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(7),(9) and (10)

#### ARTICLE 4. GENERAL PROVISIONS

Section  
899. Weld qualifier license  
900. Definitions

12 AAC 72.899. WELD QUALIFIER LICENSE. A weld qualifier license issued under the authority of this chapter as it existed between August 2, 1973 and the effective date of this section is valid until six months after the effective date of this section and may not be renewed. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(7)

12 AAC 72.900. DEFINITIONS. (a) In this chapter

(1) "appropriate rating" means that rating which is required by the specific code designated in the job specifications; when there is no job specification or a specific code is not designated in the job specification, appropriate rating is not less than the all-position certification issued in accordance with the current edition of the American Welding Society Code;

(2) "board" means the Board of Welding Examiners;

(3) "code" means nationally recognized welding, nondestructive testing or engineering principles or rules published as guides or requirements or both by societies or agencies charged with establishing such guidelines;

(4) "continuous employment" means

employment without interruption of more than 90 consecutive days unless otherwise specified in the code under which the certificate is being renewed;

(5) "coupon" means a piece of metal cut and sectioned for testing;

(6) "cutting process" means a process in which the severing or removing of metals is effected;

(7) "department" means the Department of Commerce and Economic Development;

(8) "direct supervision" means being physically present at the work site and in personal charge of the work being performed;

(9) "job specifications" means the written document setting out the specific construction standards to be adhered to for the project;

(10) "rating" means a particular skill level in the art of welding;

(11) "responsibility" means being accountable to the board or its agents or both for one's action relating to the requirements of this chapter;

(12) "standards" means minimum acceptable guidelines established by societies or agencies or both charged with the responsibility for promulgating such guidelines;

(13) "technical level" means a level of work in welding using mathematics and science such as would require at least two years of post-high-school study at an accredited engineering school or technical institute or equivalent study;

(14) "valid" means having legal force and properly executed and binding under the law and is in compliance with the appropriate code, standard or specification;

(15) "weld testing methods" means the destructive or nondestructive means of evaluating the integrity of the weld metal or heat affected zone of the base material or both;

(16) "welder" means welder, welding operator and tacker;

(17) "welding" means the metal joining process used in making welds;

(18) "welding inspector" means a person meeting the requirements of secs. 55 - 125 of this chapter;

(19) "welding performance specification" means a document required before testing, setting the criteria for demonstration of a welder's ability to produce welds meeting prescribed standards;

(20) "welding procedure" means a written document specifying the essential variables as listed in the appropriate welding or engineering code or both;

(21) "welding procedure specification" means a document required before welding on any structure, specifying the parameters and requirements which control the quality of the welding for that structure;

(22) "welding process" means the method of application of heat or filler metal or both to complete the joining process;

(23) "welding qualification certificate" means a certificate issued under the authority of the board by a licensed welding inspector to a person verifying that he or she has successfully performed one or more of the specific welding tests required for a certification to a particular welding or engineering code;

(24) "weldment" means an assembly whose component parts are joined by welding.

(b) Terms not defined in this section shall be construed in accordance with American Welding Society A3.0-76, "Terms and Definitions." (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1) and (9)

TO: 

DATE: June 13, 1979

Don Hostak, Director  
Div. of Occupational Licensing  
Dept. of Commerce and  
Economic Development

FILE NO.

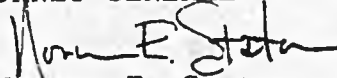
TELEPHONE NO

FROM

AVRUM M. GROSS  
ATTORNEY GENERAL

SUBJECT

AS 08.40 and AS 08.99  
Enforcement Responsibilities

By:   
Norman E. Staton  
Assistant Attorney General.

You have requested an opinion as to which department has the authority and responsibility for enforcing the provisions contained in AS 08.99, regarding the Board of Welding Examiners and the Board of Electrical Examiners.

After reviewing the pertinent provisions, it is our opinion that the Department of Commerce and Economic Development ("Commerce") and the Commissioner of Labor ("Labor") have specific statutory authority for enforcement and investigation of complaints regarding Electrical Examiners, (AS 08.40) and therefore have concurrent discretionary authority. However, while Commerce has discretionary authority for enforcement and investigation of complaints regarding the Board of Welding Examiners (AS 08.99), Labor only has the authority to act if requested to act by the Board.

Commerce and Labor have concurrent discretionary authority to investigate and enforce provisions regarding Electrical Examiners (AS 08.40).

AS 08.01.087 provides:

Sec. 08.01.087. Powers and duties of department. (a) The department may upon its own motion, conduct investigations to determine whether any person has violated a provision of this chapter or a regulation adopted under it or a provision of a chapter in this title dealing with one of the boards listed in § 10 of this chapter or a regulation adopted by one of those boards, or to secure information useful in the administration of this chapter.

(b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or any of the laws pertaining to or regulations adopted

by the boards listed in § 10 of this chapter, he may, if he considers it in the public interest, and after notification to all board members by telephone or telegraph of a proposed order or action unless a majority of the members of the board object within 10 days, . . . .

AS 08.01.110 provides in part: "(Definitions.) In this chapter . . . (2) 'department' means the Department of Commerce and Economic Development."

The powers and duties of Commerce embrace the boards listed in AS 08.01.010, which provides in part:

(Applicability of Chapter.) This chapter applies to the . . .

- (7) Board of Electrical Examiners;
- (17) Board of Welding Examiners

As a result, under the provisions of AS 08.01.087, AS 08.01.110(2) and AS 08.01.010(7) and (17), Commerce may, upon its own motion, conduct investigations and enforce the provisions of AS 08.40, Electrical Administrators and AS 08.99, Board of Welding Examiners.

AS 08.40.175, regarding Electrical Examiners, provides:

Sec. 08.40.175. Cease and desist order.

(a) If the commissioner of labor determines that a person is acting as an electrical administrator in violation of this chapter, he may issue a cease and desist order prohibiting further action by the person as an electrical administrator. The cease and desist order remains in effect until the person has submitted evidence acceptable to the commissioner of labor showing that the violation has been corrected.

(b) A person affected by an order issued under (a) of this section may seek equitable relief preventing the commissioner of labor from enforcing the order.

As a result, AS 08.40.175 grants authority to Labor to determine if an electrical examiner is acting in violation of the chapter. In order for Labor to make a determination, it must have the authority to investigate. If the commissioner determines that action is warranted, he or she may issue a cease and desist order and thereby enforce the provisions of the chapter.

Therefore, AS 08.01.87 and AS 08.40.175 grant Commerce and Labor concurrent discretionary authority to investigate and enforce the provisions of AS 08.40, Electrical Administrators.

Due to the fact that Commerce and Labor have concurrent discretionary authority, it would be advisable for the departments to cooperate and coordinate their activities in the area.

Commerce has discretionary authority to investigate and enforce provisions of the Board of Welding Examiners (AS 08.99) while Labor only has authority to do so if requested by the Board.

As discussed above, AS 08.01.087 grants Commerce discretionary authority upon its own motion, to conduct investigations and enforce the provisions of AS 08.99, Board of Welding Examiners.

On the other hand, AS 08.99.080(b) requires Labor to investigate and enforce provisions of the chapter upon request by the Board of Welding Examiners. AS 08.99.080(b) provides:

(b) The board may request technical personnel from the Department of Labor for the purpose of reviewing and analyzing reports and may request field inspection by the department for the purpose of assuring compliance with, and enforcement of the regulations, rules and orders promulgated under §§ 10-110 of this chapter.

(Emphasis added.) If requested to investigate or enforce, Labor would have concurrent authority with Commerce.

Don Hostak, Director  
Div. of Occupational Licensing

June 13, 1979

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⊗ Although the Department of Commerce and Economic Development has discretionary authority while the Department of Labor has mandatory authority, we again recommend the departments work out an arrangement to handle this matter, or in the alternative, have the legislature resolve the matter.

NES:bwb

## Title 59. PROFESSIONS AND OCCUPATIONS

## CHAPTER 40. OKLAHOMA WELDING ACT (NEW)

Effective October 1, 1978

- Sec.  
 1624. Short title.  
 1625. Description and legislative intent.  
 1626. Definitions.  
 1627. Welding inspectors - Powers and duties.  
 1628. Applicants for certification - Qualifications.  
 1629. Certification of Applicants.  
 1630. Standards of skills, practice and conduct of welding inspectors.  
 1631. Unauthorized practice - Suspension, refused renewal or revocation of certification.  
 1632. Reinstatement.  
 1633. Recertification.  
 1634. United States of America Standard Institute Codes Adoption.  
 1635. Commission of Labor - Additional powers and duties.  
 1636. Fees.  
 1637. Disposition of revenues.  
 1638. Exemptions.  
 1639. Owner may require welder to qualify with appropriate code - Exempt equipment.  
 1640. Violations - Misdemeanor - Penalties.  
 1641. Construction of act.

§ 1624. Short title. This act shall be known and may be cited as the "Oklahoma Welding Act."

§ 1625. Description and legislative intent. A. This act describes the welding inspector's basic technical functions, the requirements by which welding personnel may become qualified, and the principles of conduct and practice by which certification may be maintained. The certification procedure shall apply to personnel who inspect weldments.

B. This act is intended to supplement any requirements of an employer, code, standard or specification and shall not be construed as a preemption of the employer's responsibility for the work or for the performance of such work.

§ 1626. Definitions. As used in this act:

1. "Certificate" means the document issued to an applicant upon successful examination;
2. "Certification" means the testimony of qualifications;

3. "Code" means United States of America Standard Institute Code;
4. "Committee" means the Oklahoma State Labor Department, Boiler Inspection Department, Chief Boiler Inspector;
5. "Qualification" means the successful completion of all parts of the requirements set out by the Oklahoma Department of Labor;
6. "Welding Inspector" means a person who has met the requirements of this act;
7. "Weld-testing facility" means a qualified and approved testing facility approved by the Oklahoma Department of Labor;
8. "Weldment" means a welded assembly in which the bulk of the component parts are prepared and joined by any combination of the cutting and welding processes covered by Section 5 of this act; and
9. "Work" means that portion of the product or weldment that specifically involves or affects the use of welding.

<sup>1</sup>Section 1628 of this title.

§ 1627. Welding inspectors - Powers and duties. A welding inspector shall have the following powers and duties:

1. Verify that the work which he inspects conforms to the requirements of the applicable codes, standards and job specifications;
2. Verify that the base materials and consumable welding materials conform to the specification requirements and that the specified welding filler metals are used on each base metal or combination of base metals;
3. Verify that the welding equipment to be used for the work is that which is specified in the welding procedure and has the capability to produce the specified welds;
4. Verify that the welding procedures are as specified, qualified and available to the welders for reference;
5. Verify that the welders have been properly qualified in accordance with the applicable codes and standards, and that their qualifications authorize them to use the welding procedures specified for the work. If there is evidence that the welder's work does not conform to the requirements of the applicable code, standard or specification, the welding inspector may require requalification of a welder, if that person's qualification is not current by the requirements of the applicable codes, standards or specifications;

6. When qualifying welders, the welding inspector shall observe the qualification tests;

7. Verify that only specified and properly qualified welding procedures are used for the work;

8. Verify that the joint preparation and fit-up meets the requirements of the welding procedure and drawings;

9. Verify that the specified filler metals are used and that the filler metals are maintained in proper condition for use as specified;

10. Observe the technique and performance of each welder;

11. Examine the work for conformance to the requirements of the applicable codes, standards, specifications and drawings;

12. Identify the work he inspects with specified marking methods or appropriate records;

13. Perform the necessary visual inspections;

14. Verify that the required visual and other nondestructive examinations have been performed by qualified personnel in the specified manner. He shall review the resulting information to assure that the results are complete. The welding inspector may perform nondestructive examinations that are specified, providing he is qualified in accordance with the specified requirements; and

15. Prepare clear and concise reports and keep necessary records of the welding procedure, the welding procedure qualifications, the welding qualifications, the control of welding materials and the results of inspections and tests. It shall be the duty of the welding inspector to see that all test results are forwarded to the Department of Labor for issuance of welder certification cards.

§ 1628. Applicants for certification - Qualifications. Each applicant for certification as a welding inspector shall have the following qualifications:

1. Maintenance experience involving the detection and measurement of weld inadequacies or discontinuities in accordance with specified procedures;

2. Repair experience involving the repair or replacement of welds that were determined inadequate or defective by reference to a code, standard, specification or drawing;

3. Familiarity with and understanding of the fundamentals of the following processes:

- a. shielded metal arc welding,
- b. stud arc welding,
- c. submerged arc welding,
- d. flux cored arc welding,
- e. gas metal arc welding,
- f. gas tungsten arc welding,
- g. electroslag welding,
- h. oxyfuel gas welding,
- i. brazing,
- j. thermal cutting, and
- k. mechanical cutting.

Cutting processes refer only to those processes that are applied to the fabrication and repair of weldments;

4. Capability in writing clear and concise reports and maintaining records; and

5. Competency in the use of tools, gauges and instruments pertaining to weld inspection.

§ 1629. Certification of applicants. The Oklahoma State Labor Department shall issue to each applicant successfully meeting the qualifications requirements provided in Section 5 of this act a certificate stating that the applicant has met the certification requirements. The certificate shall be valid for one (1) year unless revoked pursuant to Section 8 of this act.<sup>2</sup>

<sup>1</sup>Section 1628 of this title.

<sup>2</sup>Section 1631 of this title.

§ 1630. Standards of skills, practice and conduct of welding inspectors.

A. In order to safeguard the public health and well-being and to maintain integrity and high standards of skills, practice and conduct in the occupation of welding inspection, the certified welding inspector shall be cognizant of the principles provided in this section and the

scope to which they apply with the understanding that any unauthorized practice is subject to the Committee's review and may result in suspension or revocation of certification.

B. The welding inspector shall act with complete integrity in professional matters and be forthright and candid to the representatives on matters pertaining to this act.

C. The welding inspector shall preserve the health and well-being of the public by performing the duties required of welding inspectors in a conscientious and impartial manner to the full extent of his moral and civic responsibilities and qualifications. Accordingly, the welding inspector shall:

1. Undertake and perform assignments only when qualified by training, experience and capability; and

2. Be completely objective, thorough and factual in any written report, statement or testimony of the work and include all relevant or pertinent information in such communiques or testimonials.

D. With regard to public statements, the welding inspector shall:

1. Issue no statements, criticisms or arguments on weld inspection matters connected with public policy which are inspired or paid for by one or more interested parties without first identifying the party and speaker, and disclosing any possible pecuniary interest; and

2. Publicly express no opinion on a weld inspection subject unless it is founded upon an adequate knowledge of the facts in issue, upon a background of technical competence pertinent to the subject, and upon honest conviction of the accuracy and propriety of the statement.

E. With regard to conflicts of interest, the welding inspector shall:

1. Conscientiously avoid conflict of interest with his client and shall disclose any business association, interests or circumstances that might be so considered;

2. Not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties or their authorized agents;

3. Not solicit or accept gratuities, directly or indirectly, from one or more parties dealing with the client or employer in connection with the welding inspector's work; and

4. Neither inspect, review nor approve any work on behalf of one or more parties, while serving in the capacity of an elected, retained or employed public official.

F. With regard to solicitation of employment, the welding inspector shall:

1. Neither pay, solicit nor offer, directly or indirectly, any bribe or commission for professional employment with the exception of the usual commission or fees required; and

2. Neither falsify, exaggerate nor indulge in the misrepresentation of personal academic and professional qualifications, past assignments, accomplishments and responsibilities, or those of his associates.

§ 1631. Unauthorized practice - Suspension, refused renewal or revocation of certification. The Oklahoma Commissioner of Labor shall have the power to suspend, refuse renewal of or revoke the welding inspector's certification, and the power to place on probation or to reprimand the holder, if he is found guilty of an unauthorized practice. The Commissioner of Labor may apply to any court of competent jurisdiction for an enforcement of its administrative decisions and rulings.

§ 1632. Reinstatement. Reinstatement of a revoked certification shall be allowed with no penalty or prejudice to the individual, provided the reason for such revocation has been rectified to the Commissioner of Labor's satisfaction.

§ 1633. Recertification. A. The welding inspector shall be recertified upon payment of the current fee and successful reexamination of complete facilities every year. However, renewal applicants who attest to continual or uninterrupted activity in the practice of welding inspection and who re comply with the provisions of Sections 141 through 147 of Title 40 of the Oklahoma Statutes and rule number 36 of the Oklahoma Boiler Code Manual shall be recertified upon payment of the current certification fee without reexamination.

B. Application for renewal of a certification that has expired shall be considered a new application.

C. The welding inspector shall be responsible for maintaining a current address with the State Department of Labor, Boiler Inspector Department, for mailing of renewal notices.

§ 1634. United States of America Standard Institute Codes - Adoption. The following United States of America Standard Institute Codes shall be the piping codes for this state:

1. The power piping code;
2. The fuel gas piping code;
3. The gas transmission and distribution piping system code;
4. The petroleum refining piping code; and
5. The liquid petroleum transportation piping system code.

The provisions of this act shall apply only to weldments required by the above codes.

§ 1635. Commission of Labor - Additional powers and duties. The Commissioner of Labor shall have the following duties in addition to any other duties prescribed by law:

1. Examine, certify and renew the certification of qualified applicants, keep a record of all such proceedings, and submit annual reports to the Governor;
2. Promulgate rules and regulations concerning the quality of welds and qualification of welders;
3. Designate and approve persons qualified to administer welding tests; and
4. Designate and approve shops, testing facilities or other establishments qualified for testing coupons and weldments.

§ 1636. Fees. A. The certification fee for each welder shall be Ten Dollars (\$10.00). The certification fee for each testing facility shall be Fifty Dollars (\$50.00).

B. Certificates for welders and testing facilities shall be issued for a period of one (1) year, and shall be renewed by January 1 of each year. Failure to renew the certificate within thirty (30) days of expiration shall require certification.

§ 1637. Disposition of revenues. All revenues collected under the provisions of this act shall be paid by the Department of Labor to the State Treasurer and by him placed to the credit of the General Revenue Fund of the state, to be used for governmental functions and to be paid out only pursuant to direct appropriation by the Legislature of the State of Oklahoma.

§ 1638. Exemptions. Upon the effective date of this act, owner-user inspectors following weldment procedures which conform to the applicable code for qualifying welders and testing weldments by non-

destructive or destructive methods shall be exempt from this act. Any inspector who has been certified by the American Welding Society shall be exempt.

§ 1639. Owner may require welder to qualify with appropriate code - Exempt equipment. If a welder holds a state certificate, the owner may require the welder to qualify in accordance with the appropriate code whenever deemed necessary, and reject the welder if qualifying test is failed. Any equipment fabricated in compliance with existing codes is exempt from this act.

§ 1640. Violations - Misdemeanor - Penalties. Any person who violates the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by payment of a fine of Five Hundred Dollars (\$500.00).

§ 1641. Construction of act. Nothing in this act shall be construed to affect or modify any unexpired welder certification issued prior to the adoption hereof. Holders of unexpired welder certifications issued by the Commissioner of Labor shall be entitled to renew said certificates as herein provided.

B

STATE OF ALASKA  
Guide Licensing and Control Board  
May, 1979

Findings

The Guide Licensing and Control Board functions to establish guiding areas, limit the number of guides in areas, and assure that a guide is competent enough to care for himself and others in the remote setting. Guides are also concerned with environmental conservation and animal husbandry. Regulation of this profession is in the best interests of the State and should be continued. The Board is carrying out its duties in a responsible manner and appears to be meeting needs and demands reasonably; therefore, we believe the Board also should be continued. Guides and their clients are also subject to Alaska Department of Fish and Game hunting regulations.

Section 1, ch. 106, SLA 1976, provides: "Purpose. It is the purpose of this Act to protect the safety of the citizens of the state and better manage and protect its resources by licensing persons who transport hunters for hire so that reasonable standards and guidelines will be met and activities affecting the state's game resources will be more accurately monitored and assessed."

I. General Information

A. Regulated Parties

1. Master Guides
2. Registered Guides
3. Class-A Assistant Guides
4. Assistant Guides
5. Transporters

B. Definitions

"(2) 'guide,' 'guides' or 'guiding' means assisting another person to take game with the intent of receiving monetary or material remuneration for the services, by accompanying and directing that person personally or through a licensed assistant guide for the duration of a hunt, and not solely for the purpose of providing transportation services;

(5) 'transporting' or the 'activity of transporting' means conveying a person by any lawful means to an area for remuneration or material benefit in excess of normal operating costs, when the primary purpose of the person being conveyed is the taking of big game and the associated removing of big game meat and parts of big game after big game has been taken; big game as used in this paragraph means game which, if taken by a nonresident, would require a big game tag." (AS 08.54.240)

C. Nature and Composition of Board

1. Board members and terms:

Three-year term (no restrictions regarding consecutive terms or number of terms).

Marcus F. Jensen (Chairman)	ends June 15, 1980
Clark Engle	ends June 15, 1981
Glen Glenzer	ends June 15, 1980
Charles Keim	ends June 15, 1979
Hubert Weise	ends June 15, 1979
Norman Sutliff	ends June 15, 1979
Donald Harris	ends June 15, 1981

2. Representation:

Profession = 3  
Public = 4

3. Qualifications:

"...No more than three members of the board shall have a guide license. The other members shall have a general knowledge of the game resources of the state. A minimum of 10 years residence in the state is required for all members of the board."  
AS 08.54.010

D. Licensing Data

Current licenses (effective May, 1979)

Master guides	=	35
Registered guides	=	268
Class-A assistants	=	95
Assistant guides	=	413
Transporters	=	<u>47</u>
Total		858

All licentiates in this profession are in-State.

E. Fees

1. master guide license, annual	\$75.00
2. registered guide license, annual	75.00
3. class-A assistant guide, annual	15.00
4. assistant guide license, annual	10.00
5. transporter license	10.00
6. examination fee	25.00

(Also subject to Fish and Game fees under AS 16.05.340(e).)

F. Board Revenues and Expenditures

	FY '76	FY '77	FY '78	FY '79
Receipts	\$39,054.64	\$39,025.50	\$41,882.00	\$41,601.00
- refunds	<u>254.64</u>	<u>330.00</u>	<u>265.00</u>	<u>605.00</u>
Total	\$38,800.00	\$38,695.50	\$41,617.00	\$40,996.00
Expenditures				
Transportation	2,913.37	2,607.63	3,457.12	3,042.11
Per Diem	5,213.88	5,057.75	8,840.68	6,672.80
Phone	382.99	569.68	815.01	813.13
Printing, Adver. & Postage	966.17	1,592.27	2,584.38	626.51
Fees & Services	300.00	430.00	362.00	
Rents, Leases & Other	<u>293.90</u>	<u>-</u>	<u>768.98</u>	<u>3,094.70</u>
Total	<u>\$10,070.31</u>	<u>\$10,257.33</u>	<u>\$16,828.17</u>	<u>\$14,249.25</u>
Surplus	\$28,729.69	\$28,438.17	\$24,788.83	\$26,746.75
Deficit	-	-	-	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

Enforcement of Guide Licensing and Control statutes and regulations is the responsibility of the Department of Public Safety, Division of Fish and Wildlife Protection. An Anchorage based Assistant Attorney General is specifically designated for the Board. Sixty-

one investigations were reported to have been conducted by the Division of Fish and Wildlife Protection during the period from April, 1977 through April, 1979. During this same period 35 accusations were filed for disciplinary hearings before the Board.

## II. Analysis

- A. To what extent has the Guide Licensing and Control Board operated in the public interest?

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The Board operates to protect the public interests by controlling hunting activity, promoting hunter safety, and protecting wildlife resources. Accordingly, the Board has statutory responsibility for: (1) preparation, grading and administration of examinations; (2) passing on applicant qualifications; (3) regulation of guide activity and performance standards; (4) maintaining a current register; (5) maintaining and publishing a list of active registered or master guides; (6) regulating guide activities and conduct; (7) revocation, denial and suspension of licenses; (8) establishing geographical guiding quotas; and (9) adoption of procedural and substantive regulations concerning guiding.

Special permit provisions exist for qualified applicants who are limited by language barriers. Candidates for examination who may not fully understand the English language may be given the examination orally in their native language. The Board has recently concentrated a great deal of effort in recruiting qualified guides from remote bush and coastal areas. A separate guiding district has been created (making a total of 27) which includes all western, northwestern and northern Alaska coastal areas north of latitude 50° north for the purpose of regulating marine mammal hunting. Board members have traveled to outlying villages to educate the populace on guide qualifications and to take applications for licensure. Meetings in Nome and/or Kotzebue are planned in 1979 assuming an Arctic guide program is started.

Examinations given by the Guide Licensing and Control Board are Board constructed. Only applicants for registered guide status must take a written examination. Oral examinations are administered by the Board to candidates for both registered and master guide. A passing score of 80% must be achieved. Even though the Board has failed applicants on the basis of the oral examination, it has not made or kept a record of these proceedings. The Board should record all oral examinations in support of its determinations and should ensure that its reasons for denial of applications and licenses are cited in meeting minutes and in notices to the applicant. Review indicated that this procedure is not always followed.

State licensure constitutes exclusive permission to engage in an activity that would otherwise be unlawful. Board procedures are designed to assure that those persons so licensed and engaged are qualified by virtue of past experience and demonstrated competence.

The Anchorage office of the Division of Fish and Wildlife Protection maintains records and files on all enforcement activities and on all guides. These records are complete and up to date. Individual guide files contain all relevant information from initial licensure to latest renewal. A transfer of the Board and regulation to the Division of Fish and Wildlife Protection should be given consideration, particularly in view of the fact that the division has responsibility for enforcement of guiding laws. In a memorandum dated November 8, 1978, to the Office of the Governor, an official of the Department of Public Safety indicated that such a transfer would be favorable. The Board also has indicated support for this proposal.

The Guide Licensing and Control Board is active in disciplinary proceedings concerning the profession. A number of hearings have been held by the Board and subsequent action taken. Viability of enforcement is

largely due to authorization of investigation, administrative support services and Department of Law assistance assigned particularly to guide activities.

AS 08.54.190(a) provides that all licenses expire every year on December 31. As of May, 1979, 858 licenses were in effect and the number increases every year. A statutory amendment should be considered which would allow for biennial renewal.

AS 08.54.200(c)(3) makes revocation of a guide license mandatory upon conviction of two violations of federal or State sport fish, game or guide statutes or regulations. The Board is presently given no discretion or latitude by which it may consider the seriousness of offenses or lesser disciplinary action such as suspension; the most minor violations must result in license revocation. SB 101, with which the board is in agreement, was introduced during the 1979 session of the Legislature (see Appendix A). Passage of this bill would allow the Board to take disciplinary action commensurate with the nature of offenses.

Transporters are required by AS 02.05.040 (the Alaska Air Commerce Act of 1960) to have "in force a certificate issued by the commission [Alaska Transportation Commission] authorizing that person to engage in air commerce as a certificated carrier, contract carrier, or air taxi operator." Title 02, § 170(f), also requires filing of game transporter reports with the Department of Fish and Game. The Alaska Business Act (43.70) requires that transporters maintain a current business license. An abundance of regulations covering this subject also exists under AS 16.05, Fish and Game Code. Licensed guides are exempt from license requirements for transporters. In view of the enforcement and regulatory difficulties encountered in this area, and the fact that transporters are otherwise regulated, it is suggested that appropriate revisions be made to Guide Licensing statutes.

12 AAC 38.055 provides for a limited time waiver of guide area use requirements in case of death of a permit holder. During this period "an heir may apply to the board for a reassignment of the permit to a person designated by the heir" (emphasis added). In case of mental incompetence, a guardian may, during this same limited period "apply to the board for a reassignment of the permit to a person designated by the guardian" (emphasis added). It is questionable whether designation of permit holders should be done by heirs and guardians and whether preference should be given by the Board to persons so designated. It should not be a function of a State board to protect the monetary interests of a licensee. Rather, the Board should consider the qualifications of all applicants, as is done in other instances, and grant permits on that basis alone.

B. To what extent has the operation of the Guide Licensing and Control Board been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

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Resources and services provided for this Board far exceed those provided for other boards and commissions under Title 8. As previously noted, enforcement and investigation of its statutes and regulations is adequately handled by the Department of Public Safety. The Board has been assigned an Assistant Attorney General, located in Anchorage, and issues have been pursued actively, both by the Department of Law and by the Board. Other support staff is provided by the Division of Occupational Licensing and is presently adequate. Employee turnover has impeded to some extent continuity and follow through on Board requests.

The Board has not been particularly impeded by budgetary constraints. Meetings and/or hearings have been scheduled as necessary. A special appropriation in the amount of \$10,000 was made by the Legislature in 1979 to allow the Board to conduct hearings and formulate procedures

related to hunting of marine mammals. Fees and revenues for all boards and commissions under the jurisdiction of the Division of Occupational Licensing are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct board revenues and expenses may be determined.

The Board has expressed a desire to repeal statutes in Title 8 concerning transporters (§§ 142, 144 and 146). Interpretation of AS 08.54.130(2) has apparently caused some confusion in that it is not clear whether the supervisor of a Class-A assistant should be in the guide unit or merely giving direction from any location in the State. AS 08.54.190(a) should be amended to allow for biennial rather than annual renewal of licenses. SB 101, introduced in 1979, would give the Board some latitude in disciplinary actions where guides have been convicted of federal or State sport fish, game or guide laws.

Examinations for registered and master guides are given once a year in November or December, in Anchorage. Control and security of testing materials is maintained by the Department of Public Safety. Board regulations state that applicants who fail either the written or oral test may not be reexamined for six months. An annual examination procedure means that an applicant who fails will miss an entire subsequent hunting season before he can take the next examination. It is suggested that consideration be given to scheduling two examinations each year in two areas of the State to coincide with regular Board meetings.

Public members are included in the composition of the Board. Total membership of seven is felt to be adequate. Terms of membership are three years, however, at least two members have served since the Board was established in 1973.

C. To what extent has the Guide Licensing and Control Board recommended statutory changes which are generally of benefit to the public interest?

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In 1976 statutory amendments concerned regulation of transporters and "housekeeping" items. One significant 1976 amendment mandated that the Board "establish a quota of licensed operating guides who may operate within designated geographical game units or subunits of the state and provide for an equitable and reasonable procedure for limiting the number of guides to that quota" (AS 08.54.040(a)(8)). The Board has recently accomplished this directive.

Statutory recommendations made by the Board have been cited previously.

- D. To what extent has the Guide Licensing and Control Board encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

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Guide Board meetings and hearings are well attended by interested parties. Petitioners before the Board will not even have their petitions considered unless they or their representative(s) are present. Any party possibly affected by a petition is also notified that the matter will be discussed so they may participate.

There is evidence to indicate that Board members have made themselves visible and available to members of the public and the industry. Some members have spent a considerable amount of time on personal correspondence and even personal visits with interested parties in some cases. For instance, members have traveled to Nunivak to meet with and recruit potential guides.

Public interests are felt to be furthered by the presence of public members on professional boards. "In recent years a number of states have added one or more public members (citizens with no particular interest in the occupation or profession governed by the board) to licensing boards in an effort to ensure that the interests of the public would be represented in decisionmaking."<sup>1</sup> The State of California, which provides for a one-third public membership on health care boards and a public majority on others, has indicated that its experience with public members has been highly rewarding.

E. How efficiently are public inquiries or complaints regarding the Guide Licensing and Control Board processed and resolved?

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Routine correspondence regarding Board activities may be responded to by the Division of Fish & Wildlife Protection, the Division of Occupational Licensing or by individual Board members. Review of Board files indicates that responses generally are made in an appropriate and timely manner.

Sixty-one investigations were reported to have been conducted by the Division of Fish and Wildlife Protection during the period from April, 1977 through April, 1979. Thirty-five Accusations for Disciplinary Hearings before the Board were filed during this time.

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<sup>1</sup>Shinberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, pg. 20.

At least one complaint regarding the examination was filed with the Office of the Ombudsman and was determined by that office to have been partially justified.

- F. To what extent does the Guide Licensing and Control Board present qualified applicants to serve the public?

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Individuals seeking licensure must submit fees and qualifying documents to the administrative agency for consideration by the Board. Examinations for registered and master guides are given annually. Applicants who are qualified and/or demonstrate a specified level of knowledge and proficiency are issued a license.

Licensure does not, however, guarantee assignment of hunting units. This is also determined by past use, animal resources and number of guides already in the area, and compatibility with present users and facilities. Current policy limits the number of hunting units that a guide may be certified for; past assignments in excess of the general limit were not rescinded but once lost or forfeited are usually re-assigned to another qualified applicant. These procedures are intended to comply with § 040(a)(8).

- G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Guide Licensing and Control Board in its own activities, and in its area of activity or interest?

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Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (also responsible for

two other boards) who is hired through the State Personnel System and is subject to affirmative action.

Licenses are issued on the basis of specific criteria. Affirmative action requirements are not applicable to these licensure qualifications.

H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Guide Licensing and Control Board to better serve the interests of the public?

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Transfer of licensing and record keeping functions to the Department of Public Safety would contribute to continuity and centralization of Board operations. Enforcement and investigative services provided by that Department, and the services of the Department of Law, have proved satisfactory.

AS 08.54.190(a) should be amended to allow for biennial renewals. § 200(c)(3) should be amended to vest some disciplinary discretion with the Board in instances concerning convictions of minor violations. §§ 142, 144 and 146, concerning transporters, should be repealed. This intent was also expressed by the Board by resolution at its April 3, 1979 meeting.

The Board should review its regulations with respect to implications that heirs and guardians of permit holders may designate successors. The Board should also consider regulatory clarification of "supervision" as cited in § 130(2).

The Board should reconsider its policy of scheduling examinations only annually and only in Anchorage.

## Article 1. Guide Licensing and Control Board.

### Section

10. Creation and membership of board
20. Appointment and term of office
30. Chairman of board
40. Powers and duties
45. Special guiding permit
50. Board regulations
60. Board hearing
70. Compensation and expenses

Sec. 08.54.010. Creation and membership of board. There is created the Guide Licensing and Control Board consisting of seven members. No more than three members of the board shall have a guide license. The other members shall have a general knowledge of the game resources of the state. A minimum of 10 years residence in the state is required for all members of the board. (§ 1 ch 17 SLA 1973)

Sec. 08.54.020. Appointment and term of office. The members of the board shall be appointed by the governor and confirmed by the legislature for staggered terms of three years or until their successors are appointed. Initial terms are as follows: three members for one year, two members for two years, and two members for three years. A member may be removed at the pleasure of the governor. (§ 1 ch 17 SLA 1973)

Sec. 08.54.030. Chairman of board. The board shall elect one of its members as chairman. (§ 1 ch 17 SLA 1973)

Sec. 08.54.040. Powers and duties. (a) Except as provided in § 45 of this chapter, the board shall

- (1) prepare, grade and administer examinations;
- (2) determine and pass on qualifications of applicants for licenses and authorize the issuance of licenses to those who qualify;
- (3) establish guide performance standards and regulate activity;
- (4) compile, maintain and publish a guide register of guides who have not been convicted of a violation of a federal or state sport fish, game, or guiding statute or regulation; a guide listed in the register whose license is revoked or suspended shall be removed from the register while his license is revoked or suspended;
- (5) compile, maintain and publish a record of registered or master guides who have completed a contract hunt in any of three years immediately preceding the publishing of the record;

(6) prohibit guiding activities which are unsportsmanlike, unethical, unsafe, against principles of conservation, degrading to the guiding profession, or which adversely affect the natural resources;

(7) after a hearing, revoke, suspend or deny renewal of a license in accordance with § 200 of this chapter;

(8) establish a quota of licensed operating guides who may operate within designated geographical game units or subunits of the state and provide for an equitable and reasonable procedure for limiting the number of guides to that quota; preference shall be given to qualified available and willing licensed guides who reside within the designated game unit or subunit.

(b) If a person is unable to competently understand the written portion of an examination given under (a)(1) of this section, he shall be given the complete examination orally in a language which he understands. (§ 1 ch 17 SLA 1973; am § 1 ch 133 SLA 1976)

Sec. 08.54.045. Special guiding permit. This chapter does not limit the power of the board or its authorized designee, to issue a special guiding permit, in place of a guide license, to a person to guide in a specifically designated area, if the person is considered sufficiently experienced to perform the services of a guide and is limited solely by language barriers from securing a regular guide license. (§ 1 ch 17 SLA 1973)

Sec. 08.54.050. Board regulations. The board shall adopt procedural and substantive regulations, under the Administrative Procedure Act (AS 44.62), required by this chapter or reasonably necessary for its administration. (§ 1 ch 17 SLA 1973)

Sec. 08.54.060. Board hearing. The Administrative Procedure Act (AS 44.62) applies to proceedings and hearings under this chapter. (§ 1 ch 17 SLA 1973)

Sec. 08.54.070. Compensation and expenses. Members of the board receive no salary, but are entitled to per diem and travel expenses authorized by law for other boards. (§ 1 ch 17 SLA 1973)

## Article 2. Licensing.

### Section

- 100. Qualifications for a master guide license
- 110. Qualifications for registered guide license
- 120. Qualifications for a class-A assistant guide license
- 130. Privileges and limitations of class-A assistant guides
- 140. Qualifications for assistant guide license
- 142. Qualifications for transporter license

144. Restriction to transportation
146. Transporter report
150. Responsibility of registered or master guide for violations
170. License fees
180. Examination fee
185. Additional fees
190. Expiration and renewal
200. Grounds for disciplining a licensee
210. Unlawful acts
220. Injunction against unlawful action

Sec. 08.54.100. Qualifications for a master guide license. A person is entitled to be licensed as a master guide if he

(1) has legally hunted in the state for a part of each of 10 years during which time a substantial source of his income was from guiding or related activities directly contributing to his experience and competency as a guide;

(2) meets all the requirements of a registered guide and has been actively engaged in licensed guiding activities in the state for at least five years preceding application;

(3) has not been convicted of a violation of federal or state sport fishing, game or guiding laws or regulations within the preceding five years;

(4) has consistently performed in a superior manner as evidenced by required reports submitted to the board and by inquiries made by the board to at least two of the guide's clients of record; and

(5) meets additional qualifications which the board may require. (§ 1 ch 17 SLA 1973)

Sec. 08.54.110. Qualifications for registered guide license. A person is entitled to be licensed as a registered guide if he

(1) is 21 years of age or more;

(2) is a resident of the state and maintains a permanent place of abode in the state;

(3) has practical field experience in the handling of firearms, hunting, judging trophies, field preparation of trophies, first aid and photography;

(4) is familiar with the terrain and transportation problems in the district for which the license is requested;

(5) has passed the qualification examination prepared and administered by the board;

(6) has demonstrated to the board sufficient standards of competence and ethical conduct and has not been convicted of a crime involving moral turpitude;

(7) has legally hunted in the state for all or part of each of five years in a manner directly contributing to his experience and competency as a guide;

(8) has been licensed as and performed the services of an assistant guide in the state for a part of each of three years;

(9) submits a written recommendation to the board from a registered guide for whom the applicant has worked;

(10) is capable of performing the physical duties associated with guiding activities;

(11) has been favorably recommended in writing by two hunters that he has guided or assisted in guiding during each year of his three years as an assistant guide, whose recommendations have been solicited by the board from a list provided by the applicant;

(12) meets additional qualifications which the board may require. (§ 1 ch 17 SLA 1973)

Sec. 08.54.120. Qualifications for a class-A assistant guide license. A person is entitled to be licensed as a class-A assistant guide if he

(1) has been employed for at least one season as a licensed assistant guide;

(2) has had at least 20 years experience in the guide district in which he is to be employed; for the purposes of this paragraph physical presence at some time of the year during each of the 20 years constitutes adequate evidence of experience, and military service outside the state for no more than six years shall be accepted as part of the required 20 years experience;

(3) has been recommended in writing as qualified by a registered or master guide to the board. (§ 1 ch 17 SLA 1973)

Sec. 08.54.130. Privileges and limitations of class-A assistant guides. A class-A assistant guide

(1) may not contract for hunts;

(2) shall be under the supervision of a registered or master guide who has contracted with the client for whom the class-A assistant guide is conducting the hunt;

(3) may take charge of a camp and conduct hunts from it without the registered or master guide necessarily being present in the area if the registered or master guide is physically present in the state and is actively supervising in guiding activities. (§ 1 ch 17 SLA 1973)

Sec. 08.54.140. Qualifications for assistant guide license. A person is entitled to be licensed as an assistant guide if he

(1) is 19 years of age or more;

(2) is a resident of the state;

(3) is favorably recommended to the board, in writing, by a registered guide;

(4) meets additional qualifications which the board may require;

(5) is in sound physical condition. (§ 1 ch 17 SLA 1973)

Sec. 08.54.142. Qualification for transporter license. (a) No person may engage in the activity of transporting unless he is licensed as a transporter under this chapter. A person may be licensed as a transporter if he

(1) is a resident of the state;

(2) is familiar with the terrain and transportation problems in the district or districts for which the license is requested;

(3) obtains a business license to do business as a transporter under AS 43.70.030.

(b) No person may engage in the activity of transporting by air without an air commerce certificate as required by AS 02.05.040. (§ 2 ch 106 SLA 1976)

Sec. 08.54.144. Restriction to transportation. (a) A licensed transporter may transport persons whose primary purpose is the taking of big game or the associated removing of big game meat and parts of big game, with the intent of receiving monetary or material remuneration for the transportation.

(b) Air carriers who transport person between airports, landing strips or other landing areas officially listed in the United States government Flight Information Publication, Alaska Supplement, as revised, or the United States government Sectional Aeronautical Charts, as revised, are exempted from the license requirements for transporters under this chapter but shall comply with the reporting provisions as prescribed in AS 02.05.170(f).

(c) Master guides, registered guides, class-A assistant guides or assistant guides are exempted from the license requirements for transporter under this chapter but shall comply with the reporting provisions as prescribed in AS 02.05.170(f). (§ 2 ch 106 SLA 1976)

Sec. 08.54.146. Transporter report. A transporter shall maintain a record of (1) the names and addresses of all persons he transports; (2) the type of game transported; (3) an estimate of the quantity of meat transported; (4) the date of transporting; and (5) if known, the locality where the game was taken. The report shall be submitted to the Department of Fish and Game within 90 days after transporting the game. After receiving a report required under this section, the Department of Fish and Game shall send a copy of it to the Department of Public Safety. (§ 2 ch 106 SLA 1976; am § 4 ch 133 SLA 1976)

Sec. 08.54.150. Responsibility of registered or master guide for violations. A registered or master guide contracting for a hunt is equally responsible under § 200 of this chapter for a violation of a federal or state sport fish, game or guide statute or regulation committed by a class-A assistant guide or assistant guide while in the course of his employment. (§ 1 ch 17 SLA 1973)

Sec. 08.54.170. License fees. (a) License fees for engaging in the profession of guiding are:

(1) master guide license, annual.....	\$75
(2) registered guide license, annual.....	75
(3) class-A assistant guide, annual.....	15
(4) assistant guide license, annual.....	10

(b) The license fee for a master guide, registered guide, class-A assistant guide or assistant guide license is in addition to the fee required for a hunting or fishing license.

(c) The license fee for a transporter is \$10. (§ 1 ch 17 SLA 1973; am § 3 ch 106 SLA 1976)

Sec. 08.54.180. Examination fee. An applicant for a guide examination shall pay a fee of \$25. (§ 1 ch 17 SLA 1973)

Sec. 08.54.185. Additional fees. In addition to the license and examination fees provided for under this chapter, master guides and registered guides are subject to fees imposed under AS 16.05.340(e). (§ 4 ch 268 SLA 1976)

Sec. 08.54.190. Expiration and renewal. (a) A master guide, registered guide, class-A assistant guide, assistant guide or transporter license expires on December 31, following issuance.

(b) No license may be issued to a class-A assistant guide or assistant guide who has failed to renew his license for two consecutive years unless he again meets the qualifications for initial issuance of the license.

(c) A master or registered guide who fails to renew a license is not required to requalify under § 190(2) or § 110(8) of this chapter, respectively. (§ 1 ch 17 SLA 1973; am § 12 ch 127 SLA 1974; am § 4 ch 106 SLA 1976)

Sec. 08.54.200. Grounds for disciplining a licensee. (a) The board shall hold a hearing to determine if disciplinary action is necessary if

(1) complaints concerning the licensee have been filed with the board from three or more clients of separate parties; or

(2) a licensee has been charged with a violation of federal or state sport fish, game or guide statutes or regulations; or

(3) a licensee has been convicted of a violation of federal or state sport fish, game or guide statute or regulation.

(b) After a hearing, the board may revoke, suspend, or deny renewal of a license if the board finds that the licensee

(1) engaged in unethical activity, unsafe activity, or activity which adversely affects the natural resources of the state when such activity is unrelated to the legal and legitimate purposes of the contract hunt; or

(2) violated a provision of a federal or state sport fish, game or guide statute or regulation.

(c) After a hearing, the board shall revoke a license if the board finds that the licensee

(1) does not meet the qualifications specified by statute or regulation for the class of license held;

(2) is incompetent as a master guide, registered guide, class-A assistant guide, or assistant guide;

(3) has been convicted of two violations of federal or state sport fish, game or guide statutes or regulations.

(d) No person who is disciplined under this section may engage in any guiding or transporting activity during the period of license revocation or disciplinary action. No person licensed under this chapter may hire or work for a guide whose license is suspended or revoked under this section.

(e) If the board revokes a license it shall notify the Department of Revenue, and the person whose license has been revoked shall return the license to the Department of Commerce and Economic Development. (§ 1 ch 17 SLA 1973; am § ch 43 SLA 1975; am § 5 ch 106 SLA 1976; am § 47 ch 218 SLA 1976)

Sec. 08.54.210. Unlawful acts. (a) It is unlawful for

(1) a master guide, registered guide, class-A assistant guide, assistant guide or transporter to fail to timely report to the Department of Public Safety, division of fish and wildlife protection, and in no event later than 30 days, violations by a client of a state fish, game or guiding statute or regulation;

(2) a master guide, registered guide, class-A assistant guide, assistant guide or transporter to aid the commission of a violation of this chapter or of AS 16.05 or a regulation promulgated under either chapter, or permit the commission of a violation in his sight without attempting to prevent it, short of using force, and without reporting it;

(3) a person to guide or transport as defined in this chapter without being licensed under this chapter and without having the license in his actual possession; however, for purposes of transporting by air, in the case of a corporation, company, partnership or other business entity, the license may remain at the principal place of business of the business entity;

(4) a person to advertise as or represent himself to be a licensed master guide, registered guide, class-A assistant guide, assistant guide or transporter without being currently licensed, or to falsely advertise services;

(5) a person to guide as defined in this chapter without having a current valid hunting and fishing license in his possession.

(6) a master or registered guide to employ or have under his supervision more than three assistant guides at the same time.

(7) a person to guide as defined in this chapter without paying a fee as prescribed in AS 16.05.340(e).

(b) A person who violates (a)(1)-(6) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both, and may have his license revoked for a period up to five years. However, a person who engages in guiding or transporting activity during the period his license is suspended or revoked under this chapter is guilty of a felony punishable, upon conviction, by a fine of not more than \$5,000 and by imprisonment for not less than one year nor more than three years. In addition to punishment for a felony, all guns, fishing tackle, boats, aircraft, automobiles or other vehicles, camping gear and other equipment and paraphernalia used in, or in aid of, guiding or transporting activity engaged in during the period of suspension or revocation shall be confiscated by persons authorized to enforce this chapter. A person who violates (a)(7) of this section, upon conviction, is subject to the same license revocation provision as for a violation of (a)(1)-(6) of this section and, in addition, is punishable by a fine of not more than \$5,000, or by imprisonment for not more than one year, or by both. (§ 1 ch 17 SLA 1973; am §§ 3, 4 ch 43 SLA 1975; am § 6 ch 106 SLA 1976; am § 3 ch 133 SLA 1976; am §§ 5, 6 ch 268 SLA 1976)

Sec. 08.54.220. Injunction against unlawful action. When in the judgment of the board a person or corporation or other entity has engaged in an act in violation of § 130 and §§ 200-210 of this chapter or the regulations promulgated under them, the board may apply to the appropriate court for an order enjoining the act. Upon a showing by the board that the person is engaging in the act, the court shall grant injunctive relief or other appropriate order without bond. (§ 1 ch 17 SLA 1973; am § 5 ch 43 SLA 1975)

### Article 3. General Provisions.

#### Section 240. Definitions

Sec. 08.54.240. Definitions. In this chapter

- (1) "board" means the Guide Licensing and Control Board;
- (2) "guide", "guides" or "guiding" means assisting another person to take game with the intent of receiving monetary or material remuneration for the services, by accompanying and directing that person personally or through a licensed assistant guide for the duration of a hunt, and not solely for the purpose of providing transportation services;
- (3) "resident" means a person who maintains a place of residence within the state; has not claimed residency in another state for

the immediately preceding 12 months; shows by all attending circumstances that his intent is to make this state his permanent residence;

(4) "unethical activity" means

(A) deception in any degree involving prospective or actual clients either before, during, or following contract hunts;

(B) misrepresentation either through private communication or public advertising of the nature, type, duration, cost, or other conditions of contract hunts.

(C) making a guaranty that a species or certain number of species of game will be taken on a contract hunt.

(5) "transporting" or the "activity of transporting" means conveying a person by any lawful means to an area for remuneration or material benefit in excess of normal operating costs, when the primary purpose of the person being conveyed is the taking of big game and the associated removing of big game meat and parts of big game after big game has been taken; big game as used in this paragraph means game which, if taken by a nonresident, would require a big game tag. (§ 1 ch 17 SLA 1973; am §§ 7, 8 ch 106 SLA 1976; am § 2 ch 133 SLA 1976)

CHAPTER 38.  
GUIDE LICENSINGARTICLE 2.  
GUIDE REGISTER

## Article

1. Examinations (12 AAC 38.010)
2. Guide Register (12 AAC 38.020)
3. General Provisions  
(12 AAC 38.030-12 AAC 38.190)

ARTICLE 1.  
EXAMINATIONS

## Section

## 10. Examinations

12 AAC 38.010. EXAMINATIONS. (a) The application for a guide examination must be made at least five months before the examination date on a form provided by the board. The application for examination shall include a listing of all hunters the applicant has guided or assisted in guiding during his apprenticeship and a letter of recommendation from any registered or master guide for whom he has worked.

(b) Guide examinations will be administered by the board or its authorized representatives at times and places as announced by the board.

(c) The registered guide examination will be composed of written and oral portions designed to reveal the actual qualifications of the candidate to practice guiding in the district or districts of his choice. However, a prospective guide unable to competently understand the written portion of the examination may be granted a guide license based on the outcome of the oral examination augmented by his experience. A score lower than 80 percent on either the written or oral portion of the test shall indicate inadequate qualifications. A person failing to achieve 80 percent or more on either the written or oral portion of the examination may not be reexamined for six months.

(d) A person contesting the results of any portion of the registered guide examination shall direct his appeal and the grounds therefor in writing to the chairman of the Guide Licensing and Control Board, Department of Commerce, Division of Occupational Licensing, Pouch D, Juneau, Alaska 99811, at least 30 days before the board meeting following the examination. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.050

## Section

## 20. Guide register

12 AAC 38.020. GUIDE REGISTER. (a) On December 31 of the register year, the names of all persons holding a master guide or registered guide license shall be entered by the board, on a register maintained by the board and shall be published for distribution to the public.

(b) All guides shall advise the board of their current address and all changes of address. (Eff. 6/28/74, Reg. 50; am 2/25/77, Reg. 61)

Authority: AS 08.54.040(a)(4) and (5)  
AS 08.54.050

ARTICLE 3.  
GENERAL PROVISIONS

## Section

30. Licenses
40. Restriction to districts
50. (Repealed)
51. Guiding area permits
52. Guide prohibited from using a guiding area not assigned to him or her
53. Application and qualification for guiding area permit
54. Reassignment of guiding area permit
55. Death or mental incapacity of guiding area permit holder
56. Changes to guiding area permit
57. Minimum use of guiding area
58. Grounds for revocation or suspension of a guiding area permit
60. Statement of financial remuneration
70. Responsibility of guide to his client
80. Survival gear
90. Presence of guide required
100. Taking of game by guides
110. Transporting meat
120. Cooperation with officials
130. (Repealed)
140. Requirements for a registered guide license
150. Requirements for a master guide
160. Improper certification
170. Improper reporting
180. Guiding ethics
190. Definitions

12 AAC 38.030. LICENSES. (a) A person must purchase his registered guide license within one year of passing the guiding examination or his eligibility lapses.

(b) An application for a guide license shall be made to the Division of Occupational Licensing, Department of Commerce, Pouch D, Juneau, Alaska 99811. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.050

12 AAC 38.040. RESTRICTION TO DISTRICTS. (a) A guide may conduct guiding activities only in districts for which he is certified.

(b) Twenty-six guide districts are established and defined as being identical to those areas described as game management units by the Board of Fish and Game in 5 AAC 90.010, as of January 1, 1974, with the addition of two subdistricts

(1) 18A - Nunivak Island and all waters within one mile of that island;

(2) repealed 6/6/79;

(3) 27 - Marine Mammals, including all the area between the western boundaries of districts 17, 18, 22, 23 and 26, except that area included in 18A, north of latitude 50 degrees north and east of the Convention Line of 1867 between the United States and the Union of Soviet Socialist Republics and south of latitude 75 degrees north.

(c) A guide licensed under AS 08.54 as of the effective date of this section is restricted to certification to guide in those districts for which he is certified on that date.

(d) After the effective date of this section, all guides applying for new certification are limited to a total of three districts including those districts for which they were certified as of that date.

(e) A master guide or registered guide may serve as a class A assistant guide in districts for which he is not certified.

(f) Notwithstanding any provision of this section, a guide may petition the board for a

transfer of certification to another district if he demonstrates to the satisfaction of the board

(1) that he will incur substantial hardship if a transfer is not permitted as evidenced by

(A) substantial land withdrawals from hunting within his district;

(B) significant reclassifications of land within his district;

(C) depletion of game as evidenced by actions of the Department of Fish and Game; or

(D) other demonstrations of hardship; and

(2) that he is qualified to guide in the district to which he wishes to be transferred. (Eff. 6/28/74, Reg. 50; am 2/25/77, Reg. 61; am 6/6/79, Reg. 70)

Authority: AS 08.54.040(a)(3) and (6)  
AS 08.54.050

12 AAC 38.050. REGISTRATION OF MAIN CAMP. Repealed 5/12/78.

12 AAC 38.051. GUIDING AREA PERMITS. (a) Guiding area permits will be issued by the board to guides qualifying under secs. 53 and 54 of this chapter for exclusive or joint use of a specified area in order to limit the number of guides allowed to guide for big game animals in that area.

(b) The board will determine the size, boundaries and number of guiding areas assigned to a master or registered guide and is not limited by number or boundaries of guide districts which may be included.

(c) Each guiding area will be assigned a unique identification code. (Eff. 5/12/78, Reg. 66)

Authority: AS 08.54.040(a)(3),(6) and (8)  
AS 08.54.050

12 AAC 38.052. GUIDE PROHIBITED FROM USING A GUIDING AREA NOT ASSIGNED TO HIM OR HER. No guide may contract guided big game hunts in an exclusive guiding area not assigned to him or her unless written permission to do so is obtained from the guide

to whom the guiding area is assigned. If more than one guide holds a permit for joint use of the guiding area, written permission must be obtained from each holder of a permit. The written permission must include the effective and expiration dates of use and the identity and number of the big game species to be hunted,

and must be dated and signed by all of the persons holding a permit for the guiding area. This written permission must be on the person of the guide conducting the hunt or in the base camp from which the hunt is conducted. (Eff. 5/12/78, Reg. 66)

Authority: AS 08.54.040(a)(3),(6) and (8)  
AS 08.54.050

**12 AAC 38.053. APPLICATION AND QUALIFICATION FOR GUIDING AREA PERMIT.** (a) An applicant for initial issuance of a guiding area permit must, at the time of application and at the time the application is reviewed by the board, be a registered or master guide in good standing and must be certified in the district or districts in which the applied-for guiding area is located.

(b) In order to be considered, an applicant must submit to the board, on or before the published deadline, an application which describes the proposed geographic boundaries of the guiding area being applied for and a 1:250,000 scale map showing the proposed boundaries.

(c) Each application must include satisfactory documentation of the applicant's past use, occupancy, or financial investment in the guiding area applied for. The application may include other relevant information if it is substantiated by satisfactory documentation.

(d) The board will, in its discretion, issue a permanent guiding area permit to a qualified applicant who can substantiate his or her use, occupancy, or financial investment in the guiding area for at least three of the five years immediately preceding the published deadline for filing the application for that particular unit. The board will, in its discretion, issue a temporary guiding area permit to a qualified applicant who can substantiate his or her use, occupancy or financial investment in the guiding area for at least two of the five years immediately preceding the published deadline for filing the application for that particular unit.

(e) The holder of a temporary guiding area permit may apply for a permanent permit after one additional year of use, in the temporary guiding area. (Eff. 5/12/78, Reg. 66)

Authority: AS 08.54.040(a)(3),(6) and (8)  
AS 08.54.050

**12 AAC 38.054. REASSIGNMENT OF GUIDING AREA PERMIT.** (a) Guiding area permits are not transferable by the permit holder. The board will, in its discretion, reassign a guiding area permit

(1) upon the death of the permit holder or upon a judicial determination that the permit holder is mentally incompetent;

(2) upon revocation or suspension of a guiding area permit;

(3) if the permit holder voluntarily relinquishes the guiding area permit; and

(4) upon application for reassignment.

(b) Under (a)(4) of this section, a permit holder may apply to the board for reassignment of his or her guiding area permit to a designated master or registered guide; the application must be made jointly by the permit holder and the designated master or registered guide. Approval of the reassignment will be given only upon a finding by the board, after notice and opportunity for a hearing, that the designated registered or master guide is qualified to guide in the area, is certified in the district or districts in which the applied-for guiding area is located, and that the reassignment is consistent with the public interest. The board will consider the designated master or registered guide's past use, occupancy, or financial investment in the guiding area and other relevant and reliable information in determining whether the designated master or registered guide is qualified.

(c) Except as otherwise provided in this chapter, an applicant for a guiding area permit which is to be reassigned must meet the requirements of sec. 53(a) of this chapter and make application in the manner prescribed for initial issuance of a guiding area permit.

(d) If an applicant cannot establish past use of the guiding area to be transferred or is not certified in the district or districts in which the guiding area is located, the board will consider experience and current use in another area of similar terrain if the applicant can establish to the satisfaction of the board that he or she is competent because of other relevant factors to conduct guiding activities in the guiding area.

(e) The board will consider the recommendations of the prior holder of the guiding area permit to be reassigned and will, in areas of joint use, consider the recommendations of the other holders of permits for the guiding area. (Eff. 5/12/78, Reg. 66)

Authority: AS 08.54.040(a)(3),(6) and (8)  
AS 08.54.050

**12 AAC 38.055. DEATH OR MENTAL INCAPACITY OF GUIDING AREA PERMIT HOLDER.** (a) Upon the death of a holder of a guiding area permit, the board will, in its discretion, grant a waiver, for a time specified by the board, of the requirements of sec. 57 of this chapter if application is made by the estate within 90 days after death. Failure to make application within 90 days is considered a voluntary relinquishment of the permit. At any time during the period of the waiver, an heir may apply to the board for a reassignment of the permit to a person designated by the heir.

(b) Upon a judicial determination that a guiding area permit holder is mentally incompetent, the board will, in its discretion, grant a waiver, for a time specified by the board, of the requirements of sec. 57 of this chapter if application is made by the permit holder's guardian within 90 days after a judicial determination of the permit holder's mental incompetency. Failure to make application within 90 days is considered a voluntary relinquishment of the permit. At any time during the period of the waiver the guardian may apply to the board for a reassignment of the permit to a person designated by the guardian. (Eff. 5/12/78, Reg. 66)

Authority: AS 08.54.040(a)(3),(6) and (8)  
AS 08.54.050

**12 AAC 38.056. CHANGES TO GUIDING AREA PERMIT.** Petitions for changes to the size or boundary of a guiding area, for reassignment of a guiding area permit, or for any other changes affecting the guiding area, will be accepted for all guide districts and will be reviewed at a regularly scheduled meeting of the board. Each petitioner will be advised of the date and place of the meeting when his or her petition is scheduled for review. A petition will not be reviewed by the board if the petitioner or a person authorized in writing by the petitioner as his or her designee fails to appear at the time

of the scheduled review. If the petition concerns a joint use guiding area permit, each holder of a permit for that guiding area will be furnished a copy of the petition and advised of the date and place when the petition is scheduled to be reviewed and may appear before the board and present testimony relevant to the petition. (Eff. 5/12/78, Reg. 66)

Authority: AS 08.54.040(a)(3),(6) and (8)  
AS 08.54.050

**12 AAC 38.057. MINIMUM USE OF GUIDING AREA.** Each holder of a guiding area permit must conduct at least two contracted hunts within two consecutive calendar years in the guiding area as evidenced by statements of financial remuneration filed in accordance with sec. 60 of this chapter. Failure to do so for any two consecutive calendar years may result in revocation of the guiding area permit unless the permit holder can demonstrate to the satisfaction of the board that circumstances beyond his control precluded conducting the required hunts. (Eff. 5/12/78, Reg. 66)

Authority: AS 08.54.040(a)(3),(6) and (8)  
AS 08.54.050

**12 AAC 38.058. GROUNDS FOR REVOCATION OR SUSPENSION OF A GUIDING AREA PERMIT.** The board will, in its discretion, revoke or suspend a guiding area permit or permits if the permit holder

(1) violates a federal or state sport fish, game or guiding statute or regulation, which violation occurred while guiding;

(2) has his guide license revoked or suspended or is denied renewal of a license for violation of a federal or state sport fish or game or guiding statute or regulation other than for nonpayment of current license fees;

(3) is found by the board to have misused a guiding area. (Eff. 5/12/78, Reg. 66)

Authority: AS 08.54.040(a)(3),(6) and (8)  
AS 08.54.050

**12 AAC 38.060. STATEMENT OF FINANCIAL REMUNERATION.** (a) Before hunting with his or her client, a guide shall complete or have completed a statement of financial remuneration in triplicate on a form provided by the board for this purpose and shall state

(1) that he received financial or material remuneration for his services;

(2) the dates of the contract hunt;

(3) the species to be hunted for;

(4) the legal signature of the guide and his client;

(5) the typed or printed name and address of the guide and his client;

(6) the guiding area permit unique identifying code assigned under sec. 51(c) of this chapter.

(b) The original of the statement required in (a) of this section shall be sent to the Department of Public Safety, Division of Fish and Wildlife Protection, Records Section, P.O. Box 6188 Annex, Anchorage, Alaska 99502, within 21 days after completion of the hunt.

(c) The guide is responsible for furnishing one copy of the statement to his client.

(d) One copy of the statement shall be filed in camp for the duration of the hunt and thereafter at the guide's regular place of business for four years, and shall be produced for inspection upon request by an agent of the Department of Public Safety. (Eff. 6/28/74, Reg. 50; am 5/12/78, Reg. 66)

Authority: AS 08.54.050

**12 AAC 38.070. RESPONSIBILITY OF GUIDE TO HIS CLIENT.** (a) It is the responsibility of a guide to ascertain that a client has a proper license and appropriate tags and harvest reports, in his possession, for the big game species being hunted before hunting. The guide is responsible for attaching appropriate tags to any game taken by his client and is responsible for having all game sealed or marked as required by Alaska Department of Fish and Game regulations.

(b) A guide shall take every reasonable measure to assure the safety and comfort of his clients. He is responsible for having available the following:

(1) adequate first aid supplies;

(2) sufficient food to provide for emergencies that might render the party immobile;

(3) shelter which is normally considered satisfactory and comfortable under field conditions;

(4) transportation or communications or arrangements to obtain them without hardship or unreasonable delay. (Eff. 6/28/74, Reg. 50)  
Authority: AS 08.54.050

**12 AAC 38.080. SURVIVAL GEAR.** A guide is responsible for assuring that each aircraft operated by him, and used in any phase of a hunt conducted by him, carries survival gear as required by AS 02.35.110. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.050

**12 AAC 38.090. PRESENCE OF GUIDE REQUIRED.** A master, registered or class A assistant guide must be in the field and participating in the conduct of the guided hunt whenever assistant guides are guiding. (Eff. 6/28/74, Reg. 50; am 11/2/75, Reg. 56)

Authority: AS 08.54.050

**12 AAC 38.100. TAKING OF GAME BY GUIDES.** (a) No guide may take big game animals or marine mammals while acting as a guide, except in cases of actual emergency when a bear or other animal is attacking or when a bear or other animal is about to escape after being wounded. It is then the duty of the guide to take such actions as he considers necessary.

(b) It is unlawful for a master guide, registered guide, class A assistant guide or assistant guide guiding a hunter for walrus to take or assist in taking any walrus other than the animal taken by the client he is guiding; however, one crewman other than the guide may take one single cow walrus and its calf if this taking does not exceed the bag limit as prescribed by regulations of the Board of Game. (Eff. 6/28/74, Reg. 50; am 6/12/77, Reg. 62)

Authority: AS 08.54.050

**12 AAC 38.110. TRANSPORTING MEAT.** A guide is responsible for transporting the meat of big game animals, except bear, wolves, and wolverine, taken by his client from the site of the kill to its destination or to a common carrier

for shipping to its destination for the purpose of human consumption. If the meat is delivered to a person other than the person who took the animal, a signed and dated statement or receipt stating the kind and quantity of meat received in approximate pounds or named portions of the carcass must be obtained from the recipient and presented upon request to any officer authorized to enforce this chapter. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.050

**12 AAC 38.120. COOPERATION WITH OFFICIALS.** Failure on the part of a guide to assist the Departments of Fish and Game and Public Safety in determining the truth of any statements reported in accordance with secs. 30 - 180 of this chapter is considered a violation of ethical conduct. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.050

**12 AAC 38.130. REQUIREMENT FOR AN ASSISTANT GUIDE LICENSE.** Repealed 5/12/79.

**12 AAC 38.140. REQUIREMENTS FOR A REGISTERED GUIDE LICENSE.** In addition to the requirements of AS 08.54.110, to be qualified for a registered guide license, a person must

(1) demonstrate to the board that he has spent 90 days in the field acting as an assistant guide as certified by the master or registered guides who employed him;

(2) not have violated a federal or state sport fish, game or guide statute or regulation or engaged in unethical activity, unsafe activity or activity which adversely affects the natural resources of the state for the preceding five years. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.050  
AS 08.54.110(12)

**12 AAC 38.150. REQUIREMENTS FOR A MASTER GUIDE.** In addition to the requirements of AS 08.54.100, to be qualified for a master guide license a person must have acted as a registered guide for 12 consecutive years. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.050  
AS 08.54.100(5)

**12 AAC 38.160. IMPROPER CERTIFICATION.** No master or registered guide may improperly certify that a person has met the qualifications for a guide license. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.050

**12 AAC 38.170. IMPROPER REPORTING.** No guide may knowingly falsify any information required to be set out on any form required by the Alaska Department of Fish and Game or the Guide Licensing and Control Board. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.050

**12 AAC 38.180. GUIDING ETHICS.** Unethical activity includes, but is not limited to

(1) not fully cooperating with state and federal wildlife officials or not abiding by and advising clients and personnel of all applicable conservation and game laws and regulations or condoning their violation;

(2) misrepresenting or not clearly defining rates, accommodations and services to prospective clients prior to booking and acceptance of deposit, or otherwise misleading prospective clients through false or fictitious advertising;

(3) being unwilling or incapable of making financial restitution to a client for any breach of contract by the guide or his employees, owing to no fault of the client;

(4) not advising clients of game population to the best of the guide's ability based on past performances in hunting areas and advising him of his chances of encountering the species he desires in the time allotted;

(5) making "guarantees" as to the success of a hunt or the number of pieces of game to be collected;

(6) not maintaining and providing stock,

mechanical equipment, gear, food supplies and facilities to a quality and condition to provide services equal to or better than described in the guide's advertising, correspondence, verbal declaration or contractual agreements;

(7) not maintaining a neat, orderly and sanitary camp at all times, or not providing reasonably well-prepared, palatable and balanced camp meals for clients and personnel in keeping with the conditions of the hunt;

(8) contracting for more hunts or for more hunters at any one time than the guide or his employees can adequately facilitate rendering services for;

(9) hiring guides that are improperly licensed, or ill trained in the arts of woodsman'ship, judging trophies, cooking, first aid, photography, firearms, trophy preparation and caring for clients;

(10) failing, while guiding a client, to take all precautions if an animal is wounded;

(11) failing to use every means at his disposal to bag any wounded animal while it is in danger of escaping, or if in a serious emergency, human life or well-being is endangered;

(12) filling a client's game tag or bag limit;

(13) failing, barring unforeseen conditions, to properly prepare, according to generally accepted procedures, all antlers, horn, hides and capes to be delivered to the taxidermist or to the client at the conclusion of a hunt in a satisfactory and unspoiled condition;

(14) failing to endeavor to salvage all meats of trophies taken by his client, in accordance with existing state law;

(15) promoting hunting or the taking of trophies by means other than fair chase: specifically, the pursuit of a trophy in an illegal or unsportsmanlike manner, by herding, driving or chasing of animals with the use of any mechanically powered equipment;

(16) failing to practice sound wildlife conservation or failing to create an awareness of conservation needs and practices during his associations with the public. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.040(6)  
AS 08.54.050

12 AAC 38.190. DEFINITIONS. Unless otherwise indicated, in this chapter

(1) "competence" means a professional standard of conduct which satisfactorily implements, under field conditions, the knowledge and qualifications of a guide;

(2) "transport" means shipping, carrying, importing, exporting, or receiving or delivering for shipment, carriage or export;

(3) "board" means the Alaska Guide Licensing and Control Board. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.050

Original sponsor: Bradley

Offered: 2/16/79  
Referred: Rules

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

CS FOR SENATE BILL NO. 101

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

ELEVENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the disciplining of a licensed  
7 guide."

8

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

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\* Section 1. AS 08.54.200(c)(3) is repealed.

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STATE OF ALASKA  
COLLECTION AGENCY BOARD  
June, 1979

Findings

Statutes regulating the Collection Agency Board and profession vest licensing and enforcement powers within the Department of Commerce and Economic Development. These functions continued throughout a six-year period during which no Board meetings were held. Due to potential monetary loss by businesses and the public as a result of unscrupulous collection operations, control of agencies and agency operators is determined to be a valid governmental concern. However, control could be maintained without a State board as demonstrated by continued operation during the six-year dormant period. We believe that the Collection Agency Board should be allowed to terminate on June 30, 1980.

I. General Information

A. Regulated Parties

1. Collection Agencies
2. Collection Agency Operators

B. Definitions

"(3) 'collection agency business' means the business of engaging directly or indirectly and having as a primary or secondary object, business or pursuit the solicitation of claims for collection or repossession of collateral security or the collection of claims owed or due or asserted to be owed or due to another or the repossession of collateral security;

(A) a house, agency, firm, person, corporation or voluntary association using a name other than its own in collecting its own claims with the intention of conveying, or which tends to convey, the impression that a third party has been employed, is conducting a collection agency business within the meaning of this chapter;

(B) a person who sells, attempts to sell, gives away or attempts to give away to another person, other than a licensee under this chapter a system of collection letters, demand forms or other printed matter where the name of a person other than a creditor appears in a manner to indicate that a request or demand is being made by another person, other than the creditor, for the payment of a sum due, or asserted to be due, or who solicits or accepts accounts for collection on a contingent or percentage basis or by a fee or outright purchase

for collection purposes, is considered to be in the collection agency business within the meaning of this chapter;

- (4) 'collection agency' means a person licensed and authorized to engage in the collection agency business;
- (5) 'operator' means a person having managerial control of a collection agency." (AS 08.24.380)

C. Nature and Composition of Board

1. Board members and terms:

Three-year term (no restrictions regarding consecutive terms or number of terms).

James Engwall (Chairman)	Ends March 1, 1981
Allan Shepard	Ends March 1, 1980
Donald Leach	Ends March 1, 1981
Judy Warwick	Ends March 1, 1979
Director, Division of Occupational Licensing	

2. Representation:

Profession = 2  
Public = 2  
Administrative Agency = 1

3. Qualifications:

"...The board shall consist of two persons engaged in the collection agency business within the state and licensed

under this chapter. The third member shall be designated by the commissioner of commerce economic development from his staff. Two members shall be public members in accordance with AS 08.01.025." (AS 08.24.011)

D. Licensing Data

Current licenses (effective May, 1979)

Agencies = 23

Operators = 25

There are currently no out-of-State licenses.

E. Fees

Resident

1. operator biennial fee	\$100.00
2. operator application fee	40.00
3. agency biennial fee	200.00
4. agency application fee	100.00
5. delinquency charge	50.00

Nonresident

1. operator license	\$100.00
2. operator biennial fee	200.00
3. agency license	200.00
4. agency biennial fee	400.00

\$5,000 Agency bond required for all collection agencies.

F. Board Revenues and Expenditures

	FY ' 76	FY ' 77	FY '78	FY '79
Receipts	\$4,164.00	\$8,364.00	\$6,950.00	\$3,697.55
- refunds	-	300.00	-	-
Total	\$4,164.00	\$8,064.00	\$6,950.00	\$3,697.55
Expenditures				
Transportation	-	38.83	1,830.87	2,018.48
Per Diem	-	212.50	1,621.60	1,493.55
Phone	-	20.10	49.40	950.69
Printing, Adver. & Postage	-	140.16	624.35	204.79
Fees & Services	-	-	-	-
Rents, Lease:	-	-	-	-
Other	-	-	-	3.25
Total	-	811.59	4,126.22	\$4,670.76
Surplus	\$4,164.00	\$7,252.41	\$2,823.78	-
Deficit	-	-	-	\$ 973.21

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

As of June 1, 1979, nine complaints remain open in agency files. These complaints are from various sources and range in nature from embezzlement to harrassment of the public by collection entities. Sixty-four cases are pending Board approval for closure due to age and lack of jurisdiction.

## H. Professional Qualifications

No technical education or experience requirements.

## II. Analysis

- A. To what extent has the Collection Agency Board operated in the public interest?

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The only specific statutory authority allowed this Board is to adopt rules and regulations and investigate applicants. The Board is involved in licensure of applicants as a matter of policy although the Commissioner or his designee has responsibility for passing on applicant qualifications. Departmental authority includes enforcement, approval and issuance of licenses, power to seek injunctions, publication of the law and current directories, modification or waiver of operator license requirements, investigation of applicants, adoption of rules and regulations, auditing of agency transactions, and suspension of licenses for nonrenewal or noncompliance with required procedures. The Department may also suspend, revoke or refuse renewal under certain conditions.

No examination is given to applicants for operator or agency licensure. Approval is based on statutory qualifications as well as additional Board and/or department required information. Individual licensee files maintained by the agency are inadequate in documentation of qualifications. Only one of seven files for which licenses were issued in 1970 contained information relevant to the applicant's moral character. Two out of eighteen files reviewed for which licensure was granted after 1970 lacked this information. In the group of seven issued in 1970, one had not completed high school or its equivalent, two contained no fingerprint information, one indicated a possible law violation with no follow-

through or resolution, and one had no application on file at all. One of the remaining eighteen contained no application or fingerprint information and six were licensed contingent on a favorable report from the F.B.I. No verification of education such as transcripts or certified diploma copies has ever been required. The applicant must submit, however, in addition to statutory requirements, a personal resume, a personal credit report, and three past employment verification forms.

Regulations are currently being promulgated which will outline application procedures, qualifying requirements, specific procedures for handling funds collected, and ethical rules of professional conduct. No regulations are in effect as of this writing.

Applicants for operator licensure are required by statute to have been a State resident continuously for at least one year prior to the date of application. For a total of \$300 a nonresident may be licensed (residents pay \$140). The residency requirement under AS 08.24.110(1) should be reviewed for validity. The Board has recommended deletion of this statute. Applications also request information regarding individual social security numbers, marital status, a picture, and a credit report. Board regulations as presently drafted also contain information requirements of this nature. Residency information appears on reporting forms for new agency employees regardless of their position or length of employment.

Collection agencies are required by AS 08.24.220 to submit a semiannual statement of employees on June 1 and December 1 of every year and by AS 08.24.210 to submit an annual statement of collection no later than January 31 of each year for the preceding year. AS 08.24.240 makes it incumbent upon the Department to ensure compliance and suspend licenses for substantial noncompliance. As of May 17, 1979, only three of the total twenty-three licensed agencies had submitted the required reports

for December, 1978 and January, 1979. Letters were sent to licensees requesting submission of this information. Noncompliance has been a problem in the past and obviously continues to be a problem to which employee turnover and/or shortage within the administrative agency has contributed.

Public Law 95-109 (Fair Debt Collection Practices Act) was approved in 1977 to take effect in the first half of 1978. The United States Congress found "abundant evidence of the use of abusive, deceptive and unfair debt collection practices" which "contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy." Congress' stated purpose in regulation is "to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collector abuses." The Act outlines ethical conduct and prohibitions against unfair practices. It also assigns enforcement responsibility to the Federal Trade Commission. Due to the fact that there is no FTC office in Alaska, one may assume that this agency's enforcement activities here are negligible. Pending Board regulations are expected to rely heavily on the provisions of PL 95-109.

This profession has no endorsement, continuing competency or temporary permit procedures; however, these are not determined to be necessary to protect the public interest nor are they particularly necessary as prerequisites to licensure.

B. To what extent has the operation of the Collection Agency Board been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

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The first Board meeting was held in September of 1970 with three members present. The Board subsequently met in October of 1971, again with three members present. This was the last meeting until March of 1977 at which four members were present and one absent. There is no documentation which would explain the reason for this six-year hiatus in Board operations. Only relatively recently has the Board been in a position to formulate procedures and policies and to promulgate substantive regulations.

The Collection Agency Board has experienced some difficulty with respect to personnel and budgetary restrictions. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs; however, past employee turnover has impeded continuity and follow-up on Board requests. Fees and revenues for all boards and commissions under the jurisdiction of the Division of Occupational Licensing are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct board revenues and expenses may be determined.

The Board has encountered the same difficulties as have all other boards and commissions with respect to investigative services provided by the administrative agency. During FY '78 two investigator positions were vacant; as a result, one position was abolished by the Legislature. At the present time, two investigators are located in Anchorage with a Chief Investigator located in Juneau. An additional investigator position was approved in the FY '80 budget but will probably not be filled immediately due to vacancy factors incorporated into the personal service category of the budget. Procedural constraints of the administrative adjudication article of the Administrative Procedure Act (AS 44.62.330-.630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense

results in pursuit of only the most flagrant and potentially injurious licensing complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

Regulations are still being promulgated by the Board prior to final approval and adoption. None are in effect at this time.

Several statutory provisions for the Collection Agency Board are in need of review and possible revision.

§ 100(b) refers to an annual operator's license and a biennial fee. § 110(1) requires that an applicant for an operator's license "have been a resident of this state continuously for at least one year before the time of application..." Residency requirements should be deleted from the statutes. § 370 regarding nonresidents should be reviewed also. The term "moral turpitude" is not defined, nor is "good cause" for waiver or modification of license qualifications. The Board or the Department should clearly delineate what constitutes a "complete investigation" of applicants.

§ 130(a)(5) refers to "additional information" which may be required by the Board or Department from applicants for licensure as an agency. It should be noted that no such "additional information" is provided for in operator license requirements yet the Board has proposed by regulations to require previous names, social security number, birthplace, outline of personal business experience, a personal financial statement, a credit report, past employment information, and a complete personal history.

§ 180, a grandfather clause, is recommended to be repealed.

§ 220(b) refers to reporting of any pseudonyms or false names used in collection efforts. Apparently the use of aliases is widespread and common within this profession. § 807(10) of PL 95-109 (Fair Debt Collection Practices Act) cites as a violation the "use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer." Also cited as a violation (§ 807(11)) is "the failure to disclose clearly in all communications made to collect a debt or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose."

§ 304(b)(4) refers to "further information" which should be defined.

Consideration may also be given to increasing the amount of the bond required for collection agencies (\$5,000) to \$10,000 and to requiring submission of only surety bonds or cash.

C. To what extent has the Collection Agency Board recommended statutory changes which are generally of benefit to the public interest?

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Two public members were added to the Board by statute in 1976. No other substantive changes have been made since the Board was created in 1968.

Since 1970 the Board has recommended changes to: (1) Sec. 140(b) which would require reports and payments to customers every month; (2) Sec. 110(1) which would remove the residency requirement for an operator's license; and (3) deletion of Sec. 340(c) which requires that the employee report information be notarized.

D. To what extent has the Collection Agency Board encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

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Participation concerning Board affairs and services has come from the profession. Very little "public" interest has been shown in the form of attendance at meetings, hearings, or as written input. Most concern is expressed by individuals with particular problems directly approaching Board members.

Notices of pending meetings and new or amended regulations are published in major newspapers in the State but elicit minimal response. Positive overt steps could be taken by the Board to heighten public awareness of its existence and functions, such as public service radio announcements and utilization of other media. Wider dissemination of general information may help to mitigate public disinterest.

Public interests are furthered by the presence of two public members on the Board. "In recent years a number of states have added one or more public members (citizens with no particular interest in the occupation or profession governed by the board) to licensing boards in an effort to ensure that the interests of the public would be represented in decision-making."<sup>1</sup> The State of California, which provides for a one-third public membership on health care boards and a public majority on others, has indicated that its experience with public members has been highly rewarding.

E. How efficiently are public inquiries or complaints regarding the activities of the Collection Agency Board processed and resolved?

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<sup>1</sup>Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

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As of June 1, 1979, there were nine open investigations on file with the administrative agency. Complaints have been received from the Board, the profession, and from the public. They range in nature from harrassment of the public to embezzlement. In September of 1978, 64 complaint cases were purged from agency files and are pending closure before the Board due to age or lack of jurisdiction.

Until recently, the Board had been unaware of the number and nature of the complaints on file. The administrative agency is addressing complaints and investigation procedures and the need for timely disposition of issues.

There have been no complaints against the Collection Agency Board as a body.

F. To what extent does the Collection Agency Board present qualified applicants to serve the public?

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No technical education or experience is required for licensure in this profession. As long as an operator applicant is at least 19 years of age and has a high school education or its equivalent, (s)he may potentially be licensed. Collection agency applicants must be at least 19 years of age and submit required information and fees. No examination is administered.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Collection Agency Board in its own activities, and in its area of activity or interest?

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Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (also responsible for services to another large commission) who is hired through the State Personnel System and is subject to affirmative action requirements.

Licenses in this profession are issued on the basis of specific statutory criteria. Affirmative action requirements are not applicable to licensure qualifications.

H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Collection Agency Board to better serve the interests of the public?

Application forms and procedures should be reviewed and improved. Pending regulations will accomplish much toward this objective. Residency requirements should be deleted from Board statutes. The Board and/or the Division should ensure that licensees comply with reporting requirements in a timely manner. A \$10,000 surety bond, or cash, should be required of all collection agencies.

The administrative agency is formulating investigation procedures for all boards to whom support services are provided. The licensing examiner assigned to the Collection Agency Board also is responsible to the Real Estate Commission; services to the Commission constitute a considerable amount of time and work thereby limiting the services that should be provided to both entities. If the Board is continued, one-fourth of an examiner position is recommended as minimally adequate for administrative support.

Other recommended statutory changes have been cited previously in this report.

## Chapter 24. Collection Agencies.

### Article

1. Collection Agency Board (§§ 08.24.011-08.24.031)
2. Powers and Duties of Department of Commerce (§§ 08.24.041-08.24.071)
3. Licensing (§§ 08.24.090-08.24.380)

### Article 1. Collection Agency Board.

#### Section

- 011. Collection Agency Board
- 016. [Repealed]
- 021. Appointment and term of office
- 031. Regulations

Sec. 08.24.011. Collection Agency Board. There is created a Collection Agency Board consisting of five members, four of whom shall be appointed by the governor. The board shall consist of two persons engaged in the collection agency business within the state and licensed under this chapter. The third member shall be designated by the commissioner of commerce and economic development from his staff. Two members shall be public members in accordance with AS 08.01.025. (§ 1 ch 101 SLA 1968; am § 42 ch 218 SLA 1976; am § 7 ch 258 SLA 1976)

Sec. 08.24.016. Transportation and per diem. Repealed by § 1 ch 165 SLA 1970.

Sec. 08.24.021. Appointment and term of office. The board members shall be appointed initially for terms of two and three years respectively. Thereafter, appointments to the board shall be made upon the expiration of the initial appointment and the term of office for each member so appointed shall be three years. The members shall serve at the pleasure of the governor. Vacancies caused by death, resignation or removal from office shall be filled by appointment by the governor. (§ 1 ch 101 SLA 1968)

Sec. 08.24.031. Regulations. The board may adopt rules and regulations necessary to effectuate the purposes of this chapter. (§ 1 ch 101 SLA 1968)

### Article 2. Powers and Duties of the Department of Commerce

#### Section

- 041. Duty to enforce chapter
- 045. Duty to pass upon qualification
- 051. Power to seek injunctions
- 061. Publications of applicable law
- 071. Directory of licensed agencies

Sec. 08.24.041. Duty to enforce chapter. The department shall enforce all laws, rules and regulations relating to collection agencies. (§ 1 ch 101 SLA 1968)

Sec. 08.24.045. Duty to pass upon qualifications. The commissioner of the department or his designee within the department shall pass upon the qualifications of applicants for collection agency licenses and operators licenses. (§ 1 ch 101 SLA 1968)

Sec. 08.24.051. Power to seek injunctions. The department may apply to the superior court for an injunction to temporarily restrain a violation of this chapter or a rule or regulation issued under it, conduct investigations of alleged violations of this chapter, and regulations enacted under this chapter, and perform other action necessary to accomplish the purposes of this chapter. (§ 1 ch 101 SLA 1968)

Sec. 08.24.061. Publication of applicable law. The department shall reproduce the laws relating to licensing of collection agencies and operators, the rules and regulations adopted by the department or the board and other pertinent matter, publish the material in pamphlet form, and make the pamphlets available to the public without expense. (§ 1 ch 101 SLA 1968)

Sec. 08.24.071. Directory of licensed agencies. The department shall publish on or about August 1 of each year a directory containing a list of licensed collection agencies which specifies as to each agency its owners and officers and the names of its licensee operator or operators, together with other matters pertinent to the general purposes of this chapter. The department shall mail one copy of the directory to each licensed collection agency, to the clerk of each superior court in the state, and upon request, to other persons. (§ 1 ch 101 SLA 1968)

### Article 3. Licensing

#### Section

- 90. License required
- 100. Licensed operator required, exceptions and fee
- 110. Qualification for operator's license
- 120. Application for operator's license
- 130. Application for agency license
- 140. Fee, bond and other material
- 150. Bond
- 160. Form of bond
- 170. Return of fees and bond
- 180. Persons presently engaged in collection business
- 190. License as personal privilege
- 200. Expiration and renewal
- 210. Annual statement of collection
- 220. Semiannual statement of employees

230. False declarations in statement
240. Failure to file statement
250. Information confidential
260. Investigations
270. Administrative Procedure Act
280. Records and funds
290. Suspension, revocation or refusal to renew or grant a license or certificate
300. Court action by agency
310. Additional business names
320. Documents which imitate judicial process
330. Duty to maintain a public office
340. Statement of persons employed by agency
350. Notice of withdrawal of employees
360. Fines and penalties
370. Nonresidents
380. Definitions

Sec. 08.24.090. License required. (a) No person other than a collection agency licensed and authorized under this chapter may for compensation

- (1) conduct a collection agency business in this state;
- (2) collect claims for others in this state;
- (3) solicit the right to collect or receive payment of a claim for another;
- (4) advertise or solicit either in print, by letter, in person or otherwise, the right to collect or receive payment of a claim for another;
- (5) seek to make collection or obtain payment of a claim on behalf of another.

(b) This chapter does not apply to the following when engaged in the regular course of their respective businesses:

- (1) attorneys at law;
- (2) persons regularly employed on a regular wage or salary in the capacity of credit men or a similar capacity, except as an independent contractor;
- (3) banks, including trust departments of banks, fiduciaries and financing and lending institutions;

- (4) common carriers;
- (5) title insurers and abstract companies while doing an escrow business;
- (6) licensed real estate brokers;
- (7) employees of licensees under this chapter;
- (8) substation payment offices employed by or serving as independent contractors for public utilities.

(c) A violation of this section is a misdemeanor punishable by imprisonment in a jail for not to exceed one year, or by a fine of not more than \$1,000 or by both. (§ 1 ch 101 SLA 1968)

Sec. 08.24.100. Licensed operator required, exceptions and fee.

(a) Notwithstanding any other provision of this chapter, no licensee may engage in the collection agency business unless and until the collection agency, and each branch office of the agency is under the management and control of a licensed operator for each office. The department or the board may waive this requirement for a period not to exceed 90 days upon the death or disability of an operator, or for other good cause.

(b) The annual operator's license shall be renewable on or before July 1 of each second year beginning on July 1, 1968, and the biennial fee is \$100. (§ 1 ch 101 SLA 1968)

Sec. 08.24.110. Qualification for operator's license. (a) To qualify for an operator's license, the applicant shall:

- (1) have been a resident of this state continuously for at least one year before the time of application;
- (2) be a high school graduate, or have the equivalent education of a high school graduate;
- (3) be of good moral character;
- (4) not have been convicted of violating this chapter, nor have any unsettled complaints under this chapter against him;
- (5) not have been convicted of a felony or a crime of larceny or embezzlement or a crime involving moral turpitude;
- (6) be 19 years of age or older at the time of application;
- (7) not be a disbarred attorney or have filed bankruptcy;

(8) pay the biennial license fee which is fixed at \$100.

(b) The commissioner may waive or modify the requirements specified in (a)(2), (4), (5) and (7) of this section for good cause shown. (§ 1 ch 101 SLA 1968)

Sec. 08.24.120. Application for operator's license. (a) An application for an operator's license shall be made on forms furnished by the department and shall contain the information required in § 110 of this chapter and, in addition, the following:

- (1) a complete set of fingerprints;
- (2) a 2"x3" photograph showing a front view of head and shoulders;
- (3) if an original application, an application fee of \$40;
- (4) the biennial license fee required by § 100 of this chapter.

(b) The department and the board are authorized to make a complete investigation of applicants including inquiry of police agencies as to the applicant's record of arrest or conviction of crime. (§ 1 ch 101 SLA 1968)

Sec. 08.24.130. Application for agency license. (a) An application for a collection agency license, or for a renewal of a license shall be made upon forms furnished by the department and shall contain the following information:

- (1) the full name and proposed business name of the applicant;
- (2) the address of the applicant's principal place of business and branch offices;
- (3) the names and addresses of the applicant and those associated with him; if the applicant is a corporation or association, the application shall contain the names of the officers of the corporation or association;
- (4) the names and residential addresses of the applicant's operators;
- (5) additional information which the department or the board, by rule or regulation, requires.

(b) Every natural person applying for a collection agency license must be 19 years of age or older at the time of making application. (§ 1 ch 101 SLA 1968)

Sec. 08.24.140. Fee, bond and other material. (a) The application shall be accompanied by:

(1) if an original application, an application fee of \$100;

(2) the biennial license fee for a collection agency which is fixed at \$200 for the principal place of business and \$200 for each branch office;

(3) a bond running to the state with a surety or sureties to the satisfaction of the department, and conditioned that the licensee shall, within 30 days after the close of each calendar or fiscal month, report and pay to his customers the net proceeds due and payable of all collections made during the calendar or fiscal month which exceeds \$20.

(b) All money collected by an agency belonging to a client shall be deposited in a trust account and cleared at the end of each month. The department may audit any agency transaction. (§ 1 ch 101 SLA 1968)

Sec. 08.24.150. Bond. (a) The bond provided for in §140 of this chapter shall be in the sum of \$5,000, executed by the applicant, as principal, and by a corporation which is licensed or authorized to transact business of fidelity and surety insurance within the state as surety. The department may at any time request verification of a bonding agent's authority by the main office of any company acting as surety.

(b) A licensee may, at any time, file with the department a new bond. A licensee may in lieu of a bond make a \$5,000 cash deposit with the department, the deposit to be held by the department under the same terms and conditions as if bond in that amount were posted.

(c) A surety may file with the department notice of his withdrawal on the bond of a licensee. Upon filing a new bond, or upon the revocation of the collection agency license, or upon expiration of 60 days after the filing of notice of withdrawal as surety by the surety, the liability of the former surety for all future acts of the licensee shall terminate.

(d) The department shall immediately cancel the bond given by a surety company upon being advised its license to transact business of fidelity and surety insurance has been revoked by the state.

(e) Upon the filing with the department of notice by a surety of his withdrawal as the surety on the bond of a licensee, or upon the cancellation by the department of the bond of a surety company as provided in this section, the department shall immediately give notice to the licensee of the withdrawal or cancellation, which notice shall be by registered or certified mail with request for a return receipt and addressed to the licensee at his main office, as shown by the records of the department. At the expiration of 30 days from the date of mailing

the notice, the license of the licensee shall be terminated, unless the licensee has filed a new bond with a surety satisfactory to the department. All bonds given under this chapter shall be filed and held in the office of the department.

(f) The bond required by this section shall remain in effect until cancelled by action of the surety, the principal or the department. No action may be initiated upon the bond after two years from its cancellation. (§ 1 ch 101 SLA 1968)

Sec. 08.24.160. Form of bond. The bond required by §§ 140 and 150 of this chapter shall be in the form substantially as follows:

BOND

Know all Men by These Presents that we, ....., as principal, and.....as surety, are held and firmly bound to the State of Alaska, in the penal sum of \$....., lawful money of the United States, for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns jointly and severally.

The condition of this obligation is such that whereas, the bonded principal, named above, has applied to the Department of Commerce and Economic Development of the State of Alaska for a collection agency license under the provisions of AS 08.24 and is required by the provisions of that law to furnish a bond conditioned as herein set out.

Now, therefore, if....., within 30 days after the close of each fiscal or calendar month, reports and pays to customers the net proceeds due and payable of all collections made during that calendar or fiscal month which exceed \$20, and strictly, honestly and faithfully complies with the provisions of AS 08.24 and all amendments to it and regulations adopted under it, then this obligation is void, otherwise to remain in full force and effect.

This bond becomes effective on the.....day of ....., 19..... The surety may be relieved of future liability under it by giving 60 days' written notice to the principal and to the Department of Commerce and Economic Development of the State of Alaska.

This bond is one continuing obligation and the liability of the surety for the aggregate of all claims which may arise under it may in no event exceed the amount of the penalty set out in it.

IN WITNESS WHEREOF we have hereunto set our hands and seals at....., Alaska, this.....day of ....., 19.....

(SEAL).....Principal

(SEAL).....Surety

(§ 1 ch 101 SLA 1968; am § 43 ch 218 SLA 1976)

Sec. 08.24.170. Return of fees and bond. If the department does not issue the license applied for, the license fee and bond shall be returned. The application fee may not be returned. (§ 1 ch 101 SLA 1968)

Sec. 08.24.180. Persons presently engaged in collection business. (a) A person who is actively engaged in a collection agency business on May 1, 1968 and who wishes to continue to engage in this business shall apply for a license within 60 days after May 1, 1968.

(b) A person who applies or receives a license under (a) of this section is subject to all of the provisions of this chapter, except that in his application for a license he is not required to comply with §120(a)(3) and (4) of this chapter. (§ 1 ch 101 SLA 1968)

Sec. 08.24.190. License as personal privilege. (a) Except as provided in (b) of this section, a license granted under this chapter is a personal privilege and is not assignable.

(b) Upon the death of a collection agency licensee, the department has the right to transfer the license of the decedent to the executor or administrator of his estate for the period of the unexpired term of the license and the court having jurisdiction of the probate of the estate of the decedent may authorize the executor or administrator to continue the collection agency business of the decedent and upon other terms and conditions as the court may prescribe.

(c) The death of the operator of a corporate licensee shall in no way interfere with the continuation of the licensed business if another licensed operator is placed in management control of the corporate licensee. (§ 1 ch 101 SLA 1968)

Sec. 08.24.200. Expiration and renewal. (a) All licenses required by this chapter shall expire on June 30, 1970, and June 30 of each second year thereafter and shall be renewed as of July 1 following upon payment of required biennial fees.

(b) If a licensee under this chapter is delinquent for a period of 15 days in applying for the renewal of a license, the department shall suspend the license and notify the licensee by certified mail or by personal service. The notice shall state that the license will be revoked if application for renewal is not made within 15 days from the date on which the notice was mailed or personally served. When a licensee has been delinquent in renewing his license or certificate, the department shall charge an additional fee of \$50 for the renewal of the license. (§ 1 ch 101 SLA 1968)

Sec. 08.24.210. Annual statement of collection. Each collection agency licensee shall, not later than January 31 of each calendar year, file with the department a verified annual statement for the preceding

calendar year, showing the respective amounts of all customers' money collected by the licensee during the preceding calendar year, which has not previously been remitted to the customers entitled to it or properly accounted for, and showing also the amounts of money which the licensee has on deposit in a bank or in the licensee's possession for the purpose of liquidating any and all amounts due to customers. The statement shall contain the name and address of the bank. The annual statement shall be made substantially in the following form:

ANNUAL STATEMENT TO DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

Pursuant to AS 08.24.210 the undersigned,....., licensed under AS 08.24 to conduct a collection agency business, hereby declares that the amount of money collected during the preceding calendar year by the undersigned, as a licensee under AS 08.24, which has not been remitted to a customer or properly accounted for is \$.....; and that the amount on deposit with all banks for the purpose of liquidating all amounts to customers is \$.....

The attached schedule contains a true statement of the name and address of each customer of the undersigned to whom there was due or owing at the end of the preceding calendar year on account of collections made during the preceding calendar year the aggregate sum of \$20 or more.

IN WITNESS WHEREOF, the undersigned has executed this statement on this..... day of....., 19.....

(Name of licensee).....  
(Signature).....  
(Capacity).....

VERIFICATION

STATE OF ALASKA        )  
THIRD DISTRICT        )    ss

I, the undersigned, being first sworn, do on oath depose and say: That I executed the within annual statement as the licensee named in it or on behalf of the licensee named in it, as the operator, director, or officer of the licensee named in it, as indicated in it; that I have read the statement and know its contents; and that the statement is true.

.....

Subscribed and sworn to before me this ..... day of ....., 19.....

Notary Public in and for Alaska  
My commission expires:

(§ 1 ch 101 SLA 1968; am § 44 ch 218 SLA 1976)

Sec. 08.24.220. Semiannual statement of employees. (a) Every collection agency licensee shall file with the department on June 1 and December 1 of every year a list of the names and residence addresses of each person employed by the licensee in the six-month period ending 10 days before the due date of the report.

(b) If any of these employees have used pseudonyms or false names in their collection business efforts for the reporting period, those pseudonyms or false names must be set out following the true name of the employee using the name. (§ 1 ch 101 SLA 1968)

Sec. 08.24.230. False declarations in statement. The willful making of a false declaration in the annual statement or biennial statement of employees constitutes sufficient grounds for revocation of the license of the licensee. (§ 1 ch 101 SLA 1968)

Sec. 08.24.240. Failure to file statement. If the annual statement of collection or semiannual statement of employees is not filed as required under §§ 210 and 220 of this chapter, the failure to file constitutes grounds for the immediate suspension of the collection agency license of the licensee failing to file the statement, and the department shall notify the licensee by registered or certified mail that the license of the licensee will be suspended upon the expiration of 15 days after the date on which the notice was mailed unless the licensee complies with the provisions of §§ 210 or 220 of this chapter. However, for good cause shown and upon satisfactory proof furnished by the licensee that the failure to file the statement was due to a condition not within the control, or was due to excusable neglect, of the licensee, the department may permit the filing of the statement after the time limited and excuse the failure to file the statement within the time limited. If the statement required by §§ 210 or 220 of this chapter is not filed as required in this section the department shall revoke the license. (§ 1 ch 101 SLA 1968)

Sec. 02.24.250. Information confidential. Except as otherwise provided in this chapter, information in whatever form required to be filed by the terms of §§ 210 and 220 of this chapter shall be confidential and may not become a public record, but it may be introduced in evidence in a suit, action or proceeding in a court or in a proceeding involving the granting or revocation of the license of a licensee. (§ 1 ch 101 SLA 1968)

Sec. 08.24.260. Investigations. The department may upon its own motion, and shall, upon the sworn complaint in writing of a customer of a collection agency, investigate the actions of a licensee claimed to have violated this chapter and for that purpose shall have free access to the offices and place of business and, if the complaint involves customer accounts, to all pertinent books, accounts, records, papers, files, safes and vaults of the licensee or certificate holder. If the complaint involves the owing of money, or any other thing of value, by a

licensee to the complainant, when the licensee raises the issue of an offset or counterclaim, the division may require the complainant to submit all records and data in his possession pertaining to the offset or counterclaim. (§ 1 ch 101 SLA 1968)

Sec. 08.24.270. Administrative Procedure Act. The department and the board shall comply with the Administrative Procedure Act [AS 44.62] both as to enactment of regulations and adjudication. (§ 1 ch 101 SLA 1968)

Sec. 08.24.280. Records and funds. (a) A collection agency shall keep a record of all sums collected by it, and of all disbursements made by it, and shall maintain and keep all the records and all customers' funds in a trust account with a recognized financial institution in this state. Collection agencies shall maintain accounting records of collections for and payments to customers for a period of six years from the date of the last entry. Collection agencies shall keep other records for a period of two years from the date of the last entry.

(b) Every collection agency shall maintain a permanent numerical receipt record which shall indicate as to each payment made by a debtor the following information:

- (1) the name of the debtor making payment;
- (2) the amount paid;
- (3) the name of the creditor to whom funds are being applied;
- (4) the date and form of payment;
- (5) the balance remaining due on account.

(c) An agency using a computer system giving read-out debtor payment information will not have to maintain a numerical receipt record; however, if requested, a receipt will be furnished to debtor.

(d) The receipt shall be made immediately upon the receipt of funds by the collection agency in payment of a debt; the original copy to be made immediately available to the debtor who has made payment, upon request; and a copy to be made immediately available to the creditor for whom payment was received, upon request; and a copy to be maintained in the permanent receipt record.

(e) A collection agency shall maintain daily cash ledger sheets showing all funds received from debtors and all funds received as fees for services, such as credit reports and the like.

(f) No collection agency, or an employee of a collection agency, may intentionally make a false entry in the collection agency record or

intentionally mutilate, destroy or otherwise dispose of a record within the time limits provided in this section. The records shall at all reasonable times be open for inspection by the department, the board or their authorized agent.

(g) A collection agency shall maintain a separate trust account exclusively for customers' funds and shall keep the funds in the trust account until disbursed to the customer. (§ 1 ch 101 SLA 1968)

Sec. 08.24.290. Suspension, revocation or refusal to renew or grant a license or certificate. The department may suspend, revoke or refuse to renew or grant a license issued or applied for under this chapter if the licensee or applicant or a partner, associate, or major stockholder of a collection agency has since the date of the application been disbarred from the practice of law or been convicted of fraud, embezzlement, obtaining money under false pretenses, a crime involving moral turpitude, extortion, conspiracy to defraud, violation of a provision of this chapter or violating a rule or regulation promulgated under authority of this chapter. (§ 1 ch 101 SLA 1968)

Sec. 08.24.300. Court action by agency. No collection agency is entitled to maintain a suit or action involving the collection of money on behalf of its customers in a court of this state without alleging and proving that it is licensed and has procured a bond, as provided in this chapter. A copy of the collection agency license, certified by the department to be a true and correct copy is prima facie evidence of the licensing and bonding of the collection agency for the term expressed in the copy of the license. (§ 1 ch 101 SLA 1968)

Sec. 08.24.310. Additional business names. A collection agency using a business name other than the one appearing on the application for its license shall secure a separate license and bond as provided in this chapter for each business name used. (§ 1 ch 101 SLA 1968)

Sec. 08.24.320. Documents which imitate judicial process. Forms of demand or notice or other documents drawn to resemble court process may not be used by collection agencies in the collection of bills, accounts or other indebtedness. (§ 1 ch 101 SLA 1968)

Sec. 08.24.330. Duty to maintain a public office. Each collection agency shall maintain its principal office and any branch office at a street address which is stated in its original application for license or another address which the agency may designate to the department; the office shall be maintained in such a manner as to be open for contact by the public or debtors during normal working hours. (§ 1 ch 101 SLA 1968)

Sec. 08.24.340. Statement of persons employed by agency.  
(a) Within 15 days after licensure under this chapter, a collection agency shall submit to the department a list of all person employed by

the agency. Thereafter, upon hiring a new employee, the collection agency shall, within 15 days after the hiring, submit to the department the name of the newly hired employee and the further information required by (b) of this section.

(b) There shall be submitted with the name of the employee employed by the collection agency the following information:

- (1) the employee's residence address;
- (2) the employees's length of residence in the state;
- (3) a statement of his previous employment in the last year;
- (4) further information which the board or department may require.

(c) The statement shall be verified by the employee before a notary public or other person authorized to administer oaths.

(d) The owner or licensed operator of the collection agency shall also state upon the form submitted the date upon which the new employee was hired and that he is an employee of the collection agency at the time the form is executed. (§ 1 ch 101 SLA 1968)

Sec. 08.24.350. Notice of withdrawal of employees. When an employee withdraws from employment or his employment with a collection agency is terminated for any reason, the agency shall, within 15 days of withdrawal or termination of employment, notify the department in writing of the employee's withdrawal from employment. (§ 1 ch 101 SLA 1968)

Sec. 08.24.360. Fines and penalties. A collection agency or an operator who fails on written demand to render a true and complete account to the person to whom an indebtedness was taken for collection or who fails to turn over to that person the proceeds of the collection within 30 days after written demand, or who fails to comply with any of the provisions of this section is punishable by a fine of not more than \$500, or by imprisonment for not more than three months, or by both. (§ 1 ch 101 SLA 1968)

Sec. 08.24.370. Nonresidents. A nonresident may apply for and receive a collection agency license or an operator license or both on the same basis as a resident. The application fee for a nonresident operator license is \$100 and the biennial license fee is \$200. The application fee for a nonresident agency license is \$200, and the biennial license fee is \$400 for the principal place of business and \$400 for each branch office. (§ 1 ch 101 SLA 1968)

Sec. 08.24.380. Definitions. In this chapter

(1) "board" means the Collection Agency Board;

(2) "department" means the Department of Commerce and Economic Development;

(3) "collection agency business" means the business of engaging directly or indirectly and having as a primary or secondary object, business or pursuit the solicitation of claims for collection or repossession of collateral security or the collection of claims owed or due or asserted to be owed or due to another or the repossession of collateral security;

(A) a house, agency, firm, person, corporation or voluntary association using a name other than its own in collecting its own claims with the intention of conveying, or which tends to convey, the impression that a third party has been employed, is conducting a collection agency business within the meaning of this chapter;

(B) a person who sells, attempts to sell, gives away or attempts to give away to another person, other than a licensee under this chapter a system of collection letters, demand forms or other printed matter where the name of a person other than a creditor appears in a manner to indicate that a request or demand is being made by another person, other than the creditor, for the payment of a sum due, or asserted to be due, or who solicits or accepts accounts for collection on a contingent or percentage basis or by a fee or outright purchase for collection purposes, is considered to be in the collection agency business within the meaning of this chapter;

(4) "operator" means a person having managerial control of a collection agency. (§ 1 ch 101 SLA 1968; am § 45 ch 218 SLA 1976)

D

STATE OF ALASKA  
BOARD OF HAIRDRESSING AND BEAUTY CULTURE EXAMINERS  
June, 1979

Findings

This Board was created in 1957 and, until the past year, has met annually to conduct its affairs. Members of this profession are regulated by AS 08.28; control over health and sanitation is with the Department of Health and Social Services (AS 18.05.040). Alternatives to the present operation of the Board and to regulation of this profession are discussed in this review.

I. General Information

A. Regulated Parties

1. Schools
2. School owners
3. Instructors
4. Operators
5. Shop owners
6. Shop managers
7. Demonstrators
8. Consultants
9. Apprentices
10. Manicurists

B. Definitions

"(10)" 'practice of hairdressing and beauty culture' is engaging, for compensation or other reward, in any of the following practices: (A) arranging, dressing, curling, waving, cleansing, singeing, bleaching, coloring, or similar work on a wig or hair piece of artificial or human hair, or upon the hair of a living person by any means; (B) trimming hair, as a part of hairdressing; (C) utilizing cosmetic preparations, antiseptics, tonics, lotions, or creams, with the hands or with a mechanical or electrical apparatus, in massaging, cleansing, stimulating, manipulating, exercising, or beautifying the scalp, face, neck, arms, hands, bust, or upper part of the body of a person, for the purpose of beautification;" (08.28.320)

C. Nature and Composition of Board

1. Board members and terms:

Three-year term (no restrictions regarding consecutive terms or number of terms).

Hester Pumphrey,	Ends June 15, 1978
Ione Lambert, Chairman	Ends June 15, 1979
Maria Dunham	Ends June 15, 1980
Dennis Milhouse	Ends June 15, 1981

2. Representation:

Profession	=	5	(by statute)
Public	=	0	

3. Qualifications:

Board members must be adults, United States citizens and Alaska residents. Four members must have at least five years' experience as an operator, manager-operator, or owner-operator, and one member must have at least three years' experience as the owner, manager, or instructor of a licensed beauty school. All members must remain active and shall take an oath of office. (AS 08.28.030)

D. Licensing Data

Current Licenses (through May, 1979)

in-State	=	1,466
out-of-State	=	<u>328</u>
TOTAL	=	1,794

E. Fees

1. schools		
registration and initial license fee		\$500.00
biennial renewal		200.00
2. school owner		
registration and initial license fee		40.00
biennial renewal		30.00
3. instructor-operator:		
registration and initial license fee		40.00
biennial renewal		30.00
4. owner-operator:		
registration and initial license fee		25.00
biennial renewal		20.00
5. owner only, beauty shop:		
registration and initial license fee		25.00
biennial renewal		20.00

6.	manager-operator:		
	registration and initial license fee		25.00
	biennial renewal		20.00
7.	demonstrator or consultant:		
	registration and initial license fee		40.00
	biennial renewal		30.00
8.	operator:		
	registration and initial license fee		15.00
	biennial renewal		10.00
9.	apprentice or student:		
	registration and initial license fee		5.00
	annual renewal		3.00
10.	manicurist:		
	registration and initial license fee		15.00
	biennial renewal		10.00
11.	examination fee		15.00
12.	investigation fee		25.00

F. Board Revenues and Expenditures

	FY '76	FY '77	FY '78	FY '79
Receipts	\$23,245.00	\$22,248.00	\$22,237.00	\$27,568.00
- refunds	<u>170.00</u>	<u>285.00</u>	<u>416.00</u>	<u>598.00</u>
Total	\$23,075.00	\$21,963.00	\$21,821.00	\$26,970.00
Expenditures				
Transportation	1,063.01	1,752.03	1,086.96	1,892.83
Per Diem	2,678.75	2,700.00	2,133.41	2,211.25
Phone	83.85	61.73	127.75	605.95
Printing, Adver. & Postage	902.44	818.79	405.70	288.52
Fees & Services	368.50	486.50	347.50	483.00
Rents, Leases & Other	<u>          </u>	<u>125.00</u>	<u>411.00</u>	<u>507.88</u>
Total	<u>\$ 5,096.55</u>	<u>\$ 5,944.05</u>	<u>\$ 4,512.32</u>	<u>\$ 5,989.43</u>
Surplus	\$17,978.45	\$16,018.95	\$17,308.68	\$20,980.57
Deficit	-	-	-	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

As of June 1, 1979, five complaints remain open in agency files and six are pending closure on Board approval. Sixty-seven were purged in 1978 and are pending closure due to lack of jurisdiction or age of the complaint. One of the open cases has been on-going since

1972 with continual infractions and complaints from a number of sources. Another case alleges physical injury to a member of the public (received a year after the alleged incident).

H. Professional Qualifications

All states require vocational training as a prerequisite to licensure.

II. Analysis

- A. To what extent has the Board of Hairdressing and Beauty Culture Examiners operated in the public interest?

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Statutory powers and duties of the Board include examining applicants and issuing licenses. The written portion of the examination is a national test, composed and graded by a national organization (the Psychological Corporation). The Board is considering inclusion of a jurisprudence portion into this examination. A six-to-seven hour practical examination is also administered to newly graduated students. Monitoring and grading is done by the Board. Applicants must achieve a score of 75% in all portions of the examination and must retest in only the area(s) failed. The examination process is designed to demonstrate competency in a profession and helps to ensure that individuals are qualified to practice.

The Board also has responsibility for regulating and licensing schools of hairdressing and beauty culture. Four such schools exist in the State, one in Fairbanks, and three in Anchorage. The Board reviews and approves school layout, its curriculum, student-teacher ratios, necessary equipment, and other matters pertaining to training of students. Inspections of schools are conducted by the Board and by the State Department of Health and Social Services. 7 AAC 22.390 outlines the criteria by which the Department of Health and Social Services deter-

mines the sanitary status of establishments. The Board routinely inspects schools in Anchorage during the period in which it holds a scheduled meeting. It has not conducted inspections in Fairbanks; however, a board member was assigned this responsibility at the May, 1979, Board meeting. It should be noted also that the Board has consistently found infractions in one particular school which has been the subject of numerous complaints from a variety of sources since 1972. Although the school has been admonished regarding its practices, no definitive action has been taken. The Board has the authority to suspend or revoke a license for good cause.

The Board may promulgate rules and regulations necessary to carry out the purposes of AS 08.28. It is now in the process of revising and updating current regulations and adding provisions concerning application procedures, qualifications, requirements for schools, and examination and grading procedures. Members of the profession have exhibited interest in the regulation making activity.

Most licenses are issued without examination to applicants who are already licensed in another jurisdiction. This practice facilitates entry into the profession as does that of issuing temporary licenses pending examination. A review of applicant files indicates that out-of-state applicants are usually licensed about 4-5 weeks from the date of application. The Board has been relying on its examiner from the Division of Occupational Licensing to verify qualifications and issue licenses. The Board has formally authorized this procedure at its May, 1979, meeting and will review and ratify licensures during a subsequent regularly scheduled meeting.

Applicants for licensure must be at least 17 years of age, of good moral character, have completed two years of high school or its equivalent, and have the required training or work experience. These items are addressed on application forms but are not verified. No school transcripts are required; although applicants are required to list three

character references, in no case has this information been checked or used for any purpose. Also included on the application are questions regarding such matters as length of residency in Alaska and future job prospects. The Board should review its applications and procedures for licensing.

Schools are required to submit quarterly reports to the Board on student or apprentice achievement and to notify the Board of enrollments and terminations. These records are maintained by the administrative agency as are all Board and licentiate files. The agency is in the process of implementing improved file and data maintenance procedures for all boards.

Barbers are excluded from the provisions of AS 08.28.

The Board has been discussing the advantages and disadvantages of continuing education requirements but has not yet formulated a position other than to agree that members of the profession should take every opportunity to upgrade their skills.

While it was stated as past policy that apprenticeships would not be allowed in towns where schools are located, the Board reversed this position at its May, 1979, meeting. It also rescinded a previous action which required the Division to release student examination scores to schools.

The Board and regulation of the beauty culture profession could be allowed to terminate on June 30, 1980, as provided by law, probably without significant adverse impact on the consuming public. Another alternative would be termination of the Board and assumption of the licensure functions by the administrative agency. Or practitioners could simply be registered by the administrative agency.

The Board could also be reestablished for another four years or less. If it is reestablished and/or regulation of this profession continues, consideration should be given to the suggestions for efficient operation noted in this review.

- B. To what extent has the operation of the Board of Hairdressing and Beauty Culture Examiners been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

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Practices and policies which utilize standard examinations, standard endorsement procedures and the issuance of temporary permits are felt to facilitate entry of qualified applicants into the profession and to promote availability of services. Student and apprenticeship programs also function to provide career opportunities and services in the State.

The Board of Hairdressing and Beauty Culture Examiners has experienced some difficulty with respect to personnel and budgetary restrictions. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs; however, past employee turnover has impeded continuity and follow-up on Board requests. Fees and revenues for all boards and commissions under the jurisdiction of the Division of Occupational Licensing are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct board revenues and expenses may be determined.

The Board has encountered the same difficulties as have all other boards and commissions with respect to investigative services provided by the administrative agency. During FY '78 two investigator positions were

vacant; as a result, one position was abolished by the Legislature. At the present time, two investigators are located in Anchorage with a Chief Investigator located in Juneau. An additional investigator position was approved in the FY '80 budget but will probably not be filled immediately due to vacancy factors incorporated into the personal service category of the budget. Procedural constraints of the administrative adjudication article of the Administrative Procedure Act (AS 44.62.330-.630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

Regulations concerning applications for licensure and examination procedures are being promulgated. A review of Board statutes indicates that changes should be considered either by the Board or by the Legislature.

The term "good moral character" should be either defined or deleted from the statutes.

AS 08.28.030 requires that all Board members also be members of the profession. Public members should be allowed on this Board, although an increase in total membership is not advocated. Members have not taken an oath of office as required.

In reference to § 090, the Board has not promulgated regulations specifically for apprentices, however, this is not mandatory. Formal procedures have been established.

The Board has requested draft legislation which would repeal § 150, admission of shop owner without examination. This statute allows a shop

owner to practice hairdressing or beauty culture without a license as long as he employs a licensed manager-operator. §§ 240, 250 and 260, all grandfather clauses, are recommended to be repealed.

- C. To what extent has the Board of Hairdressing and Beauty Culture Examiners recommended statutory changes which are generally of benefit to the public interest?

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1976 amendments added to the powers and duties of the Board and included general items of a "housekeeping" nature.

Board minutes from 1976 reflect the Board's recommendation for legislation for shampooists, facialists and manicurists. There is no record of any recommendations by the Board for statutory changes that would be of specific benefit to the public.

- D. To what extent has the Board of Hairdressing and Beauty Culture Examiners encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

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The bulk of participation at Board meetings and hearings has come from the profession. Substantial professional interest is generated by promulgation of regulations, by enforcement activities, and by quality of training facilities. Very little general "public" concern with Board functions has been demonstrated. Notices of pending meetings and new or

amended regulations are published in major newspapers in the State. Positive steps could be taken by the Board and the Division to heighten public awareness, such as public service radio announcements or utilization of other media.

Public interests would be furthered by the presence of public members on the Board. "In recent years a number of states have added one or more public members (citizens with no particular interest in the occupation or profession governed by the board) to licensing boards in an effort to ensure that the interests of the public would be represented in decision-making."<sup>1</sup> The State of California, which provides for a one-third public membership on health care boards and a public majority on others, has indicated that its experience with public members has been highly rewarding.

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Hairdressing and Beauty Culture Examiners processed and resolved?

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Five open complaints regarding this profession were on file with the administrative agency as of June, 1979. One of these alleged physical injury to a consumer; however, it is worth noting that the complaint was referred by another division and had been received by them a year after the alleged incident occurred. Six additional cases are pending Board approval for closure and sixty-seven were purged in 1978 due to age and/or lack of jurisdiction (also pending closure). The administrative agency has been addressing the need for investigative procedures and for timely disposition of complaints.

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<sup>1</sup>Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

One complaint against the Board is on file but Board records indicate this issue has been resolved.

F. To what extent does the Board of Hairdressing and Beauty Culture Examiners present qualified applicants to serve the public?

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Individuals wishing to practice must submit fees and application to the administrative agency with relevant information regarding qualifications. 12 AAC 24.020 provides that examinations for licensure be given on a quarterly basis. Applicants who are statutorily qualified and who demonstrate the required level of knowledge and proficiency are issued a license.

Current Board practices which allow for licensure by endorsement and the issuance of temporary work permits are conducive to entry into the profession by qualified persons.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Hairdressing and Beauty Culture Examiners in its own activities, and in its area of activity or interest?

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Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (also responsible to four other regulated professions), who is hired through the State Personnel System and is subject to affirmative action requirements.

Licenses in this profession are issued on the basis of specific statutory criteria. Affirmative action requirements are not applicable to licensure qualifications.

H. To what extent are statutory, budgetary, or other changes necessary to enable the Board of Hairdressing and Beauty Culture Examiners to better serve the interests of the public?

Conclusions Proposed by O.L.

Public members should be included on the Board. Statutory amendments should be introduced which would repeal §§ 150, 240, 250 and 260.

*Through attrition  
add 1 public  
member.*

The Board should explore methods of informing the general public of its existence and functions. It also should assume a more active roll in regulation and inspection of schools. The administrative agency will continue to address the need for assessment and follow through on complaints as well as record keeping procedures.

The Board should review and revise its application forms and procedures.

Board and administrative expenses outweigh revenues collected through regulation of this profession. Fees collected are not adequate to cover transportation and per diem for meetings and examinations, and Division of Occupational Licensing administrative overhead such as staff salaries, examination expenses, and investigative services.

## Chapter 28. Cosmetologists and Hairdressers.

### Article

1. Board of Hairdressing and Beauty Culture Examiners (§§ 08.28.010-08.28.090)
2. Licenses (§§ 08.28.100-08.28.260)
3. Miscellaneous Provisions (§§ 08.28.270-08.28.290)
4. General Provisions (§§ 08.28.300-08.28.320)

### Article 1. Board of Hairdressing and Beauty Culture Examiners.

10. Creation and membership of Board of Hairdressing and Beauty Culture Examiners
20. Term of office and removal
30. Qualifications of board members
40. Powers and duties of the board
50. Meetings of the board
- 60 -70. [Repealed]
80. Standards for regulations
90. Special regulations

Sec. 08.28.010. Creation and membership of Board of Hairdressing and Beauty Culture Examiners. There is created a Board of Hairdressing and Beauty Culture Examiners, referred to in this chapter as the board. The board consists of five members appointed by the governor. (§ 3(1) ch 52 SLA 1957)

Sec. 08.28.020. Term of office and removal. Members serve a term of three years and at the pleasure of the governor. (§ 3(1) ch 52 SLA 1957)

Sec. 08.28.030. Qualifications of board members. (a) To qualify for membership on the board, a member must be an adult, a citizen of the United States, and a resident of the state.

(b) The governor shall appoint persons so that four members have at least five years' experience as an operator, manager-operator, or owner-operator, and one member has at least three years' experience as the owner, manager, or instructor of a beauty school licensed under this chapter. To remain on the board, a member must remain active in an activity that would qualify him for appointment under this subsection.

(c) Each member shall take the oath provided by law for public officers. (§ 3(1) ch 52 SLA 1957; am § 1 ch 101 SLA 1963)

Sec. 08.28.040. Powers and duties of the board. The board shall exercise general control over the vocations of hairdressing and beauty culture within the state. The board

duties

- (1) shall examine applicants and issue licenses;
- (2) shall issue licenses for schools of hairdressing or beauty culture;
- (3) may suspend or revoke a license;
- (4) may promulgate rules and regulations relating to hairdressing or beauty culture, and hairdressing or beauty culture schools, necessary to effectuate the purposes of this chapter;
- (5) except as provided in § 280 of this chapter, may inspect schools and shops in order to enforce the provisions of this chapter;
- (6) may, on its own motion, and shall, upon receipt of a written complaint, investigate the practices of a person, shop, or school licensed under this chapter. (§ 3(2) ch 52 SLA 1957; am § 1 ch 104 SLA 1976)

Sec. 08.28.050. Meetings of the board. The board shall meet at least once each year for the conduct of its business. The annual meeting shall be held at the place designated by the majority of the board members.

The board shall, at its annual meeting, elect a president, vice-president and secretary-treasurer from its members. Board members serve without pay. However, each member is entitled to transportation and per diem allowances authorized by law. (§ 3(3) ch 52 SLA 1957)

Sec. 08.28.060. Duties of secretary-treasurer. Repealed by § 3 ch 59 SLA 1966.

Sec. 08.28.070. Salary of secretary-treasurer. Repealed by § 3 ch 59 SLA 1966.

Sec. 08.28.080. Standards for regulations. The board shall adhere as closely as possible to the rules, regulations, and standards prescribed and recommended by the "Allied Cosmetology Council of State Board, Schools, and Shops." (§ 13 ch 52 SLA 1957)

Sec. 08.28.090. Special regulations. The board may prescribe special rules and regulations for apprentices whose job training is supervised by the Department of Education under a vocational rehabilitation program. However, these apprentices, to become licensed, shall pass the standard licensing examination given by the board. (§ 14 ch 52 SLA 1957)

## Article 2. Licenses

### Section

- 100. License required
- 110. Qualifications of applicants
- 120. Examination and other requirements
- 130. Temporary license
- 140. Out-of-state licenses
- 150. Admission of shop owner without examination
- 160. [Repealed]
- 170. Fees
- 180. School license
- 190. Display of license
- 200 - 210. [Repealed]
- 220. Lapsed license
- 230. Grounds for revocation or suspension of license
- 240. Application of license provisions to existing operators
- 250. Application of license provisions to beauty schools
- 260. Credit to students for prior study

Sec. 08.28.100. License required. No person may engage in the practice of hairdressing or beauty culture or organize, open, or conduct a school of hairdressing and beauty culture without a license. (§ 2 ch 52 SLA 1957)

Sec. 08.28.110. Qualifications of applicants. An applicant for a license as an operator, manager-operator, demonstrator or consultant, owner-operator, or instructor-operator shall

- (1) be at least 17 years of age;
- (2) be of good moral character;
- (3) have completed two years of high school or its equivalent;
- (4) have training at least 2,000 hours, extending over a school term of not less than 50 weeks in a school of hairdressing or beauty culture approved by the board, or service as an apprentice under a licensed operator in a shop approved by the board or completed training and working experience as a hairdresser in another state or country which the board finds to meet the minimum requirements of this state. (§ 4(1) ch 52 SLA 1957; am § 2 ch 112 SLA 1959; am § 2 ch 104 SLA 1976)

Sec. 08.28.120. Examination and other requirements. An applicant shall pass an examination given by the board. The examination shall cover subjects designated by the board. The board shall fix the time and place for examination and shall give at least one examination each year. The board may delegate the power of examination to a committee of the board or a board member. The board may prescribe additional requirements for a license. (§ 4(2) ch 52 SLA 1957)

Sec. 08.28.130. Temporary license. The board may issue a temporary license or working permit to a graduate of an approved school of hairdressing or beauty culture or to an apprentice who has received on-the-job training which complies with the rules and regulations of the board. A temporary license or working permit is valid until the results of the examination given to the student or apprentice are announced. (§ 4(3) ch 52 SLA 1957)

Sec. 08.28.140. Out-of-state licenses. A person holding a current valid license from a board of cosmetology and hairdressing in another state or country is entitled to a license under this chapter without examination if he applies, accompanying his application with

(1) proof of a foreign license;

(2) proof that he has completed at least 2,000 hours of training in a hairdressing and beauty culture school or service as an apprentice under a licensed hairdresser in a shop approved by the board or completed training and working experience as a hairdresser which the board finds to meet the minimum requirements of the state;

(3) payment of an investigation fee. (§ 4(4) ch 52 SLA 1957; am § 3 ch 112 SLA 1959; am § 2 ch 101 SLA 1963; am § 1 ch 2 SLA 1965; am § 1 ch 46 SLA 1968; am § 3 ch 104 SLA 1976)

Sec. 08.28.150. Admission of shop owner without examination. A shop owner may be licensed without examination but, unless licensed as an operator, he shall not engage in the practice of hairdressing or beauty culture without employing a licensed manager-operator. (§ 4(4) ch 52 SLA 1957; am § 3 ch 112 SLA 1959)

Sec. 08.28.160. Examination fee. Repealed by § 3 ch 46 SLA 1968.

Sec. 08.28.170. Fees. The following fees shall be imposed under this chapter when applicable

(1) schools:

registration and initial license fee.....	\$500
biennial renewal.....	200

(2) school owner:

registration and initial license fee.....	40
biennial renewal.....	30

(3) instructor-operator:		
	registration and initial license fee.....	40
	biennial renewal.....	30
(4) owner-operator:		
	registration and initial license fee.....	25
	biennial renewal.....	20
(5) owner only, beauty shop:		
	registration and initial license fee.....	25
	biennial renewal.....	20
(6) manager-operator:		
	registration and initial license fee.....	25
	biennial renewal.....	20
(7) demonstrator or consultant:		
	registration and initial license fee.....	40
	biennial renewal.....	30
(8) operator:		
	registration and initial license fee.....	15
	biennial renewal.....	10
(9) apprentice or student:		
	registration and one-year permit fee.....	5
	annual renewal.....	3
(10) manicurist:		
	registration and initial license fee.....	15
	biennial renewal.....	10
(11) examination fee.....		15
(12) investigation fee.....		25

(§ 4(5) ch 52 SLA 1957; am § 4 ch 112 SLA 1959; am § 2 ch 46 SLA 1968; am §§ 4, 5 ch 104 SLA 1976)

Sec. 08.28.180. School license. The board shall prescribe rules and regulations for the licensing of schools of hairdressing and beauty culture. The rules and regulations shall include the financial respon-

sibility of the owner, details of the curriculum, minimum hours of instruction, and physical condition of the school premises and facilities. (§ 5 ch 52 SLA 1957)

Sec. 08.28.190. Display of license. Every licensee shall display his license in a conspicuous place in his place of business or in his working booth. Each shop owner or manager is responsible for the display of licenses held by employees in their shops. (§ 6(1) ch 52 SLA 1957)

Sec. 08.28.200. License year. Repealed by § 3 ch 59 SLA 1966.

Sec. 08.28.210. Duplicate licenses. Repealed by § 3 ch 46 SLA 1968; § 7 ch 94 SLA 1968.

Sec. 08.28.220. Lapsed license. A lapsed license may be reinstated, if the license has not been lapsed for a period of more than five years, and all renewal and delinquent fees for the period during which the license has been lapsed are paid. (§ 6(4) ch 52 SLA 1957)

Sec. 08.28.230. Grounds for revocation or suspension of license. The board may suspend or revoke a license for failure to comply with this chapter, or a rule, regulation, or order of the board. (§ 8 ch 52 SLA 1957)

Sec. 08.28.240. Application of license provisions to existing operators. A person holding a valid license as an operator issued before March 16, 1957, is not required to obtain a new license, but shall nevertheless comply with all other provisions of this chapter. (§ 12 ch 52 SLA 1957)

Sec. 08.28.250. Application of license provisions to beauty schools. Hairdressing and beauty culture schools shall comply with the licensing provisions of this chapter and with rules and regulations issued under it. Upon application and payment of the fee by a beauty school which has been in operation and teaching a course of not less than 2,000 hours for one year before January 1, 1957, the board shall issue a license for its operation. (§ 12 ch 52 SLA 1957)

Sec. 08.28.260. Credit to students for prior study. A student of a hairdressing and beauty culture school shall receive credit for hours of instruction completed before March 16, 1957, if the school substantially met the minimum standards for curricula, the qualification of instructors, and other rules and regulations established by the board under this chapter. If the school met the prescribed minimum standards for a period of six months or more preceding March 16, 1957, all students who have satisfactorily completed the course of instruction shall receive credit for the entire period of instruction. (§ 12 ch 52 SLA 1957)

### Article 3. Miscellaneous Provisions.

#### Section

- 270. Record of achievement
- 275. Advertising
- 280. Control of health and sanitary conditions
- 290. Applicability of Administrative Procedure Act

Sec. 08.28.270. Record of achievement. Each licensee who supervises a student or apprentice shall submit quarterly to the board a record of achievement of the student or apprentice. (§ 3 ch 52 SLA 1957)

Sec. 08.28.275. Advertising. No person, shop, or school engaged in the practice of hairdressing or beauty culture may knowingly use false or deceptive statements in advertising its services. A hairdressing or beauty culture school representing itself to be approved or accredited shall indicate the organization or agency issuing the approval or accreditation. (§ 6 ch 104 SLA 1976)

Sec. 08.28.280. Control of health and sanitary conditions. Control over health and sanitary conditions in shops and schools licensed under this chapter is in the Department of Health and Welfare. (§ 7 ch 52 SLA 1957)

Sec. 08.28.290. Applicability of Administrative Procedure Act. Procedures and rules and regulations adopted under this chapter shall comply with the Administrative Procedure Act (AS 44.62). (§ 10 ch 52 SLA 1957; am § 5 ch 112 SLA 1959)

### Article 4. General Provisions.

#### Section

- 300. Barbers excluded
- 310. Penalties
- 320. Definitions

Sec. 08.28.300. Barbers excluded. This chapter does not apply to barbers exclusively engaged in the occupation of barbering. (§ 11 ch 52 SLA 1957)

Sec. 08.28.310. Penalties. A person who engages in the practice of hairdressing or beauty culture without obtaining a license, or any person who organizes, opens or conducts a school of hairdressing or beauty culture, without obtaining a license, is guilty of a misdemeanor and upon conviction is punishable by imprisonment for a period of not more than 90 days, or by a fine of not more than \$300, or by both. (§ 9 ch 52 SLA 1957)

Sec. 08.28.320. Definitions. As used in this chapter, unless the context otherwise requires,

(1) "apprentice" is a person at least 17 years of age who has completed two years of high school or equivalent education, who receives on-the-job training on licensed premises and who does not receive a wage or commission, and for whose work no charge is made until the apprentice has received at least 350 hours of training;

(2) "demonstrator" or "consultant" is a person who practices hairdressing and beauty culture upon a person acting as a subject or model when the demonstration is performed before students, operators, manager-operators, instructors or individuals, shop owners, school owners, or any other public gathering;

(3) "instructor-operator" is a person who gives instruction in the practice of hairdressing or beauty culture in a school, who has passed the qualifications of an owner-operator or manager-operator, and who has passed an examination and holds an instructor-operator license;

(4) "manager-operator" is a person of legal age who operates or manages a hairdressing or beauty culture shop or school;

(5) "manicurist" is a person who practices beauty culture by treating the hands and nails;

(6) "operator" is a person who engages in any practice defined in (10) of this section;

(7) "owner" is a person owning a hairdressing or beauty culture shop;

(8) "owner-operator" is a person who owns a hairdressing or beauty culture shop or school who is qualified under this chapter to practice the art of hairdressing and beauty culture or who is a licensed cosmetologist;

(9) "person" includes a corporation, copartnership, or unincorporated association;

(10) "practice of hairdressing and beauty culture" is engaging for compensation or other reward, in any of the following practices:

(A) arranging, dressing, curling, waving, cleansing, singeing, bleaching, coloring, or similar work on a wig or hair piece of artificial or human hair, or upon the hair of a living person by any means;

(B) trimming hair, as a part of hairdressing;

(C) utilizing cosmetic preparations, antiseptics, tonics, lotions, or creams, with the hands or with a mechanical or electrical apparatus, in massaging, cleansing, stimulating, manipulating,

exercising, or beautifying the scalp, face, neck, arms, hands, bust, or upper part of the body of a person, for the purpose of beautification;

(11) "school of hairdressing" or "school of beauty culture" is a place where a person operates and maintains a class to teach hairdressing or beauty culture;

(12) "shop" is a building or structure, or part of a building or structure, other than a school, where the practice of hairdressing or beauty culture is conducted;

(13) "student" is a person at least 16 years of age who has completed two years of high school or equivalent education, attends a licensed beauty school and does not receive a wage or commission, and for whose work no charge is made until the student has received at least 350 hours of training;

(14) "board" means the Board of Hairdressing and Beauty Culture Examiners;

(15) "department" means the Department of Commerce and Economic Development. (§ 1 ch 52 SLA 1957; am § 1 ch 112 SLA 1959; am § 1 ch 17 SLA 1966; am §§ 60, 61 ch 127 SLA 1974; am §§ 7, 8 ch 104 SLA 1976)

CHAPTER 24. BOARD OF  
HAIRDRESSING AND  
BEAUTY CULTURE EXAMINERS

## Section

- 10. Submission of application
- 20. Time of examination
- 30. Additional requirements for licenses
- 40. Requirements for licenses without examination
- 50. Apprenticeships
- 60. Duties of instructor-operator and student instructor
- 70. Location of shops in private residence
- 80. Prohibition against employment of unlicensed operators
- 90. Notification to board of sale, lease or transfer
- 100. Approval of school of hairdressing and beauty culture
- 110. Plan and equipment requirements of schools
- 120. Sanitary rules and regulations
- 130. Curriculum requirements of school of hairdressing and beauty culture
- 140. Inspection of school

12 AAC 24.010. SUBMISSION OF APPLICATION. (a) All applications shall be made under oath and all documentary evidence in support of the application, such as diplomas and foreign license, shall be verified or certified.

(b) The required fee must be submitted with the application.

(c) Applicants shall apply in writing to the secretary of the Board of Hairdressing and Beauty Culture Examiners.

(d) The board reserves the right to require additional proof of qualifications. (In effect before 7/28/59; am 2/64, Reg. 14; am 5/27/66, Reg. 21)

Authority: AS 08.28.120

12 AAC 24.020. TIME OF EXAMINATION. (a) Examination of applicants for licenses shall be given quarterly.

(b) The board shall give public notice of the date, place and time at least 30 days prior to examination.

(c) Additional examinations may be held at the discretion of the board if there are five or more applicants. (In effect before 7/28/59; am 2/64, Reg. 14; am 5/27/66, Reg. 21)

Authority: AS 08.28.120

12 AAC 24.030. ADDITIONAL REQUIREMENTS FOR LICENSES. (a) No person may be licensed as a manager-operator unless

(1) he is a licensed cosmetologist; and

(2) he has had one year practical experience as a licensed cosmetologist immediately prior to application.

(b) No person may be licensed as an instructor-operator unless

(1) he has an Alaska cosmetology license;

(2) he has had one year's practical experience; and

(3) he has engaged in the active practice of hairdressing and beauty culture for at least five years, or has completed 600 hours of student instructor training.

(c) Except that a person may be licensed as an instructor-operator by reciprocity if he holds a current instructor-operator license from a state whose requirements were substantially equal to those provided in AS 08.28.140 at the time the license was issued. (In effect before 7/28/59; am 2/64, Reg. 41; am 5/27/66, Reg. 21)

Authority: AS 08.28.040

AS 08.28.110

AS 08.28.180

AS 08.28.120

12 AAC 24.040. REQUIREMENTS FOR LICENSES WITHOUT EXAMINATION. (a) An applicant who has a current license from a board of cosmetology in another state with less than 2,000 hours of training in an approved school of beauty culture shall be allowed credit for practical shop experience. He may be licensed without examination as follows:

(1) the training and experience must have been immediately prior to date of application and

(A) he has 1,500 hours of training and one year's experience in a licensed beauty shop; or

(B) he has 1,000 hours of training and two years' experience in a licensed beauty shop.

(b) Proof of practical experience must accompany the application for license or be furnished at the request of the board.

(c) Special consideration may be given to an applicant who can furnish proof of training in an advanced beauty culture school. (In effect before 7/28/59; am 2/64, Reg. 14; am 5/27/66, Reg. 21)

Authority: AS 08.28.130  
AS 08.28.140

**12 AAC 24.050. APPRENTICESHIPS.** Any hairdressing or beauty culture shop may train an apprentice in the art of hairdressing or beauty culture subject to the following conditions:

(1) All apprentices shall register with the secretary of the board;

(2) A shop may have one apprentice for each five operators or fraction thereof except that an apprentice who is training under the state office of Vocational Rehabilitation may train in any shop without regard to the quota imposed by this section;

(3) Apprentices shall be instructed in both theory and practical work. Theory shall be taught from a textbook or textbooks approved by the board;

(4) An apprentice shall complete 2,000 hours of instruction over a period not exceeding two years with not more than eight hours' instruction to be given in any single day;

(5) Upon completion of the prescribed course, the apprentice shall be eligible to take an examination given by the board. If the apprentice fails to pass the examination, he shall be eligible to take another examination;

(6) An apprentice shall complete his apprenticeship in the shop in which he was registered, except that the board may authorize an apprentice's transfer to another shop where good cause is shown;

(7) When an apprentice has interrupted his apprenticeship for a continuous period of one year, no credit will be allowed for apprenticeship instruction received prior to the interruption. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.090  
AS 08.28.120

**12 AAC 24.060. DUTIES OF INSTRUCTOR-OPERATOR AND STUDENT INSTRUCTOR.** (a) No instructor-operator may (in connection with his duties as an instructor at a licensed school) practice hairdressing and beauty culture upon members of the public, except when the work pertains directly to the instruction of students.

(b) A student-instructor in cosmetology shall be registered with the board upon enrollment in a registered school.

(c) A student-instructor shall not be permitted to instruct without a licensed instructor on the premises. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.180

**12 AAC 24.070. LOCATION OF SHOPS IN PRIVATE RESIDENCE.** (a) No shop may be opened and maintained in a private residence unless the shop is located in a separate room apart from the living quarters.

(b) The shop shall be properly equipped and shall be subject to inspection by the board and by the Alaska Department of Health and Welfare. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.180

**12 AAC 24.080. PROHIBITION AGAINST EMPLOYMENT OF UNLICENSED OPERATORS.** No manager or any other person in a position of authority shall employ an unlicensed operator. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.100

**12 AAC 24.090. NOTIFICATION TO BOARD OF SALE, LEASE OR TRANSFER.** In the case of a sale, lease or transfer of any school or shop, the seller, lessor or transferor shall notify the board of the transaction within 30 days of the sale, lease or transfer. The notice shall contain the name and address of the buyer, lessee or transferee. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.180

**12 AAC 24.100. APPROVAL OF SCHOOL OF HAIRDRESSING AND BEAUTY CULTURE.** No school of hairdressing or beauty culture may be approved by the board unless the school employs at least two licensed instructors, and upon approval, the school must keep on duty at least one full-time, licensed instructor for each 10 students during school hours. After enrollment of the first 20 students, the school shall employ one additional instructor for every 25 students. In addition to the foregoing requirements, such school shall teach the following minimum required operations for each student during the 2,000 hours training:

- (1) shampoos - 100
- (2) color rinses - 50
- (3) neck trims w/clippers - 50
- (4) haircuts - 200
- (5) manicures - 50
- (6) tweezer arches - 10
- (7) wax arches - 10
- (8) fingerwaves (flat) - 100
- (9) iron work - 150
- (10) scalp treatments - 25
- (11) facials (to be completed with make-up) - 25
- (12) cold waves - 60
- (13) heat permanents (blocking and wrapping) - 10

(14) henna packs - 5

(15) bleaches - 25

(16) hair tints - 25

(17) hairstyles - 300 (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.180

**12 AAC 24.110. PLAN AND EQUIPMENT REQUIREMENTS OF SCHOOLS.** (a) The plans for a proposed school shall be submitted to the board for approval. A representative of the board shall review the plans and inspect the premises for the purpose of determining:

(1) suitability of location

(2) suitability of school rooms including plumbing, ventilation, lighting and adequacy of floor space (basement rooms below ground level will not be approved);

(3) adequacy of layout;

(4) adequacy of equipment; and

(5) adequacy of provisions for licensed instructors.

(b) After all equipment has been installed the premises must be inspected by a representative of the board and thereafter approved by the board before a license will be issued.

(c) The minimum requirements for a school of beauty culture enrolling 25 students or less shall consist of the following items of equipment:

(1) 10 wefts;

(2) one vibrator;

(3) six curling heaters;

(4) eight block heads;

(5) one linen cabinet;

(6) four shampoo basins and trays

(7) 10 mirrors and 10 chairs;

- (8) one blackboard, 4' x 4' or equivalent;
- (9) eight sanitary receptacles;
- (10) eight dryers;
- (11) four facial chairs;
- (12) four dry sterilizers (lamps or equivalent);
- (13) one therapeutic lamp installed in such manner as to permit free use of operator's hands;
- (14) one permanent wave machine, croquinole (two complete sets of 32 each of rods, clips and felts), cold wave (four sets each consisting of 32 rods);
- (15) one tablet armchair or usable table for each student in theory class;
- (16) one beauty culture textbook for each student (book of questions and answers are not considered textbooks);
- (17) three types of iron (paper curl, marcel and straghtening comb).

(d) In addition to the items of equipment listed in (c) the school shall have such supplies as wave sets, shampoo creams, hair tint, cloth towels, manicuring tables with proper lighting, chairs for at least five students, available books on anatomy, physiology and hygiene, charts 24" x 24" or equivalent, on skin, bones, muscles, nerves, and circulatory systems, and other necessary items for instruction that the board may require.

(e) The proper placement of this equipment shall require at least 1,000 square feet of floor space, excluding office, cloakroom and reception room space. In the event that the student enrollment of any school increases, additional space and equipment may be required by the board. The number of students taught in a school of beauty culture at any one time shall be limited to one for every 15 square feet of space contained in the school subject to the following limitations: space occupied by offices and lavatories shall not be used in computing maximum number of students taught.

(f) The following equipment shall be issued to each student:

- (1) one shampoo cape;
- (2) two brushes;
- (3) one pair scissors;
- (4) one pair thinning shears;
- (5) one razor;
- (6) six combs (four fingerwaves, one rattail, and one haircutting);
- (7) one electric clipper (optional);
- (8) complete tools for manicuring; cuticle oil, cuticle remover, polish, emery boards, nipper scissors, pusher and brush; and
- (9) a carrying case of sufficient size to accomodate the materials used by the student. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.180

AS 08.28.250

**12 AAC 24.120. SANITARY RULES AND REGULATIONS.** The rules and regulations of the Alaska Divison of Public Health, as set forth in Title 7, Alaska Administrative Code, Sections 1250 and 1257, are hereby adopted by reference and incorporated herein as a part of these rules and regulations. All licensees shall comply with such regulations. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.280

**12 AAC 24.130. CURRICULUM REQUIREMENTS OF SCHOOL OF HAIRDRESSING AND BEAUTY CULTURE.**

(a) The school shall submit its proposed curriculum to the board, with the application for license. The curriculum must be approved by the board before the school is licensed. The curriculum shall provide for the use of a standard textbook approved by the board. The curriculum must include instructions on the statutes and regulations governing hairdressing and beauty culture in the State of Alaska.

(b) The curriculum shall provide for a course of at least 2,000 hours of instruction, with no more

than eight hours of instructions in any single day. The school shall, upon completion of the course by a student, issue a diploma and an academic achievement record. A copy of the academic record shall be transmitted to the board.

(c) All students shall register with the secretary of the board. It shall be the duty of the owner of each school to transmit in writing the name, age, address and the date of commencement of instructions of each student enrolled within 30 days after the student's enrollment. It shall also be the duty of the owner of each school to advise the secretary of the board, in writing, of the date of termination of instructions within 30 days after termination.

(d) There shall be a minimum requirement of 250 hours of theory study during the 2,000 hours.

(e) There shall be a minimum requirement of 350 hours of practice training.

(f) Schools must keep daily records of student attendance of all courses, and these records shall be open for inspection by any member of the Board of Hairdressing and Beauty Culture Examiners.

(g) Practice training shall consist of classwork and individual training in all subjects of each practice. All practice training shall be limited to actual practice by the student either on transformation or other devices, or on other students, for the purpose of acquiring the fundamentals and technique of such subjects.

(h) A school may make a reasonable charge for these services to persons other than student, but all services shall be of a clinical nature and under direct supervision of an instructor.

(i) School authorities shall give a student who leaves the school in good standing an "affidavit" indicating the number of hours of each type of instructions received. A student who wishes to transfer to another school must present the affidavit to the school authorities before credit may be given for past instructions.

(j) A student transferring from a school in another state may transfer his credits upon

presentation of a certified affidavit of records from the state cosmetology board of the other state, or upon other proof acceptable by the board.

(k) Where a student has interrupted his schooling for a continuous period of three years, no credit will be allowed for instructions received prior to the interruption. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.180

12 AAC 24.140. INSPECTION OF SCHOOLS. Licensees shall permit any member of the board to inspect at any time during working hours. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.180

5

E

STATE OF ALASKA  
Board of Barber Examiners  
July, 1979

Findings

The Board of Barber Examiners was created in 1957. Members of this profession, and the Board, are regulated under AS 08.12; control over health and sanitation of facilities is with the Department of Health and Social Services (AS 08.12.030(2) and AS 18.05.040(9)).

Alternatives to the present operation of the Board and to State regulation of the barbering profession are discussed in this review; however, we believe that the review indicates termination of the Board and licensing.

I. General Information

A. Regulated Parties

1. Barbers

B. Definitions

"Barbering includes the following practices when performed for hire or reward:

- (1) shaving or trimming the beard or cutting the hair;
- (2) giving facial and scalp massages or treatments with oils, creams, lotions or other preparations either by hand or mechanical appliances;
- (3) singeing, shampooing, dressing or dyeing the hair or applying hair tonics." (AS 08.12.280)

C. Nature and Composition of Board

1. Board members and terms:

(No specified length of term and no restrictions regarding consecutive terms or numbers of terms.)

Don A. Noll  
Manual Norat  
James Russi  
Elmo Kienbaum  
Maurice Smith

2. Representation:

Profession = 5 (by statute)

Public = 0

3. Qualifications:

Four members shall be from separate major senatorial districts and the fifth from the district having the largest number of practicing licensed barbers. Each member shall be a practicing barber who has engaged in barbering the State for at least five years prior to his appointment.

D. Licensing Data

Currently licensed:

in-State	=	204	
out-of-State	=	<u>40</u>	
Total		244	(July, 1979)

E. Fees

1. barber license exam	\$25.00
2. teacher license exam	75.00
3. annual relicensure	10.00
4. annual teaching relicensure	50.00
5. annual school/college fee	150.00
6. temporary permit	25.00

F. Board Revenues and Expenditure

	FY '76	FY '77	FY '78	FY '79
Receipts	\$4,087.00	\$5,005.54	\$4,410.18	\$4,369.00
-Refunds	-	35.00	10.00	95.00
Total	4,087.00	4,970.54	4,400.18	\$4,274.00
Expenditures				
Per Diem	1,152.50	1,714.50	1,297.75	1,227.50
Transportation	586.93	583.61	723.22	1,647.25
Phone	20.75	74.20	84.30	473.41
Printing, Adver. & Postage	558.61	425.96	228.49	272.78
Fees & Services	170.40	115.00	300.00	35.00
Rents, Leases & Other	-	-	300.00	725.65
Total	<u>\$2,489.19</u>	<u>\$2,913.27</u>	<u>\$2,933.76</u>	<u>\$4,381.59</u>
Surplus	\$1,597.81	\$2,057.27	\$1,466.42	-
Deficit	-	-	-	\$ 107.59

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

#### G. Complaints

Eight of the twelve complaints filed with the administrative agency from January, 1976 through June, 1979 were complaints against the Board regarding its examination procedures. The remaining four cases consisted of complaints that individuals were practicing barbering without a license. Although these were filed in 1976 and 1977, only one has been closed. All complaints against the Board (filed in 1978) remain open.

#### H. Professional Qualifications

None. Most states require barber training or schooling as a prerequisite to licensure.

### II. Analysis

- A. To what extent has the Board of Barber Examiners operated in the public interest?

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The Board is statutorily required to issue licenses and permits to qualified individuals or schools, to examine applicants for a barber teacher license, and to regulate conduct and standards of teaching facilities. The Board also has general powers which it may exercise: (1) adoption of examinations in accordance with nationally recognized standards; (2) adoption of reasonable rules and regulations relative to sanitation - ultimate control over health and sanitary conditions is expressly cited as being with the Department of Health and Social Services; (3) suspension of licenses for failure to maintain sanitary standards; (4) inspection of shops; (5) adoption of rules concerning Board operations; (6) delegation of examination, inspection and enforcement powers; and (7) other acts and things necessary to carry out the purposes of AS 08.12.

The Board of Barber Examiners has experienced several problems with its past examinations and procedures. Eight of twelve complaints filed with the administrative agency from January, 1976, through June, 1979, were complaints against the Board regarding its examination.

All applicants for licensure must take an examination. No statutory authority exists by which the Board may license through endorsement or reciprocity. In addition to the written portion of the examination, a practical portion is given consisting of four parts: haircut, shampoo, shave and massage. A passing grade of 75% must be attained on the written portion and on all parts of the practical portion. If any part of the practical is failed, the applicant must retake all four parts.

The written examination given by the Board in the past has contained a variety of types of questions (i.e., multiple choice, short essay, fill-in-the-blank). No key was utilized by the Board in grading which appears to have resulted in some inconsistencies. The test utilized in April, 1979, was provided by the National Board of Barber Examiners of America. Two out of twelve applicants passed that examination and complaints were received regarding the relevancy of some questions. The Board is currently developing a pool of test questions, with answers, from which the Division of Occupational Licensing can formulate future examinations. In this way standard procedures will be established yet each exam will be different in content.

Administration of the practical examination has also met with considerable criticism. In August of 1978 a meeting was held with the Board, representatives of the Department of Law and Division of Occupational Licensing and a representative from the Office of the Governor. The purpose of the meeting was to review allegations of impropriety on the part of the Board and to develop guidelines to assist the Board in its future operations. One Board member, who owns a barber school in the State, was advised to refrain from grading students of his facility.

The member has complied with this advice, however, he has participated in grading of other applicants. Because scores are averaged, such a procedure could work to the disadvantage of "nonstudents." A review of files of applicants who have been licensed since mid-1974 (and are still active) indicate that a significant percentage (84%) were given exactly the same passing grade (75) on all parts of the practical examination by one member of the Board. In a few of these instances the proportionate points given did not total 75 and in one case proper addition would have failed the applicant.

Past Board procedure has been to review the examinations the day after they are given. Scores on some examination papers have been changed either at the time of scoring or during the Board review process. The Board has been made aware of the potential problems this procedure could generate and has been advised to discontinue this practice. The Board has also been advised to establish standard grading criteria for its own benefit as well as that of the applicants.

The Board has adopted regulations for the conduct of the practice of barbering in accordance with reasonable standards of sanitation. However, it does not inspect facilities or ensure that the regulations are being adhered to. Standards for barber schools and colleges also have been established by regulations as have application procedures and some examination information. AS 08.12.030(2) specifically provides that the Department of Health and Social Services have "ultimate control over health and sanitary conditions for all licensees under this chapter..." At its April, 1979, meeting the Board resolved not to involve itself in inspection activities but rather to leave this to other agencies.

The Board may suspend licenses for failure to maintain sanitation standards. There is no record of such an instance having come before the Board in recent years.

Applicants for licensure must submit evidence of good moral character (certified attestation by two parties), a health certificate, and "other information required" by regulation. There is no requirement that an applicant have attended barber school or training, or that (s)he have barbering experience. The Board has proposed statutory amendments which would establish an apprentice program and which would require either 1,500 hours or two years of schooling and/or training.

Statutory exemptions from licensure are licensed cosmetologists, persons engaged in barbering within a military reservation and persons barbering in a community of less than 1,000 persons, or more than 25 miles from such a community. (In analyzing the need for regulation of this profession, one may note that the public in small isolated communities apparently does not need protection.) The Board has also requested a statutory amendment which would delete the latter exception from licensure.

Temporary permits "shall" be issued by the Board to persons entering the State or transferring from exempt status who have either a barber college diploma or a license issued by another jurisdiction. While new graduates from another state may be issued a temporary permit, none is provided for in-State graduates. The Board has, however, been issuing permits to these individuals. Permits are valid until the next examination and are nonrenewable (except that those failing the April, 1979 examination were reissued permits).

We believe that termination of the Board of Barber Examiners and cessation of State regulation of this profession would not have any significant impact on public well-being. No complaints have been received from the public or regarding any threat to public safety. Barbers do not utilize strong chemical agents. Monetary costs of services to the consumer are relatively minor. A bill was introduced during the 1979

Legislative session, SB 215, which would abolish the Board and relevant statutes (See Appendix A). This bill is now in the Senate Commerce Committee.

- B. To what extent has the operation of the Board of Barber Examiners been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

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The greatest impediment to efficient Board operation has been its examination procedures. As previously noted, this has been discussed with the Board and suggestions were made to correct past deficiencies. The fact that the Board can license only by examination has created problems when individuals have demanded licensure by endorsement or reciprocity.

The Board has indicated that it feels the statutory exemption for barbers in small outlying communities is inappropriate. It has also requested that barber schooling or training be made a statutory requirement for licensure.

There is no term of membership provided for board members. The restriction on Board membership for only persons who have been licensed in the State for five years should be reexamined.

The Board of Barber Examiners has experienced some difficulty with respect to personnel and budgetary restrictions. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs; however, past employee turnover has impeded continuity and follow-up on Board requests. Fees and revenues for all boards and commissions under the jurisdiction of the Division of Occupational Licensing are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct Board revenues and expenses may be determined.

The Board has encountered the same difficulties as have all other boards and commissions with respect to investigative services provided by the administrative agency. During FY'78 two investigator positions were vacant; as a result, one position was abolished by the Legislature. At the present time, two investigators are located in Anchorage with a Chief Investigator located in Juneau. An additional investigator position was approved in the FY '80 budget but will probably not be filled immediately due to vacancy factors incorporated into the personal service category of the budget. Procedural constraints of the administrative adjudication article of the Administrative Procedure Act (AS 44.62.330-630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

C. To what extent has the Board of Barber Examiners recommended statutory changes which are generally of benefit to the public interest?

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No amendments of consequence have been made to AS 08.12 since 1960.

If regulation of the profession is determined to be of benefit to the public interest, the following amendments requested by the Board would further those interests: (1) provisions for apprenticeship programs; (2) requirements for schooling or training as licensure qualifications; and (3) deletion of exemption for persons barbering in a community having less than 1,000 persons, or more than 25 miles from such a community.

- D. To what extent has the Board of Barber Examiners encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

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Notices of pending meetings and new or amended regulations are published in newspapers in the State by the administrative agency. Board regulations have not been amended since 1964. Meeting minutes for the past three years indicate no interest or participation by other than persons seeking examination privileges from the Board.

Public interests would be furthered by the presence of public members on the Board. "In recent years a number of states have added one or more public members (citizens with no particular interest in the occupation or profession governed by the board) to licensing boards in an effort to ensure that the interest of the public would be represented in decision-making."<sup>1</sup> The State of California, which provides for a one-third public membership on health care boards and a public majority on others, has indicated that its experience with public members has been highly rewarding.

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<sup>1</sup>Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

- E. How efficiently are public inquiries or complaints regarding the activities of the Board of Barber Examiners processed and resolved?

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Twelve complaints were filed with the administrative agency from January, 1976, through June, 1979; eight were from applicants regarding Board examination procedures, and four involving unlicensed activity were initiated by the agency. One of these cases had been closed (in September of 1978) as of June 30, 1979.

The administrative agency has been addressing investigative procedures and the need for timely disposition of complaints.

- F. To what extent does the Board of Barber examiners present qualified applicants to serve the public?

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The only method the Board has of assuring qualification is the examination procedure. Applicants are not required to have schooling, training or experience and the Board is unable to accept verification of licensure in another jurisdiction for licensure without examination in Alaska. Past examination procedures, however, have not proved satisfactory as measurements of ability either. The administrative agency and the Board will continue to work toward valid examination and grading standards.

- G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Barber Examiners in its own activities, and in its area of activity or interest?

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Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (also responsible for

four other regulated professions) who is hired through the State Personnel System and is subject to affirmative action requirements.

Affirmative action requirements are not applicable to statutory criteria for licensure.

H. To what extent are statutory, budgetary or other changes necessary to enable the Board of Barber Examiners to better serve the interests of the public?

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If the board is reestablished, the following statutory amendments are suggested: (1) deletion of the requirement that Board members come from separate senatorial districts and the five year Alaska license restriction, length of terms should be established and number of consecutive terms limited, § 010; (2) inclusion of public members on the Board while not increasing overall size, § 020; (3) requirements for schooling or training as a condition of licensure, § 070; (4) biennial rather than annual license fees, §§ 090, 100 and 110; (5) requirement of health certification as a condition of renewal; (6) provisions for issuance of temporary permits to in-State graduates pending examination, § 160; (7) endorsement of applicants licensed in another jurisdiction with similar qualifications; (8) repeal of § 180; (9) repeal of exemption for persons barbering in a community with less than 1,000 persons, or more than 25 miles from such a community, § 270; and (10) provisions for apprentice programs.

The Board should establish examination and grading standards. It should work to solicit the interest and participation of those it regulates. Temporary permits should be issued only in accordance with statutory authority until and unless an amendment is made.

Board and administrative expenses outweigh revenues collected through regulation of this profession. Fees collected are not adequate to cover transportation and per diem for meetings and examinations, and Division of Occupational Licensing overhead such as staff salaries and investigative services.

## Chapter 12. Barbers

### Article

1. Board of Barber Examiners (§§ 08.12.010-08.12.050)
2. Examination and Licensing (§§ 08.12.060-08.12.190)
3. Barber Schools and Colleges (§§ 08.12.200-08.12.240)
4. Unlawful Acts and Penalties (§§ 08.12.250-08.12.260)
5. General Provisions (§§ 08.12.270-08.12.280)

### Article 1. Board of Barber Examiners.

#### Section

10. Creation and membership of board
20. Qualifications of board members
30. General powers of board
40. Meetings and examinations
50. Board expenses

Sec. 08.12.010. Creation and membership of board. There is created the Board of Barber Examiners, referred to in this chapter as the board, composed of five members appointed by the governor. Four members of the board shall be from separate major senatorial districts. The fifth member shall be appointed from the district having the largest number of practicing licensed barbers. The members serve at the pleasure of the governor. (§ 1 art II ch 68 SLA 1957; am § 1 ch 168 SLA 1960)

Sec. 08.12.020. Qualifications of board members. Each member of the board shall be a practicing barber who has engaged in barbering in the state for at least five years prior to his appointment. Engaging in the practicing of barbering within a military reservation is not qualifying experience. (§ 2 art II ch 68 SLA 1957)

Sec. 08.12.030. General powers of board. The board may

(1) adopt examinations in accordance with standards provided by any nationally recognized manual of barber science and examine applicants for licenses to engage in the practice of barbering;

(2) adopt rules and regulations for the conduct of the practice of barbering in accordance with reasonable standards of sanitation which do not derogate from the ultimate control over health and sanitary conditions for all licensees under this chapter which is in the Department of Health and Social Services;

(3) suspend licenses for failure to maintain standards of sanitation prescribed by the board;

(4) conduct inspections of barber shops to insure that standards of sanitation are being maintained, except that the board may not

conduct a second inspection of the same shop within 90 days after the first inspection;

(5) adopt rules of procedure for its own organization and conduct of its meetings, examinations, and inspections;

(6) delegate its powers of examination, inspection, and enforcement to a member of the board to be exercised in the judicial district in which he resides;

(7) do such other acts and things necessary to carry out this chapter. (§ 3 art II ch 68 SLA 1957; am § 2 ch 168 SLA 1960; am § 6 ch 104 SLA 1971)

Sec. 08.12.040. Meetings and examinations. The board shall meet as often as necessary to conduct its business but shall hold at least one examination in each year in which applications for a license have been filed. (§ 4 art II ch 68 SLA 1957)

Sec. 08.12.050. Board expenses. Members of the board receive no salary, but are entitled to per diem and expenses authorized by law. (§ 5 art II ch 68 SLA 1957)

## Article 2. Examination and Licensing.

### Section

- 60. License required
- 70. Application
- 80. Examination fees
- 90. License fee for barbers
- 100. License fee for barber teachers
- 110. License fee for barber schools
- 120. Licenses
- 130. Display of licenses
- 140. [Repealed]
- 150. Reinstatement of lapsed license
- 160. Temporary permit
- 170. Issuance of temporary permit
- 180. License for certain resident barbers
- 190. Deposit of receipts

Sec. 08.12.060. License required. No person may engage in the practice of, or attempt to practice, barbering without a license or permit issued by the board. (§ 1 art III ch 68 SLA 1957)

Sec. 08.12.070. Application. A person wishing to practice barbering shall apply to the board by submitting

- (1) evidence of his good moral character;
- (2) a certificate of health from a physician; and
- (3) other information required under regulations adopted by the board. (§ 2 art III ch 68 SLA 1957)

Sec. 08.12.080. Examination fees. An applicant for examination shall submit with his application an examination fee as follows:

- (1) examination for barber license.....\$25
  - (2) examination for barber teacher license.....\$75
- (§ 3 art III ch 68 SLA 1957; am § 3 ch 168 SLA 1960)

Sec. 08.12.090. License fee for barbers. The annual fee for a license to engage in barbering is \$10. (§ 5 art III ch 68 SLA 1957; am § 6 ch 168 SLA 1960; § 3A art III ch 68 SLA 1957; added by § 4 ch 168 SLA 1960)

Sec. 08.12.100. License fee for barber teachers. The annual fee for a license to engage in the teaching of barbering is \$50. (§ 3A art III ch 68 SLA 1957; added by § 4 ch 168 SLA 1960)

Sec. 08.12.110. License fee for barber schools. The annual fee for a license to conduct a barber school or college is \$150. (§ 2 art V ch 68 SLA 1957; am § 8 ch 168 SLA 1960; § 3A art III ch 68 SLA 1957; added by § 4 ch 168 SLA 1960)

Sec. 08.12.120. Licenses. Licenses shall be issued by the board to any applicant who passes the examination and who possesses the other necessary qualifications. Each license and temporary permit shall have a photograph of the licensee attached. (§ 4 art III ch 68 SLA 1957; am § 5 ch 168 SLA 1960)

Sec. 08.12.130. Display of licenses. Every licensee or permittee shall display his license or permit in a conspicuous place in his place of business. Owners, operators, and managers of shops and schools are responsible for the display of all licenses held by their employees. (§ 4 art III ch 68 SLA 1957; am § 5 ch 168 SLA 1960)

Sec. 08.12.140. Duplicate license or permit. Repealed by § 7 ch 94 SLA 1968.

Sec. 08.12.150. Reinstatement of lapsed license. A lapsed license may be reinstated if it has not remained lapsed for more than five years. (§ 5 art III ch 68 SLA 1957; am § 6 ch 168 SLA 1960; am § 4 ch 94 SLA 1968)

Sec. 08.12.160. Temporary permit. Any person entering the state or transferring from a practice exempt under the provisions of § 270 of this chapter, and who desires to engage in barbering who has (1) a diploma from a barber college accredited by the board or (2) a bona fide license issued by another territory or state, shall be issued a temporary permit, valid until the next examination given by the board. (§ 6 art III ch 68 SLA 1957)

Sec. 08.12.170. Issuance of temporary permit. A temporary permit may be issued by any member of the board upon application under terms and conditions established by regulations of the board, and upon the receipt of an application fee of \$25. The fee shall be credited to the temporary permittee, who shall be permitted to take an examination for a regular license without any additional fee. Upon taking the examination, the holder shall surrender the temporary permit to the board or the committee conducting the examination. (§ 7 art III ch 68 SLA 1957)

Sec. 08.12.180. License for certain resident barbers. The board shall issue a license without examination to a person who was engaged in the practice of barbering in the state, before March 18, 1957. Application for a license shall be accompanied by payment of a fee of \$25, an affidavit that the applicant qualifies for a license under this section, and a certificate of health from a physician that the applicant has no contagious or infectious disease. (§ 8 art III ch 68 SLA 1957)

Sec. 08.12.190. Deposit of receipts. All money received by the board shall be paid into the general fund of the state. (§ 9 art III ch 68 SLA 1957)

### Article 3. Barber Schools and Colleges

#### Section

- 200. Regulation by board
- 210. License required
- 220. Application
- 230. Examination
- 240. School license

Sec. 08.12.200. Regulation by board. The board shall provide for the conduct and supervision of barber schools and colleges in the state. The board shall adopt regulations establishing standards of sanitation and skill for barber schools and colleges and the teachers and instructors. (§ 1 art V ch 68 SLA 1957; am § 8 ch 168 SLA 1960)

Sec. 08.12.210. License required. No person may operate a barber school or college, or teach in a barber school or college, without a barber teacher license issued by the board. (§ 2 art V ch 68 SLA 1957; am § 8 ch 168 SLA 1960)

Sec. 08.12.220. Application. A person wishing to operate a barber school or college or teach in a barber school or college shall apply for examination and licensing to the board and submit

(1) evidence of his good moral character satisfactory to the board;

(2) a certificate of health from a physician;

(3) a diploma from a nationally accredited barber school or college offering a course in barber science evidencing the applicant's qualifications as a barber teacher;

(4) such other information as may be required by regulations adopted by the board. (§ 3 art V ch 68 SLA 1957; am § 3 ch 168 SLA 1960)

Sec. 08.12.230. Examination. Each applicant for a barber teacher license shall demonstrate to the board by passing an examination in theory and practice that he has the ability to instruct barber students in subjects necessary to qualify them as competent barbers. (§ 4 art V ch 68 SLA 1957; am § 3 ch 168 SLA 1960)

Sec. 08.12.240. School license. No person may operate a barber school or college without a license issued by the board. The board shall issue a license if it finds that the school or college is properly staffed with licensed barbers and the premises and equipment are sufficient, sanitary, and proper. (§ 5 art V ch 68 SLA 1957; am § 3 ch 168 SLA 1960)

#### Article 4. Unlawful Acts and Penalties.

##### Section

250. Failure to possess license

260. Suspension of license

Sec. 08.12.250. Failure to possess license. A person who practices, or attempts to practice barbering or operates a barber school or college or teaches in a barber school or college without a license is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$500, or by imprisonment for a period of not more than 30 days, or by both. (§ 1 art IV ch 68 SLA 1957; am § 7 ch 168 SLA 1960)

Sec. 08.12.260. Suspension of license. The board may suspend the license or permit of a person who violates any provision of this chapter. The board shall suspend the license of a person who, by his acts, gives evidence that he is not of good moral character, or who uses narcotics or overindulges in the use of alcoholic beverages while practicing his profession, until it is satisfied that he will conduct his profession in a proper manner. (§ 2 art IV ch 68 SLA 1957)

Article 5. General Provisions.

Section

270. Application of chapter

280. Barbering defined

Sec. 08.12.270. Application of chapter. This chapter applies to a person engaged in barbering in a community in the state having a population of more than 1,000 persons, or within 25 miles of such a community. Persons engaged in barbering entirely within a military reservation and licensed cosmetologists are excepted from this chapter. (§ 2 art I ch 68 SLA 1957)

Sec. 08.12.280. Barbering defined. Barbering includes the following practices when performed for hire or reward:

- (1) shaving or trimming the beard or cutting the hair;
- (2) giving facial and scalp massages or treatments with oils, creams, lotions or other preparations either by hand or mechanical appliances;
- (3) singeing, shampooing, dressing or dyeing the hair or applying hair tonics. (§ 1 art I ch 68 SLA 1957)

CHAPTER 08.  
BOARD OF BARBER EXAMINERS

Article

- 1. Examinations
- 2. Operation of Barber Shops, Barber Schools and Colleges
- 3. Standards for Barber Colleges and Schools

school owner, manager, instructor, or any person to communicate with or help an applicant in any way while taking the examination, or any attempt by an applicant to secure information from another applicant will disqualify the applicant from completing the examination. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030  
AS 08.12.220

ARTICLE 1.  
EXAMINATIONS

Section

- 10. Filing of application
- 20. Location and date
- 30. Form of application
- 40. Applicants failing to pass
- 50. Disqualification during examination
- 60. Form of examination, required equipment, grading

12 AAC 08.060. FORM OF EXAMINATION, REQUIRED EQUIPMENT, GRADING. (a) Written examination. The applicant must obtain a grade of at least 75 percent on sanitation, Barber Science, sterilization, and common contagious and infectious diseases of the face, skin, and scalp.

(b) Practical examination. The applicant must obtain a grade of at least 75 percent on each of the following subjects: haircut, shave, massage, shampoo, condition of tools.

12 AAC 08.010. FILING OF APPLICATION. The application for examination must be on file 10 days before the examination date. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030

(c) Authorized textbooks. The following are the authorized textbooks to be used by applicants: *Standard Textbook of Barbering*, published by Associated Master Barbers of America, Chicago, Illinois, and *Textbook of Practical and Scientific Barbering*, published by Journeymen Barbers, Educational Department, Indianapolis, Indiana.

12 AAC 08.020. LOCATION AND DATE. The location and date of the examination shall be published by the Board of Examiners at least 30 days in advance of the date of examination. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030

(d) Equipment. Each applicant must furnish his own smock, tools, and model.

12 AAC 08.030. FORM OF APPLICATION. The application shall be on a form provided by the board and shall be mailed to the secretary of the board accompanied by a \$25 examination fee; and two photographs signed on the front. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030  
AS 08.12.070  
AS 08.12.080

(e) Standards for grading examinations. In grading each applicant, the examiners will consider the following: care and neatness of supplies and equipment; appearance and posture of applicant; time consumed in completion of each operation. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030  
AS 08.12.070  
AS 08.12.220

12 AAC 08.040. APPLICANTS FAILING TO PASS. Applicants failing to pass an examination or failing to appear for examination may take another examination by filing the required \$25. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030

12 AAC 08.050. DISQUALIFICATION DURING EXAMINATION. Any attempt by a

**ARTICLE 2. OPERATION OF  
BARBER SHOPS,  
BARBER SCHOOLS  
AND COLLEGES**

## Section

- 70. Floors
- 80. Walls and ceilings
- 90. Light
- 100. Ventilation
- 110. Location
- 120. Hot water
- 130. Cold water
- 140. Facilities
- 150. Equipment
- 160. Linens
- 170. Methods
- 180. Cosmetics
- 190. Sterilization
- 200. Customers
- 210. Personnel
- 220. Health certificate renewal
- 230. Registration or permit to be displayed

12 AAC 08.070. **FLOORS.** Floors must be of smooth finish and easily cleanable and kept clean at all times and must be impervious to water. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030  
AS 08.12.200

12 AAC 08.080. **WALLS AND CEILINGS.** Walls and ceilings of barber shops and schools for the teaching of barbering must be kept painted and cleaned and in a sanitary condition. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030  
AS 08.12.200

12 AAC 08.090. **LIGHT.** All shops and schools for the teaching of barbering must have adequate light, whether natural or artificial. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030  
AS 08.12.200

12 AAC 08.100. **VENTILATION.** All barber shops and schools for the teaching of barbering must have adequate ventilation. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030  
AS 08.12.200

12 AAC 08.110. **LOCATION.** No barber shop or school for the teaching of barbering shall be used as living quarters, a dining or sleeping apartment or be directly connected with same, unless a solid partition of ceiling height separates portion used thereof, and there shall be no doors opening from shop or school; nor shall any barber shop or school be connected with any other type of business room without a complete partition of at least eight feet in height and partition must be flush with floor. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030  
AS 08.12.200

12 AAC 08.120. **HOT WATER.** All barber shops and schools must have an adequate supply of hot water to be of a temperature of at least 170°F. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030  
AS 08.12.200

12 AAC 08.130. **COLD WATER.** All barber shops and schools must have cold water in adequate amounts. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030  
AS 08.12.200

12 AAC 08.140. **FACILITIES.** Barber shops and schools must have adequate plumbing, running water and sinks within the shop and school, and water may not be used from a separate container of any kind. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030  
AS 08.12.200

12 AAC 08.150. **EQUIPMENT.** All barber shops and schools must have closed containers for soiled linen, closed containers for clean linen and sufficient custodial equipment or service. All shops and schools must also have adequate safe equipment for the protection of the public. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030  
AS 08.12.200

12 AAC 08.160. **LINENS.** All barber shops and schools must have ample supply of laundered linens and at no time may any towel, plectet, etc., be used on more than one patron without

being relandered. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030  
AS 08.12.200

12 AAC 08.170. METHODS. Hands and nails must be kept clean at all times. All equipment must be kept sterilized and in a sanitary condition. Liquid or powdered astringents only may be used and must be applied with a clean linen or sterile cotton. Head rest must be covered with clean towel or paper after each customer. All methods and procedures must be sanitary and meet with the approval of the inspectors. Hands must be washed immediately before each customer. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030  
AS 08.12.200

12 AAC 08.180. COSMETICS. Only harmless cosmetics and recognized brands of cosmetics may be used. Powder must be used from shaker type container. All types of creams must be kept under tight lids and in a sanitary condition. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030  
AS 08.12.200

12 AAC 08.190. STERILIZATION. All towels and applicators must be kept sterilized and cleaned in the following manner: Immersed in boiling water for half a minute or immersed in 70 per cent denatured alcohol solution, or 5 per cent phenol, or 4 per cent aqueous solution of formaldehyde for ten minutes or hot oil at 212°F. for two minutes or other approved bactericidal method. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030  
AS 08.12.200

12 AAC 08.200. CUSTOMERS. No barber or barber student in training shall serve or perform any service upon any customer whom he may suspect of having any communicable disease, broken skin or inflamed or weeping condition of scalp, face or neck. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030  
AS 08.12.200

12 AAC 08.210. PERSONNEL. All personnel shall have and display a health card from a

physician showing that he or she has no communicable disease. All personnel shall observe all rules and regulations governing the operation and sanitation of the shop or school where he or she is employed or in training. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030  
AS 08.12.200

12 AAC 08.220. HEALTH CERTIFICATE RENEWAL. All barbers must have health cards renewed at least once each year. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030  
AS 08.12.200

12 AAC 08.230. REGISTRATION OR PERMIT TO BE DISPLAYED. Every holder of a certificate of registration or permit shall display it in a conspicuous place adjacent to or near his or her work chair. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030  
AS 08.12.200

ARTICLE 3. STANDARDS FOR  
BARBER COLLEGES  
AND SCHOOLS

Section

- 240. Classrooms and equipment
- 250. Barbering prohibited in schools and colleges
- 260. Requirements for application
- 270. Equipment requirements
- 280. Practical training room
- 290. Curriculum - hours of classes
- 300. Prerequisites of approved barber schools
- 310. Requirements for license

12 AAC 08.240. CLASSROOMS AND EQUIPMENT. All schools must have a classroom for scientific study, and the classroom shall be separate from the room used for practical training. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.200

12 AAC 08.250. BARBERING PROHIBITED IN SCHOOLS AND COLLEGES. No barber shall practice the science of barbering as defined

in the law in any barber school or college. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.200

**12 AAC 08.260. REQUIREMENTS FOR APPLICATION.** Any applicant for a license to operate a barber school in the State of Alaska must possess the necessary requirements as set forth in the law. (In effect before 7/28/69; am 2/64, Reg. 14)

Authority: AS 08.12.200

**12 AAC 08.270. EQUIPMENT REQUIREMENTS.** The classroom shall be equipped with sufficient seating capacity for all students attending the classroom and shall have the following equipment:

(1) One lavatory with hot and cold running water for every two barber chairs to be approved for scientific barbering practice classes;

(2) One blackboard not less than six feet by three and one-half feet in size;

(3) One chart of the skin and hair;

(4) One chart of the muscles of the face, head and neck;

(5) One chart of the nerves of the face, head and neck;

(6) One chart of the bones of head and face;

(7) One chart of the blood supplies to the face, head and neck;

(8) One standard dictionary;

(9) One medical dictionary;

(10) One microscope for the study of bacteria. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.200

**12 AAC 08.280. PRACTICAL TRAINING ROOM.** The floor of the practical training room shall be covered with tile or any type of first grade linoleum and shall have available the following equipment and facilities:

(1) One closed cabinet for tools and linens for each chair;

(2) One approved soiled towel container with hinged lid or door for each chair;

(3) One sterilization solution container for each chair adequate in size to accommodate all instruments to be used on each patron;

(4) One ultra-violet lamp for every 10 students or fraction thereof;

(5) One infrared generator for every 10 students or fraction thereof;

(6) One high frequency unit for every 10 students or fraction thereof;

(7) One hair drier;

(8) One time clock. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.200

**12 AAC 08.290. CURRICULUM—HOURS OF CLASSES.** (a) No school for the teaching of barbering shall be approved by the board unless at least one approved barber teacher is teaching therein at all times and in charge of each daily class in theoretical scientific study, scientific barbering practice, and general barbering practice at all times.

(b) Each school for the teaching of barbering shall require that a patron not be released from a chair after being served by a student until all the work performed by the student has been thoroughly inspected and approved by the barber teacher.

(c) Each school for the teaching of barbering shall furnish each student upon enrollment a copy of the rules and regulations governing sanitary conditions of barbershops and schools for the teaching of barbering of this state as registered with the secretary of state.

(d) Each school for the teaching of barbering shall have adequate ventilation and lighting equipment approved by the board.

(e) Each school for the teaching of barbering, having both men and women in its enrollment,

shall provide one toilet for men and one for women. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.200

**12 AAC 08.300. PREREQUISITES OF APPROVED BARBER SCHOOLS.** No school for the teaching of barbering shall enroll or admit any student thereto unless such student shall make and file, in duplicate, a duly verified application which said application shall be obtained by such student or the school from the board. One copy of such application shall be retained by the school enrolling or admitting the student and the other copy shall be filed by such school with the board. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.200

**12 AAC 08.310. REQUIREMENTS FOR LICENSE.** No school for the teaching of barbering shall be licensed unless it has been inspected by not less than three members of the board and found in compliance with all provisions of the law and rules and regulations of the board as approved and filed with the secretary of state. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.200  
AS 08.12.240

Introduced: 2/13/79  
Referred: Commerce

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2 SENATE BILL NO. 215

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act abolishing the Board of Barber Examiners."

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

8 \* Section 1. AS 08.01.010(2), AS 08.03.010(b)(2), AS 08.12, and AS 44.-  
9 62.330(a)(1) are repealed.

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F

*to*  
KEY REFERENCES:

- (Y) - ~~yellow~~ <sup>cover</sup> State of Alaska Sunset Review, 1979 *Prepared by Div. of O.L.*
- (B) - ~~blue~~ <sup>cover</sup> Division of Legislative Audit Performance Review
- ~~White~~ <sup>Public</sup> of Electrical Examiners Board, May 1979. *Testimony*
- (W) ~~Testimony~~ <sup>Public</sup> Senate Commerce Committee Hearing ~~minutes~~ November 7, 1979
- ~~(Green)~~ Board of Electrical Examiners Report, June 1979 to Governor S. S. Hammond

- 1. Board should not be continued
  - (B) Audit - page 7, page 9, Recommendation 1; page 8 (Yellow) O.L.

~~Quote from Elaine Garrett~~

If the Board of Electrical Examiners should be continued the following changes/additions are suggested:

*OK*

A. Board composed of 4 members -- 2 lay, 2 professional. Two year terms with one re-appointment. Testimony - p. 59  
 (Y) - p. 10/13 O.L.  
 (Y) - p. 32, Board View  
 (B) - p. 13, Audit

*(3 of 2) = 5*  
*clerk examiners public (lay) members*

*w/ letter of intent.*

B. Increase the number of inspectors. Testimony - p. 60, 6, and 10  
 (Y) - p. 11, O.L.  
 (Y) - p. 5, Board has power to inspect  
 Testimony - Don Liston, Editor of "Building Alaska" magazine

*OK*

C. Statutory authority for ~~reciprocity~~ <sup>indorsement</sup> should exist. *A*  
 Testimony - H. D. Wilson, contractor, p. 69, and ombudsman's letter, p. 80  
 (Y) - p. 35, Board  
 (B) - p. 12, Audit, Recommendation #5  
 (Y) - p. 7, O.L.

*NO*

D. Eliminate ~~inspection power~~ from the Department of Labor for Electrical Examiners. Commerce already has this power.  
 (Y) - p. 27/29, conclusive p. 30, Attorney General  
 Testimony - Don Liston/"Build Alaska" SB 232

*To Labor not Commerce*  
~~To Public Supply only~~

E. Licensee should not take the certificate of fitness test.

OK  
Testimony - p. 60,9

(Y) - p. 39, Board

(Y) - pp. 8, 6

(B) - p. 9 (instead of Sunset, eliminate this duplication)  
Audit

F. Adopt the National Electrical Code and the National Electrical Safety Code as a minimum standard for the State of Alaska.

yes  
(Y) - p. 36 - Board

Testimony - Tony Reid, Inspector

Administration - Memo Oct. 30, 1979 by Bill McConkey, p. 2

G. Annual report from Board to Legislature/Put authority in 08 Title.

no  
Testimony - Michael Frith

(B) - p. 13, Audit

(Green) - p. 3, section 2, Board

H. It should not be required that electricians involved in the communications industry be licensed.

have Board look into this. letter  
(B) - pp. 7, 10, Recommendation 2 - Audit

(Y) - p. 7, Audit

I. In regard to fees and licensing a maximum of two-years ~~long~~ of license should be allowed before reexamination is statutorily required. *Ref 08.40.135 (b)*

yes  
(Y) - p. 34, Board

(Y) - p. 13 - fees - O.L.

(Y) - O.L. and Audit agree on fees. Set by OL and Board. SB 94.

~~O.L.J.~~  
10  
Licencees should be notified of renewal dates at least thirty days before the expiration date of their licenses.

Repeal 08.01.050 by O.L. per Elaine Garrett

**Sec. 18.60.590. Borough and city electrical safety codes.** (a) The department may by regulation adopt amendments the 1971 National Electrical Code as approved and issued by the American Standards Association.

(b) This chapter does not affect the authority of any municipality or rural electrification association to prescribe by ordinance, rule, or order standards for their respective areas of jurisdiction not less stringent than the standards prescribed by the department or those established under § 580 of this chapter. (§ 1 ch 89 SLA 1969; am § 42 ch 49 SLA 1970; am § 29 ch 53 SLA 1973)

**Effect of amendments.** — The 1970 amendment substituted "adopt" for "incorporate into §§ 580—660 of this chapter" in subsection (a).  
**Legislative committee reports.** — For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7. For report on ch. 53, SLA 1973 (CSHB 382), see 1973 House Journal, pp. 793, 885.  
The 1973 amendment substituted "1971" for "1968" in subsection (a).

**Sec. 18.60.600. Powers and duties of the department.** (a) The department may

(1) promulgate regulations to carry out the purposes of §§ 580 —660 of this chapter;

(2) inspect the electrical wiring of any place of employment or public structure in this state.

(b) The department shall

(1) keep a record of all inspection fees collected;

(2) keep a record of all electrical inspections conducted. (§ 1 ch 89 SLA 1969)

**Sec. 18.60.610. Delegation of authority.** Upon application to the department, a person, corporation, electric utility firm, public utility district, rural electrification association, or municipal utility district furnishing electrical current may be authorized by the commissioner to inspect the electrical wiring for a public or commercial structure as defined in § 660 of this chapter to which it is to furnish electrical current before energizing the electrical system on, in, or about the premises. Authorization by the commissioner under this section constitutes a grant of full authority to act within the provisions of §§ 580—660 of this chapter with the same immunities and privileges accorded to the state in the performance of these duties. A person or entity whose electrical wiring installation is found, by the authorized inspector, not to meet the standards prescribed has the right to appeal to the commissioner for a new inspection. The commissioner shall, within 15 days, furnish a new inspection by a designee not associated with the person, firm or utility who did the original inspection. (§ 1 ch 89 SLA 1969)

**Sec. 18.60.620. Inspection fees.** A person, corporation, electric utility firm, public utility district, rural electrification association or municipal utility district authorized under § 610 of this chapter to

provide inspection services may charge a fee for these services. After notice and hearing, the department shall set a schedule of maximum fees for inspection services rendered under §§ 580—660 of this chapter. The department may review the schedule every two years after giving notice and hearing. (§ 1 ch 89 SLA 1969)

**Sec. 18.60.630. Enforcement of compliance.** An authorized inspector under this chapter shall give written notice to the owner of constructed premises, or the contractor of premises under construction, of each violation of applicable electrical standards discovered as a result of his inspection. If within 15 days after receipt of written notice of an electrical violation, the person notified does not rectify the condition, the inspector shall notify the electric utility firm, public utility district, rural electrification association or municipality district supplying power to the premises. Upon notice in writing from the inspector, the supplier of electrical power may discontinue services to the premises where the alleged violation exists. (§ 1 ch 89 SLA 1969)

**Sec. 18.60.640. Scope of work covered.** (a) Sections 580—660 of this chapter cover only new installations and alterations to existing installations.

(b) These standards are the recommended minimum standards for all new structures in the state. (§ 1 ch 89 SLA 1969)

**Sec. 18.60.650. Penalty for violations.** A person who installs electrical wiring not in compliance with minimum electrical standards as set out in § 580 of this chapter, and who fails to correct this wiring after having been notified in writing by an authorized inspector, upon conviction, is punishable by a fine of not more than \$1,000. (§ 1 ch 89 SLA 1969)

**Sec. 18.60.660. Definitions.** In §§ 580—660 of this chapter

(1) "department" means the Department of Labor;

(2) "commissioner" means commissioner of the Department of Labor;

(3) "Electrical wiring" means the entire electrical system, including all conducting and shielding material, all regulatory and safety apparatus, and all devices and techniques used in the process of installation;

(4) "public structures" mean buildings such as hotels, resident housing with more than one rental unit, restaurants, taverns, lodging houses, children's homes, auditoriums, town halls, or any structure designed or used for public assembly whether publicly or privately financed. (§ 1 ch 89 SLA 1969)

STATE OF ALASKA  
Board of Electrical Examiners  
(August, 1979)

Findings

The Board of Electrical Examiners was created in 1960 under AS 08.40. Electrical Administrators are regulated under provisions of AS 08.40, AS 18.60, and AS 08.62, and electrical work may be inspected by the appropriate city and/or borough to ensure compliance with national standards and codes.

Alternatives to the present operation of the Board and to regulation of this profession are discussed in this review.

I. General Information

A. Regulated Parties

Electrical Administrators (Contractors)

B. Statutory Definition of Regulated Profession

"(2) 'electrical administrator' means any person engaged in the business of, or purporting to be engaged in the business of, installing or repairing, or contracting to install or repair, electrical wiring, conduits, devices, fixtures, equipment, or other electrical materials for transmitting, using or consuming electrical energy;" (AS 08.40.200)

C. Purpose of Regulation

"The purpose of this chapter [08.40] is to protect the safety of people and property in the state from the danger of improperly installed electrical wiring and equipment, by providing a procedure to assure

(1) the public that persons responsible for making electrical installations in this state qualified; id; and

(2) a sufficient number of persons are so qualified." (AS 08.40.005)

Demand

D. Nature and Composition of Board

1. Board members and terms:

Three-year term (with restrictions regarding consecutive terms or number of terms).

- |                             |                    |
|-----------------------------|--------------------|
| 1 Jerome Trammer (Chairman) | ends July 10, 1980 |
| 2 Hugh Macaulay             | ends July 10, 1981 |
| 3 Edward Schenderline       | ends July 10, 1982 |

2. Representation:

P. 11  
TLP } "or"  
① Profession = 3 (2) (by statute)  
② Public = 0 (1) ← " " "  
= 4

/ Add 1 public by  
Attrition.  
hence

3. Qualifications:

Members must be licensed electrical administrators.

← Re-write to  
comply w/  
above.

E. Licensing Data

Currently active: (through May, 1979)

in-State 259  
out-of-State = 53  
Total = 312

F. Fees

- |                          |          |
|--------------------------|----------|
| 1. license Fee           | \$100.00 |
| 2. biennial renewal      | 100.00   |
| 3. annual lapsed penalty | 25.00    |

G. Board Revenues and Expenditures

	FY '76	FY '77	FY '78	FY '79
Receipts	\$8,357.00	\$28,759.00	\$15,912.14	\$37,846.00
- Refunds	<u>500.00</u>	<u>400.00</u>	<u>475.00</u>	<u>1,100.00</u>
Total	7,857.00	28,359.00	15,437.14	<u>36,746.00</u>
Expenditures				
Transportation	1,053.40	1,884.37	2,232.23	2,079.70
Per Diem	823.44	2,793.28	2,412.75	3,011.48
Phone	128.71	312.50	712.90	457.27
Printing, Adver. & Postage	193.14	2,202.07	1,217.32	589.59
Fees & Services	446.80	362.85	-	461.80
Rents, Leases & Other	<u>-</u>	<u>340.25</u>	<u>91.22</u>	<u>191.19</u>
Total	<u>\$2,645.49</u>	<u>\$7,895.32</u>	<u>\$6,666.42</u>	<u>\$ 6,791.03</u>
Surplus	\$5,211.51	\$20,463.68	\$8,070.72	\$29,954.97
Deficit	-	-	-	<u>\$ 18,320.51</u>

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

H. Complaints

Thirty-two complaint files were open as of June 30, 1979, dating from January, 1978, through that time. All regarded unlicensed activity and all came from members of the industry or related professions. Review of the files indicates: six have had no action, eight appear to have been resolved, status of two is undetermined, and sixteen are pending Board approval for closure due to lack of jurisdiction, age of complaint, or resolution of the issue. Also pending Board approval for closure are an additional one-hundred and five cases which were purged from agency files in September of 1978.

## II. Analysis

- A. To what extent has the Board of Electrical Examiners operated in the public interest?

Statutory responsibilities of the Board include adoption of regulations establishing categories of licensure relating to examination and licensure of electrical administrators. The Board is required to hold at least one meeting each year and may hold others with prior approval of the governor. It must conduct at least two examinations each year. It may make, or have made, inspections or investigations of work performed by a licensee, and may suspend, revoke or refuse a license under specified conditions.

NO Teeth  
IN  
Revocation

Meetings of the Board are scheduled by regulation (12 AAC 32.260) four times each year in February, May, August and November. Examinations are given in conjunction with meetings; Board policy is to hold two in Anchorage, one in Fairbanks and one in Juneau. Meetings are well attended by applicants and members of the industry. The number of applicants for each examination varies but always is large. In 1978, 45 examinations were administered in February, 80 in May, 46 in August and 70 in November. Failure rates also are high: 67% in February, 85% in May, 87% in August, and 67% in November.

The Board has established five categories of licensure: inside wiring, residential wiring, outside linework, inside communications and outside communications. The examinations for the first three categories consist of three parts, for the latter two categories, two parts. Applicants must achieve at least a score of 70 on all parts; however, if any part is failed, only that part must be retaken. A national examination or something similar apparently does not exist. Examinations are therefore prepared by an electrical administrator licensed in Alaska. Each test

is prepared separately and submitted to the Division of Occupational Licensing and the Board, with answers, prior to its administration. This person also assists the Board in grading of the tests which is done as soon as the applicant turns his work in. Applicants are usually notified of their test results the same day and, according to 12 AAC 32.215, may request a review of the test with the Board the following day. (Also provided by regulations is the requirement that any subsequent change(s) in score be documented and signed by a Board member and retained by the administrative agency with the examination papers.)

Regulations effective in 1977 specify applicant qualifications for each category of licensure. Two categories (outside linework and inside wiring) require that the applicant have a Certificate of Fitness issued by the Department of Labor and that the applicant ~~have worked~~ under this certificate for an additional three years. This requirement by the Board is an attempt to establish standard licensing criteria; however, the fitness card program has only been viable for approximately two years and the Board has attempted to make appropriate allowances for those who appear to qualify for examinations. Certificates of fitness are not required in the remaining three categories because those who qualify for outside linework also qualify for outside communications, and those who qualify for inside wiring also qualify for inside communications and residential wiring.

*Violation of  
Statute*

Licensees are prohibited by statute from operating as an electrical administrator for more than one registered contractor. This prohibition, however, is not enforced. There also seems to be problems with utilization of another's license for work in lieu of obtaining one properly. Licenses are renewed biennially upon application and receipt of the renewal fee unless lapsed more than three years, in which case the Board may require reexamination. At the present time nothing else is required for renewal but the Board is discussing methods by which licensees must submit information verifying their continued competency,

such as employer certification that the individual has been active in the trade.

Statutory exemptions from licensure are provided under specified conditions for municipalities and utilities, for the manufacture or repair of electrical apparatus or equipment, for some electrical work under \$5,000 in outlying communities, for use by the installer or his immediate family, for radio or television broadcasting systems, for some elevator work, and for telephone systems. All such work is subject to inspection under AS 08.40.070, as well as to the provisions of AS 18.60.

*Done  
Should  
Communicate  
be regulated*

All applicants for licensure must take the appropriate examination(s). There are no endorsement or reciprocity provisions, nor any provision for temporary permits pending examination. The overwhelming majority of complaints regarding this profession are complaints from the industry about unlicensed activity. The existence of interim measures to allow apparently qualified people to work might function to reduce the amount of unlicensed electrical work allegedly being done. Interviews conducted during the course of this review indicated widespread dissatisfaction with the enforcement administration of the Department of Commerce and Economic Development, the Department of Labor, and the municipalities. All licensees stated that "80-90%" of the work done, even by licensees, is defective and dangerous. Almost all indicated that a considerable number of applicants had been approved for examination without being qualified and expressed objection that qualifications were not verified by the Board. Almost all declined to make formal complaints about substandard work. Many expressed a desire to serve on the Board but felt there were statutory and practical restrictions to their doing so, i.e., that appointments are made on a geographical basis and/or are lifetime appointments.

Dangerous electrical work is most certainly a matter of public concern. In 1977, there were 125 electrical systems fires in Alaska resulting in 10 injuries; in 1978, there were 110 electrical systems fires resulting in 6 injuries.<sup>1</sup> By authority of AS 18.60 (Electrical Safety) the Department of Labor has adopted the 1978 National Electrical Safety Code as the minimum electrical and safety standards of the State. Local governments may also adopt standards for themselves as long as they are not less stringent than those adopted by the Department of Labor.

Some alternate regulatory procedures exist within the State. In connection with work performed under established standards, no person may be employed to perform the work without a certificate of fitness issued by the Department of Labor under AS 18.62. This certificate of fitness is a prerequisite to approval for examination by the Board of Electrical Examiners. Centralization of electrical regulation under one State agency should be given consideration. Further suggestions are made in this report in the event the Board is reestablished.

- Sunset*
- B. To what extent has the operation of the Board of Electrical Examiners been impeded or enhanced by existing statutes, procedures or practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

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<sup>1</sup>1978 Annual Report, State of Alaska, Department of Public Safety, Division of Fire Prevention.

The Board of Electrical Examiners is given wide latitude in its operations. It is able to establish categories and standards of licensing, to make or request inspections or investigations, to formulate and administer examinations and to promulgate appropriate regulations. The Board thus has almost no restrictions on its authority other than those self imposed.

The Board of Electrical Examiners has experienced some difficulty with respect to personnel and budgetary restrictions. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs; however, past employee turnover has impeded continuity and follow-up on Board requests. Fees and revenues for all boards and commissions under the jurisdiction of the Division of Occupational Licensing are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct board revenues and expenses may be determined.

The Board has encountered the same difficulties as have all other boards and commissions with respect to investigative services provided by the administrative agency. During FY '78 two investigator positions were vacant; as a result, one position was abolished by the Legislature. At the present time, two investigators are located in Anchorage with a Chief Investigator located in Juneau. An additional investigator position was approved in the FY '80 budget but will probably not be filled immediately due to vacancy factors incorporated into the personal service category of the budget. Procedural constraints of the administrative adjudication article of the Administrative Procedure Act (AS 44.62.330-630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints. The administrative agency will continue

2/07/80  
is filled  
per  
Clane  
G.

to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

AS 08.40.010 requires that all Board members be licensed electrical administrators. Public members should be provided for as a media of public participation in regulation procedures and decision making.

*statute*  
② Terms of membership for all members should be limited.

C. To what extent has the Board of Electrical Examiners recommended statutory changes which are generally of benefit to the public interest?

Board did not comply with

The purpose of AS 08.40 was added to Board statutes in 1977. General "housekeeping" amendments were also made and the term "electrical contractor" was replaced with "electrical administrator." The stated purpose of the chapter is to "protect the safety of people and property in the state..."

D. To what extent has the Board of Electrical Examiners encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

---

Meetings and hearings of the Board are attended by applicants, union representatives and other interested parties. General "public" interest is negligible. Notices of pending meetings and new or amended regulations are published in major newspapers in the State.

Public interests would be furthered by the presence of public members on the Board. "In recent years a number of states have added one or more

public members (citizens with no particular interest in the occupation or profession governed by the board) to licensing boards in an effort to ensure that the interests of the public would be represented in decision-making."<sup>2</sup> The State of California, which provides for a one-third public membership on health care boards and a public majority on others, has indicated that its experience with public members has been highly rewarding. In August of 1977 the Board indicated that it would like to have two public members.

- E. How efficiently are public inquiries or complaints regarding the activities of the Board of Electrical Examiners processed and resolved?

By memorandum of June 13, 1979 (see Appendix A), the Department of Law advised that "AS 08.01.87 and AS 08.40.175 grant Commerce and Labor concurrent discretionary authority to investigate and enforce the provisions of AS 08 40..." The Department of Labor has two electrical inspectors in the State, one in Anchorage and one in Fairbanks.

*Inspector.*

Routine correspondence regarding Board activities may be handled by the Department of Labor, the Division of Occupational Licensing or the Board itself depending on the nature of the inquiry. Review of Board files indicates that, except in some enforcement cases, responses are generally made in an appropriate and timely manner.

- F. To what extent does the Board of Electrical Examiners present qualified applicants to serve the public?

<sup>2</sup>Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

---

The Board has delineated qualifications for each licensure category in its regulations. It does not, however, verify qualifications cited in individual applications. Interviewees generally felt the tests administered were fair and valid although quite difficult (failure rates from 67% to 87% in 1978).

The Board has provided a procedure by which individuals failing the test may review it with the Board the following day. Any changes made as a result of this review are required to be documented and retained with the examination materials. Applicants who have failed the examination may be reexamined at the next scheduled time. Applicants who appear to be qualified and who pass the appropriate examination(s) are issued a license.

- G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Electrical Examiners in its own activities, and in its area of activity or interest?

---

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (also responsible to three other regulated professions), who is hired through the State Personnel System and is subject to affirmative action requirements.

Licenses in this profession are issued on the basis of specific statutory criteria. Affirmative action requirements are not applicable to licensure qualifications.

- H. To what extent are statutory, budgetary, or other changes necessary to enable the Board of Electrical Examiners to better serve the interests of the public?

Conclusions -

① Public members should be included in Board membership and terms of service should be limited. The Board has been actively recommending statutory changes (see Appendix B) and promulgating regulations. ] p. 32

The Board has indicated that it would prefer to have the electrical inspector from the Department of Labor more closely associated with the Board and its activities. It also feels that one such inspector for the entire State is inadequate, particularly when the position is not assigned exclusively to electrical duties.

Board and administrative expenses outweigh revenues collected through regulation of this profession. Fees collected are not adequate to cover transportation and per diem for meetings and examinations, and Division of Occupational Licensing administrative overhead such as staff salaries and examination expenses.

*fees*

## Chapter 40. Electrical Administrators.

### Article

1. Board of Electrical Examiners (§§ 08.40.005-08.40.080)
2. Licensing (§§ 08.40.090-08.40.180)
3. General Provisions (§§ 08.40.190-08.40.200)

### Article 1. Board of Electrical Examiners.

#### Section

05. Purpose of chapter
10. Creation and membership of board
20. Appointment and term of office
30. Chairman of board
40. Board meetings
45. Categories of licenses
50. Regulations
60. Examinations
70. Inspection or investigation by board
80. Compensation of board members

Sec. 08.40.005. Purpose of chapter. The purpose of this chapter is to protect the safety of people and property in the state from the danger of improperly installed electrical wiring and equipment, by providing a procedure to assure

(1) the public that persons responsible for making electrical installations in this state are qualified; and

(2) a sufficient number of persons are so qualified. (§ 2 ch 53 SLA 1977)

Sec. 08.40.010. Creation and membership of board. There is hereby created a Board of Electrical Examiners consisting of three members who are licensed electrical administrators. (§ 1 ch 158 SLA 1960; am § 3 ch 53 SLA 1977)

Sec. 08.40.020. Appointment and term of office. The members of the board shall be appointed by the governor and confirmed by the legislature for staggered terms of three years, or until their successors are appointed. A member may be removed at the pleasure of the governor. (§ 1 ch 158 SLA 1960)

Sec. 08.40.030. Chairman of board. The board shall elect one of its members as chairman. (§ 1 ch 158 SLA 1960)

Sec. 08.40.040. Board meetings. The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman with prior approval of the governor. Two members constitute a quorum. (§ 2 ch 158 SLA 1960)

Sec. 08.40.045. Categories of licenses. The board may adopt regulations establishing categories of electrical administrators, establishing qualifications for those categories and the content of examinations for applicants for each category. (§ 4 ch 53 SLA 1977)

Sec. 08.40.050. Regulations. The board shall adopt regulations subject to the Administrative Procedure Act (AS 44.62), relating to the examination and licensing of electrical administrators and the suspension or revocation of licenses. (§ 2 ch 158 SLA 1960; am § 5 ch 53 SLA 1977)

Sec. 08.40.060. Examinations. A licensing examination, under the supervision of the chairman of the board or his designee, shall be conducted at least twice during each year at appropriate places in the state. (§ 2 ch 158 SLA 1960)

Sec. 08.40.070. Inspection or investigation by board. The board may make or have made a special inspection or investigation into the work of a licensee which it considers necessary, may issue subpoenas and process compelling the attendance of any person and the production of any papers or books, for the purpose of the investigation and examination, may administer oaths when required, and may petition a court of the state to enforce subpoenas and process or to compel testimony. (§ 5 ch 158 SLA 1960)

Sec. 08.40.080. Compensation of board members. Members of the board are entitled to payments, per diem allowances and transportation expenses allowed by law and paid members of other state examining and licensing boards. (§ 6 ch 158 SLA 1960)

## Article 2. Licensing.

### Section

- 90. License required
- 100. [Repealed]
- 110. Application for license
- 120. Examination of applicant
- 130. Administrator limited to one licensed contractor
- 135. Renewal and reinstatement
- 140. Issuance and display of license
- 150. Fees
- 160. [Repealed]
- 170. Denial, suspension and revocation of license
- 175. Cease and desist order
- 178. Injunctive relief
- 180. Violation of chapter

Sec. 08.40.090. License required. (a) No person may act as an electrical administrator in the state without a license issued by the board.

(b) A person licensed under this chapter may perform work only in a category for which he is licensed. (§ 3 (c) ch 158 SLA 1960; am § 6 ch 53 SLA 1977)

Sec. 08.40.100. Exclusion. Repealed by § 14 ch 53 SLA 1977.

Sec. 08.40.110. Application for license. An applicant for a license shall apply upon a form prescribed by the board. (§ 3 (d) ch 158 SLA 1960)

Sec. 08.40.120. Examination of applicant. Each applicant shall be examined to determine his knowledge of electrical installations and wiring, familiarity with the regulations contained in the National Electrical Code and the National Electrical Safety Code, as approved by the American Standards Association, other installation and safety regulations approved by the American Standards Association, and his personal skill and ability. (§ 3(d) ch 158 SLA 1960)

Sec. 08.40.130. Administrator limited to one licensed contractor. No person may qualify for or operate as an electrical administrator for more than one registered contractor. (§ 3(e) ch 158 SLA 1960; am § 1 ch 30 SLA 1969; am § 7 ch 53 SLA 1977)

Sec. 08.40.135. Renewal and reinstatement. (a) A license issued under this chapter, unless revoked or suspended, is nontransferable and may be renewed on a date set by the department, without examination, by appropriate application.

(b) A lapsed license may be reinstated by payment of all unpaid renewal fees and a penalty fee of \$25 for each year the license has been lapsed unless the license has been lapsed for more than three years and the board has reason to believe that it may be necessary to require the licensee to take and pass the examination given under § 120 of this chapter. (§ 2 ch 30 SLA 1969; am § 8 ch 53 SLA 1977)

Sec. 08.40.140. Issuance and display of license. An applicant who successfully passes the examination shall receive a certificate of license. The certificate shall be prominently displayed, while in effect, in the holder's principal place of business. (§ 3(f) ch 158 SLA 1960)

Sec. 08.40.150. Fees. (a) Each applicant shall pay an original license fee of \$100.

(b) The fee for biennial renewal of a license is \$100. (§ 3 (f) ch 158 SLA 1960; am § 3 ch 30 SLA 1969)

Sec. 08.40.160. Waiver of examination. Repealed by § 14 ch 53 SLA 1977.

Sec. 08.40.170. Denial, suspension and revocation of license.  
(a) The board may suspend, revoke or refuse to grant a license upon a finding that

- (1) the application is fraudulent or misleading;
- (2) the licensee has knowingly violated this chapter or a lawful rule, order or regulation of the board;
- (3) the licensee is incompetent, or has engaged in fraudulent practices.

(b) Notice of a proposed denial, suspension or revocation of license shall be given in writing, stating the grounds.

(c) Proceedings for the denial, suspension or revocation of a license shall be governed by the Administrative Procedure Act (AS 44.62). (§ 4 ch 158 SLA 1960; am § 4 ch 30 SLA 1969)

Sec. 08.40.175. Cease and desist order. (a) If the commissioner of labor determines that a person is acting as an electrical administrator in violation of this chapter, he may issue a cease and desist order prohibiting further action by the person as an electrical administrator. The cease and desist order remains in effect until the person has submitted evidence acceptable to the commissioner of labor showing that the violation has been corrected.

~~(a)~~ b A person affected by an order issued under (a) of this section may seek equitable relief preventing the commissioner of labor from enforcing the order. (§ 1 ch 39 SLA 1972; am § 9 ch 53 SLA 1977)

Sec. 08.40.178. Injunctive relief. The commissioner of labor may seek an injunction in the superior court to enjoin a person from violating this chapter. (§ 1 ch 39 SLA 1972)

Sec. 08.40.180. Violation of chapter. A person who knowingly violates this chapter, or who knowingly violates a valid rule, regulation or order of the board, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$300, or by imprisonment for not more than 60 days or by both. (§ 10 ch 158 SLA 1960)

### Article 3. General Provisions

#### Section

190. Exclusions

200. Definitions

Sec. 08.40.190. Exclusions. (a) This chapter does not apply to any utility or municipality engaged in

(1) electrical construction and maintenance of electrical wiring for the generation and distribution of electrical current where the wiring is an integral part of a system owned and operated by that utility or municipal light and power department;

(2) the installation, operation, maintenance, or repair of telephone, telegraph, signal or communication systems when the work is performed by the employees of the utility.

(b) This chapter does not apply to any person engaged in

(1) the manufacture or repair of electrical apparatus or equipment;

(2) electrical work, the cost of which does not exceed \$5,000 involving residences or small commercial establishments in communities

(A) which have a population of under 500; or

(B) which are over 50 miles by air or water transportation from the business place of an electrical administrator licensed under this chapter;

(3) electrical installation on residential property which is owned by the installer or a member of his immediate family and not intended for sale at the time of making the installation;

(4) the operation, maintenance or repair of a television or radio broadcasting system and the installation of a radio broadcasting system under 500 watts input power except for A.C. power supply and wiring;

(5) the installation, maintenance and repair of elevators so long as the work is performed by an agent or employee of the elevator industry and is confined to the elevator control system, which system does not include the power supply, wiring and motor connection;

(6) the maintenance or repair of telephone systems.

(c) Work within the exclusionary provisions of this section is nevertheless subject to the inspection provisions of § 70 of this chapter and must follow the regulations regarding workmanship adopted by the board. (§ 8 ch 158 SLA 1960; am § 1 ch 79 SLA 1967; am § 10 ch 53 SLA 1977)

Sec. 08.50.200. Definitions. As used in this chapter

(1) "board" means the Board of Electrical Examiners;

(2) "electrical administrator" means any person engaged in the business of, or purporting to be engaged in the business of, installing or repairing, or contracting to install or repair, electrical wiring, conduits, devices, fixtures, equipment, or other electrical materials for transmitting, using or consuming electrical energy;

(3) "electrical wiring" means and includes wiring, fixtures, conduits, appliances, devices, equipment, overhead or underground wiring systems, or other equipment in connection with the general distribution or utilization of electrical energy;

(4) "manufacture" means fabrication or completion of a product or electrical apparatus exclusive of its completion or installation at a job site;

(5) "utility" means every corporation (whether public, cooperative or otherwise), company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that owns, operates, manages, or controls any plant or system for

(A) furnishing, by generation, transmission or distribution, electrical service to the public for compensation;

(B) furnishing telecommunications service to the public for compensation. (§ 3(a)(b) ch 158 SLA 1960; am §§ 12, 13 ch 53 SLA 1977)

CHAPTER 32.  
BOARD OF ELECTRICAL EXAMINERS

experience in outside linework as field superintendent, office engineer or similar position; or

Article

- 1. Outside Linework Category (12 AAC 32.010-12 AAC 32.040)
- 2. Outside Communications Category (12 AAC 32.050-12 AAC 32.080)
- 3. Inside Wiring Category (12 AAC 32.090-12 AAC 32.110)
- 4. Inside Communications Category (12 AAC 32.130-12 AAC 32.150)
- 5. Residential Wiring Category (12 AAC 32.170-12 AAC 32.190)
- 6. Examinations (12 AAC 32.210-12 AAC 32.240)
- 7. Applications (12 AAC 32.250-12 AAC 32.260)
- 8. General Provisions (12 AAC 32.900-12 AAC 32.910)

(3) a degree in electrical engineering from an accredited college or university plus one year of current practical experience as a journeyman lineman in outside linework. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045  
AS 08.40.050

12 AAC 32.020. NOTIFICATION. Repealed 7/28/77.

12 AAC 32.021. EXAMINATION FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE OUTSIDE LINEWORK CATEGORY. An applicant for an electrical administrator license in the outside linework category will be examined to determine his or her knowledge of outside linework, familiarity with the applicable portions of the regulations contained in the National Electrical Code and the National Electrical Safety Code, as approved by the American National Standards Institute, other applicable installation and safety regulations approved by the American National Standards Institute, and practical skill and ability in outside linework. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045 AS 08.40.060  
AS 08.40.050 AS 08.40.120

12 AAC 32.030. EXAMINATIONS. Repealed 7/28/77.

12 AAC 32.031. SCOPE OF AN ELECTRICAL ADMINISTRATOR LICENSE IN THE OUTSIDE LINEWORK CATEGORY. (a) The holder of an electrical administrator license in the outside linework category may supervise all work defined in (b) of this section. A person holding a current valid license in outside linework on the effective date of the amendment to this section will be granted a license in outside communications without examination.

(b) Outside linework includes

(1) all work necessary to the assembling, installation, erection, operation, maintenance or repair of all electrical apparatus, devices, wires, cables, supports, insulators, conductors, ducts,

ARTICLE 1.  
OUTSIDE LINEWORK CATEGORY

Section

- 10. (Repealed)
- 11. Qualifications for an electrical administrator license in the outside linework category
- 20. (Repealed)
- 21. Examination for an electrical administrator license in the outside linework category
- 30. (Repealed)
- 31. Scope of an electrical administrator license in the outside linework category
- 40. (Repealed)

12 AAC 32.010. APPLICATION. Repealed 7/28/77.

12 AAC 32.011. QUALIFICATIONS FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE OUTSIDE LINEWORK CATEGORY.

(a) An applicant for an electrical administrator license in the outside linework category shall furnish proof satisfactory to the board that he or she has

(1) three years of current practical experience as a journeyman lineman in outside linework;

(2) four years of current management

and raceways when part of distributing systems outside of buildings;

(2) all underground ducts and cables when they are part of a system of a distributing company or utility;

(3) all outdoor substations and electrical connections up to and including the setting of transformers and the connecting of the primary busses to them;

(4) all outdoor street lighting on public thoroughfares, roadways, and rights-of-way; and

(5) all linework consisting of wood, concrete or metal, or substitutes for those materials; poles or towers, including wires, cables, or other apparatus supported by them. (Eff. 7/28/77, Reg. 63; am 4/11/79, Reg. 70)

Authority: AS 08.40.045  
AS 08.40.050  
AS 08.40.090

12 AAC 32.040. NOTIFICATION OF RESULTS. Repealed 7/28/77.

ARTICLE 2.  
OUTSIDE COMMUNICATIONS CATEGORY

Section

- 50. (Repealed)
- 51. Qualifications for an electrical administrator license in the outside communications category
- 60. (Repealed)
- 61. Examination for an electrical administrator license in the outside communications category
- 70. (Repealed)
- 71. Scope of an electrical administrator license in the outside communications category
- 80. (Repealed)

12 AAC 32.050. REEXAMINATION. Repealed 7/28/77.

12 AAC 32.051. QUALIFICATIONS FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE OUTSIDE COMMUNICATIONS CATEGORY. An applicant for an electrical administrator license in the outside communications category shall furnish proof

satisfactory to the board that he or she

(1) has had two years of current practical experience in outside communications; or

(2) is a graduate of an accredited college or trade school in outside communications. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045  
AS 08.40.050

12 AAC 32.060. FAILURE TO APPEAR FOR EXAMINATION. Repealed 7/28/77.

12 AAC 32.061. EXAMINATION FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE OUTSIDE COMMUNICATIONS CATEGORY. An applicant for an electrical administrator license in the outside communications category will be examined to determine his or her knowledge of outside communications, familiarity with the applicable portions of the regulations contained in the National Electrical Code and the National Electrical Safety Code, as approved by the American National Standards Institute, other applicable installation and safety regulations approved by the American National Standards Institute, and practical skill and ability in outside communications. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045 AS 08.40.060  
AS 08.40.050 AS 08.40.120

12 AAC 32.070. ISSUANCE OF LICENSE. Repealed 7/28/77.

12 AAC 32.071. SCOPE OF AN ELECTRICAL ADMINISTRATOR LICENSE IN THE OUTSIDE COMMUNICATIONS CATEGORY. (a) The holder of an electrical administrator license in the outside communications category may supervise all work defined in (b) of this section.

(b) Outside communications includes

(1) outside linework as defined by sec. 31(b) of this chapter but limited to the installation, operation, maintenance and repair of telephone, telegraph, and intercommunication facilities, up to the first point of distribution or the first terminal inside of building or property lines; and

(2) the installation, maintenance and repair of fire alarm, intrusion alarm or other low voltage signaling systems of 48 volts to ground or less, outside of buildings or property lines where aerial wires or cables are used between buildings or structures up to the first point of attachment of such conductors to those buildings or structures. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045  
AS 08.40.050  
AS 08.40.090

12 AAC 32.080. ADMINISTRATOR OF LICENSE. Repealed 7/28/77.

ARTICLE 3.  
INSIDE WIRING CATEGORY

Section

- 90. Qualifications for an electrical administrator license in the inside wiring category
- 100. Examination for an electrical administrator license in the inside wiring category
- 110. Scope of an electrical administrator license in the inside wiring category

12 AAC 32.090. QUALIFICATIONS FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE INSIDE WIRING CATEGORY. An applicant for an electrical administrator license in the inside wiring category shall furnish proof satisfactory to the board that he or she has

(1) three years of current practical experience as a journeyman electrician in inside wiring;

(2) four years of current management experience in inside wiring as field superintendent, office engineer or similar position; or

(3) a degree in electrical engineering from an accredited college or university plus one year of current practical experience as a journeyman electrician in inside wiring. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045  
AS 08.40.050

12 AAC 32.100. EXAMINATION FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE INSIDE WIRING CATEGORY. An applicant for an electrical administrator license in the inside wiring category will be examined to determine his or her knowledge of inside wiring, familiarity with the applicable portions of the regulations contained in the National Electrical Code and the National Electrical Safety Code, as approved by the American National Standards Institute, other applicable installation and safety regulations approved by the American National Standards Institute, and practical skill and ability in inside wiring. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045 AS 08.40.060  
AS 08.40.050 AS 08.40.120

12 AAC 32.110. SCOPE OF AN ELECTRICAL ADMINISTRATOR LICENSE IN THE INSIDE WIRING CATEGORY. (a) The holder of an electrical administrator license in the inside wiring category may supervise all work defined in (b) of this section and the work defined under the residential wiring category in sec. 190(b) of this chapter. A person holding a current valid license in inside wiring on the effective date of the amendment to this section will be granted a license in inside examination.

(b) Inside wiring includes

(1) installation, construction, operation, maintenance and repair of all electrical work within buildings and within property lines of any given property, and beginning at the secondary side of the transformer, except linework consisting of poles and towers, including wires or cables and other apparatus supported by them, and except outdoor substations as defined under outside linework jurisdiction; and

(2) work starting immediately after the first point of attachment of aerial conductors to buildings when aerial wires or cables are used to provide power for buildings or structures within the property lines of any given property. (Eff. 7/28/77, Reg. 63; am 4/11/79, Reg. 70)

Authority: AS 08.40.045  
AS 08.40.050  
AS 08.40.090

**ARTICLE 4.  
INSIDE COMMUNICATIONS CATEGORY**

**Section**

- 130. Qualifications for an electrical administrator license in the inside communications category
- 140. Examination for an electrical administrator license in the inside communications category
- 150. Scope of an electrical administrator license in the inside communications category

**12 AAC 32.130. QUALIFICATIONS FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE INSIDE COMMUNICATIONS CATEGORY.** An applicant for an electrical administrator license in the inside communications category shall furnish proof satisfactory to the board that he or she

(1) has had two years of current practical experience in inside communications; or

(2) is a graduate of an accredited college or trade school in inside communications. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050

**12 AAC 32.140. EXAMINATION FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE INSIDE COMMUNICATIONS CATEGORY.** An applicant for an electrical administrator license in the inside communications category will be examined to determine his or her knowledge of inside communications, familiarity with the applicable portions of the regulations contained in the National Electrical Code and the National Electrical Safety Code, as approved by the American National Standards Institute, other applicable installation and safety regulations approved by the American National Standards Institute, and practical skill and ability in inside communications. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050  
AS 08.40.060  
AS 08.40.120

**12 AAC 32.150. SCOPE OF AN ELECTRICAL ADMINISTRATOR LICENSE IN THE INSIDE COMMUNICATIONS CATEGORY.** (a) The holder of an electrical

administrator license in the inside communications category may perform all work defined in (b) of this section.

(b) Inside communications includes

(1) work within the inside wiring jurisdiction but limited to the installation, operation, maintenance and repair of telephone, telegraph and intercommunication facilities, beginning at the first point of distribution or the first terminal inside of building or property lines; and

(2) the installation, maintenance and repair of fire alarm, intrusion alarm or other low voltage signaling systems of 48 volts to ground or less, within buildings or within lines, except as defined under sec. 110(b)(2) of this chapter. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050  
AS 08.40.090

**ARTICLE 5.  
RESIDENTIAL WIRING CATEGORY**

**Section**

- 170. Qualifications for an electrical administrator license in the residential wiring category
- 180. Examination for an electrical administrator license in the residential wiring category
- 190. Scope of an electrical administrator license in the residential wiring category

**12 AAC 32.170. QUALIFICATIONS FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE RESIDENTIAL WIRING CATEGORY.** An applicant for an electrical administrator license in the residential wiring category shall furnish proof satisfactory to the board that he or she has two years of current practical experience in residential wiring as a residential wireman. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050

**12 AAC 32.180. EXAMINATION FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE RESIDENTIAL WIRING CATEGORY.** An applicant for an electrical administrator license in the residential wiring category will be examined to determine his or her knowledge of residential wiring, familiarity with the applicable

portions of the regulations contained in the National Electrical Code and the National Electrical Safety Code, as approved by the American National Standards Institute, other applicable installation and safety regulations approved by the American National Standards Institute, and practical skill and ability in residential wiring. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050  
AS 08.40.060  
AS 08.40.120

#### 12 AAC 32.196. SCOPE OF AN ELECTRICAL ADMINISTRATOR LICENSE IN THE RESIDENTIAL WIRING CATEGORY.

(a) The holder of an electrical administrator license in the residential wiring category may supervise all work defined in (b) of this section on a residential dwelling unit not exceeding two stories in height and no larger than a four-plex.

(b) Residential wiring includes inside wiring and inside communications work as defined in secs. 110(b) and 150, respectively, of this chapter, but is limited to residential occupancies described in (a) of this section. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045  
AS 08.40.050  
AS 08.40.090

### ARTICLE 6. EXAMINATIONS

#### Section

- 210. Examination
- 215. Examination review
- 220. Reexamination
- 230. Notice of examination
- 240. Examination papers

12 AAC 32.210. EXAMINATION. (a) Each part of an examination must be passed with a minimum score of 70 percent.

(b) An applicant may not be examined for more than two electrical administrator license categories at any one scheduled examination. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045  
AS 08.40.050  
AS 08.40.120

12 AAC 32.215. EXAMINATION REVIEW. (a) A person receiving a failing score may review his or her examination in the presence of at least one board member if he or she makes a request to the board before the recess of the board's regularly scheduled meeting the day immediately following the examination.

(b) An examination review shall be conducted the day the request for review is made or the following day.

(c) Upon completion of an examination review with an applicant, the board member reviewing the examination will prepare a written and signed statement of any changes the board member determines should be made to the original examination score.

(d) The board will review and act upon all written statements of recommended changes before the adjournment of the board's regularly scheduled meeting immediately following the examination.

(e) The written and signed statement of recommended changes will be returned with the original and unaltered examination papers to the department following the board's meeting. (Eff. 5/25/79, Reg. 70)

Authority: AS 08.40.050  
AS 08.40.120

12 AAC 32.220. REEXAMINATION. (a) An applicant failing part of the examination will be allowed to retake the parts failed if he or she notifies the department of his or her intent to retake the examination at least 30 days before the next scheduled examination.

(b) An applicant who fails to retake the parts failed within one year must retake the entire examination. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050

12 AAC 32.230. NOTICE OF EXAMINATION. Candidates whose applications for examination have been accepted will be notified of the time and place of examination at least two weeks before the examination. Notice of the examination will also be published in major newspapers at least 30 days before the examination. (Eff. 4/11/79, Reg. 70)

Authority: AS 08.40.050  
AS 08.40.060

**12 AAC 32.240. EXAMINATION PAPERS.** All examination papers will be preserved for a period of at least six months after notification of grade results, during which time any candidate who has failed the examination may inspect his papers in the presence of a board member or his designee. However, no person may inspect examination papers during the 30 days immediately preceding any examination. (Eff. 4/11/79, Reg. 70)

Authority: AS 08.40.050  
AS 08.40.060  
AS 08.40.120

**ARTICLE 7.  
APPLICATIONS**

**Section**

- 250. Application; forms, supporting evidence, and fee
- 260. Time and place for filing applications

**12 AAC 32.250. APPLICATION; FORMS, SUPPORTING EVIDENCE, AND FEE.** (a) An application for initial licensure must be submitted on a form provided by the department with

(1) a check or money order in the amount specified in (b) of this section;

(2) transcripts from an accredited school or trade school attended by applicant;

(3) a certified copy of the applicant's degree awarded by an accredited school or certificate from trade school;

(4) evidence of experience required by this chapter.

(b) The appropriate fee under AS 08.40.150 or 08.40.135(b) must accompany an application. The fees under AS 08.40.150 for original license and renewal must be paid for each category applied for. (Eff. 4/11/79, Reg. 70)

Authority: AS 08.40.050  
AS 08.40.110  
AS 08.40.150

**12 AAC 32.260. TIME AND PLACE FOR FILING APPLICATIONS.** An application together with the required fee must be filed at least 10 days before a regularly scheduled board meeting in order to be considered at that meeting. Regular meetings are held in the months of February, May, August, and November. (Eff. 4/11/79, Reg. 70)

Authority: AS 08.40.050  
AS 08.40.110  
AS 08.40.150

**ARTICLE 8.  
GENERAL PROVISIONS**

**Section**

- 900. Licensed electrical administrator is responsible for completed project
- 910. Definitions

**12 AAC 32.900. LICENSED ELECTRICAL ADMINISTRATOR IS RESPONSIBLE FOR COMPLETED PROJECT.** Completion of a project conducted under an electrical administrator's license constitutes certification by the administrator that work performed and materials used conform to applicable codes and standards. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050  
AS 08.40.130

**12 AAC 32.910. DEFINITIONS.** In this chapter

(1) "board" means the Board of Electrical Examiners;

(2) "department" means the Department of Commerce and Economic Development;

(3) "four-plex" means a building containing four dwelling units erected on a common foundation;

(4) "journeyman lineman" or "journeyman electrician" means a person who has at least four years or 8,000 hours experience in the electrical trade and holds a certificate of fitness as issued by the Department of Labor under AS 18.62;

(5) "residential wireman" means a person who has at least two years or 4,000 hours experience in the residential wiring trade and holds or is otherwise entitled to hold a certificate of fitness as issued by the Department of Labor under AS 18.62. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050

TO: [

DATE: June 13, 1979

Don Hostak, Director  
 Div. of Occupational Licensing  
 Dept. of Commerce and  
 Economic Development

FILE NO:

TELEPHONE NO:

FROM: AVRUM M. GROSS  
 ATTORNEY GENERAL

SUBJECT: AS 08.40 and AS 08.99  
 Enforcement Responsibilities

By:   
 Norman E. Staton  
 Assistant Attorney General

You have requested an opinion as to which department has the authority and responsibility for enforcing the provisions contained in AS 08.99, regarding the Board of Welding Examiners and the Board of Electrical Examiners.-08.04.

After reviewing the pertinent provisions, it is our opinion that the Department of Commerce and Economic Development ("Commerce") and the Commissioner of Labor ("Labor") have specific statutory authority for enforcement and investigation of complaints regarding Electrical Examiners, (AS 08.40) and therefore have concurrent discretionary authority. However, while Commerce has discretionary authority for enforcement and investigation of complaints regarding the Board of Welding Examiners (AS 08.99), Labor only has the authority to act if requested to act by the Board.

Commerce and Labor have concurrent discretionary authority to investigate and enforce provisions regarding Electrical Examiners (AS 08.40).

AS 08.01.087 provides:

Sec. 08.01.087. Powers and duties of department. (a) The department may upon its own motion, conduct investigations to determine whether any person has violated a provision of this chapter or a regulation adopted under it or a provision of a chapter in this title dealing with one of the boards listed in § 10 of this chapter or a regulation adopted by one of those boards, or to secure information useful in the administration of this chapter.

(b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or any of the laws pertaining to or regulations adopted

by the boards listed in § 10 of this chapter, he may, if he considers it in the public interest, and after notification to all board members by telephone or telegraph of a proposed order or action unless a majority of the members of the board object within 10 days, ... .

AS 08.01.110 provides in part: "(Definitions.) In this chapter ... (2) 'department' means the Department of Commerce and Economic Development."

The powers and duties of Commerce embrace the boards listed in AS 08.01.010, which provides in part:

(Applicability of Chapter.) This chapter applies to the ...

- (7) Board of Electrical Examiners;
- (17) Board of Welding Examiners

As a result, under the provisions of AS 08.01.087, AS 08.01.110(2) and AS 08.01.010(7) and (17), Commerce may, upon its own motion, conduct investigations and enforce the provisions of AS 08.40, Electrical Administrators and AS 08.99, Board of Welding Examiners.

AS 08.40.175, regarding Electrical Examiners, provides:

Sec. 08.40.175. Cease and desist order.

(a) If the commissioner of labor determines that a person is acting as an electrical administrator in violation of this chapter, he may issue a cease and desist order prohibiting further action by the person as an electrical administrator. The cease and desist order remains in effect until the person has submitted evidence acceptable to the commissioner of labor showing that the violation has been corrected.

(b) A person affected by an order issued under (a) of this section may seek equitable relief preventing the commissioner of labor from enforcing the order.

As a result, AS 08.40.175 grants authority to Labor to determine if an electrical examiner is acting in violation of the chapter. In order for Labor to make a determination, it must have the authority to investigate. If the commissioner determines that action is warranted, he or she may issue a cease and desist order and thereby enforce the provisions of the chapter.

Therefore, AS 08.01.87 and AS 08.40.175 grant Commerce and Labor concurrent discretionary authority to investigate and enforce the provisions of AS 08.40, Electrical Administrators.

Due to the fact that Commerce and Labor have concurrent discretionary authority, it would be advisable for the departments to cooperate and coordinate their activities in the area.

Commerce has discretionary authority to investigate and enforce provisions of the Board of Welding Examiners (AS 08.99) while Labor only has authority to do so if requested by the Board.

As discussed above, AS 08.01.087 grants Commerce discretionary authority upon its own motion, to conduct investigations and enforce the provisions of AS 08.99, Board of Welding Examiners.

On the other hand, AS 08.99.080(b) requires Labor to investigate and enforce provisions of the chapter upon request by the Board of Welding Examiners. AS 08.99.080(b) provides:

(b) The board may request technical personnel from the Department of Labor for the purpose of reviewing and analyzing reports and may request field inspection by the department for the purpose of assuring compliance with, and enforcement of the regulations, rules and orders promulgated under §§ 10-110 of this chapter.

(Emphasis added.) If requested to investigate or enforce, Labor would have concurrent authority with Commerce.

June 13, 1979

- 4 -

Although the Department of Commerce and Economic Development has discretionary authority while the Department of Labor has mandatory authority, we again recommend the departments work out an arrangement to handle this matter, or in the alternative, have the legislature resolve the matter.

NES:bwb

ATTACHMENT I

EXHIBIT "A"

BOARD OF ELECTRICAL EXAMINERS

1978 ANNUAL REPORT

EXHIBIT "A"

5 members

Yes

\* Section 1.AS 08.40.010 is ammended to read:

Sec 08.40.010. Creation and membership of the board. There is hereby created a board of Electrical Examiners consisting of three members who are licensed electrical administrators and two members drawn from the public at large.

Rationale: Since regulation affects the vital interests of consumers, it is incumbent upon the legislature to develop a forum upon which public views can be heard.

\* Section 2.AS 08.40.030 is ammended to read:

Sec 08.40.030 Chairman of the board. The board shall elect one of its members as chairman. The chairman shall be a licensed electrical administrator.

California Example P.11  
NO

Rationale: The Board rejects the philosophy that only members of our occupational group are qualified to make judgements about entrance standards, examination content, or disciplinary matters. We do feel, however, that the technical nature of our industry requires the presence of a knowledgeable, technically qualified chair person to represent the Board on a day to day basis.

Parliamentarian

Yes

\* Section 3.AS 08.40.040 is ammended to read:

Sec 08.40.040 Board meetings. The Board shall hold a regular quarterly (annual) meeting. The Board may hold special meetings at the call of the

Chairman with prior approval of the Governor. Three (two) members constitute a quorum.

Rationale: The board regularly holds 4 meetings a year and this is the minimum necessary to satisfy the public need. The quorum limitation must be increased to accommodate the public members requested in Section 1, above.

\* Section 4.AS 08.40.090

Sec 08.40.090 License required (A) No person may act as an electrical administrator in the state without a license issued by the board.

NO { 1. No person may submit a bid or offer to perform electrical work in the state without a license issued by the board.

(B) A person licensed under this chapter may perform or offer to perform electrical work only in a category for which he is licensed.

Rationale: A person who responds to an invitation for bids is purporting to be engaged in the business of electrical contracting unless, as an unlicensed practitioner, he acknowledges his inability to perform the work until he is licensed. Without this contingency, an offer made or contract entered into is, in effect, an agreement to commit a crime and is in violation of the public policy of the state.

*Ask  
BLANC...*

\* Section 5.AS 08.40.120 is amended to read:

Sec 08.40.120 Examination of applicant. Each applicant shall be examined to determine his knowledge of electrical installations and wiring, familiarity with the regulations contained in the National Electrical Code and the National Electrical Safety Code, as (approved by the American National Standards Association) adopted and amended by title 18,

article 6 of the Alaska Health and Safety Code, other appropriate  
installation and safety regulations (approved by the American Standards Assoc.),  
and his personal skill and ability.

Rationale: The legislature of the state of Alaska enacts statutory  
regulations dealing with occupational health and safety. These statutes  
are not approved by the American Standards Association and as a consequence  
of the wording of this section, applicants can not be examined on their  
content. (Yet) knowledge of these (and other similar) requirements will  
directly affect the quality and safety of contractor's work.

\* Section 6. AS 08.40.135 is ammended to read:

Sec 08.40.135 Renewal and Reinstatement.

- NO →
- (a) A license issued under this chapter, unless revoked or suspended,  
is non-transferrable and may be renewed biennially on a date set  
by the department without examination, upon submission of adequate  
proof of activity to the board and by appropriate application. ?
- OK →
- (b) A lapsed license may be reinstated by payment of all unpaid renewal  
fees and a penalty fee \$25.00 for each year the license has been  
lapsed, unless the license has been lapsed for more than two (three)  
years (and the Board has reason to believe that it may be necessary  
to require) in which case the licensee will be required to take  
and pass the examination given under section 120 of this chapter.
- OK →
- (c) A licensee who fails to submit adequate proof of activity to the board  
for more than two consecutive years will be required to take and pass  
the examination given under section 120 of this chapter to renew his  
license.

Rationale: At present most inactive practitioners can preserve their  
right to practice by simply paying the renewal fee. By keeping their  
licenses in force, they are able to resume practice at any time even  
though they may have failed to retain their competence.

*Reciprocity*

\* Section 7. AS 08.40.165 Is enacted to read:

Sec 08.40.165 Licensure by endorsement. An applicant who is a licensed electrical administrator in another state may apply for licensure without examination upon providing proof satisfactory to the board that;

(A) he is currently actively engaged in the electrical contracting industry and,

(B) The standards of entry in his state of licensure are at least equal to those of this state.

*How is this equality determined?*

Rationale: In order to encourage the competitive process, it is necessary to provide out of state applicants with fair and reasonable access to our credentialing procedures.

\* Section 8. AS 08.40.170 is amended by enacting sub-section (a)(4) to read:

Sec 08.40.170 Denial, Suspension, and revocation of license.

*A man can lose his license if someone 'tells' on him --- to much like Big Brother.*

(a) (4), The licensee has knowingly permitted electrical work to be accomplished in this state under the guise of his license and without his supervision.

Rationale: The accomplishment of electrical work by an unlicensed person is a crime against the state. Persons who deliberately allow other, unlicensed persons to accomplish electrical work under the fraudulent "umbrella" of licensed activity are themselves guilty of violating this statute.

\* Section 9. AS 08.400.200 (5)(B) is amended to read:

Sec 9 AS 08.40.200 (5)(B) Definitions. Furnishing (telecommunications), telephone or telegraph service to the public for compenstation.

Rationale: When this definition was added to the statute in 1977, the intent of both the Board and the Legislature was to exclude the activities of Public Service corporations (ie: Municipal Utilities, long lines carriers, etc.,) from the requirements of this chapter. Unfortunately, the wording

we jointly selected has resulted in considerable controversy and needs to be clarified.

\* Section 10.AS 08.40.200 is amended by enacting sub-section 6 to read:

Sec 08.40.200 (6) Definitions "repair" means the performance or accomplishment of work, of a routine recurring nature or otherwise, on an integral electrical circuit component which is or is capable of being energized, when such work involves the removal, replacement, disconnection or reconnection of that integral component.

Rationale: There has been a great deal of controversy over the last several years revolving around the legislative intent of the word "repair". Only by adding a firm definition for this word can we hope to achieve uniform comprehension and enforcement of this statute.

*National Code*  
*OK*  
\* Section 11.AS 18.60.580 is repealed and re-enacted to read:

Sec 18.60.580. Minimum electrical standards. The latest published editions of the National Electrical Code and the National Electrical Safety Code, both as approved by the American National Standards Institute constitute the minimum Electrical Safety standards of the state.

Rationale: It is both ridiculous and expensive for the legislature to have to review this act every two to three years to change a date so that we may once again be in tune with the rest of the U.S.A.

\* Section 12.AS 18.60.590 is amended to read:

Sec 12.AS 18.60.590 State, Borough and City electrical Codes

Sec 12. AS 18.60.590 Electrical Codes

- (A) The (department) Board of Electrical Examiners may be regulation adopt ammendments to the (1971) National Electrical Code and/or the National Electrical Safety Code (as approved and issued by the American Standards Association) provided such ammendments result in standards no less stringent than those prescribed by section 580 of this chapter.
- (B) This chapter does not affect the authority of any organized borough, municipality or rural electrification association to prescribe by ordinance, rule or order, standards for their respective areas of jurisdiction no less stringent than the standards prescribed by the (department) Board or those established by section 580 of this chapter.

Rationale: The Department of Labor employes electrical inspectors, not administrators. The technical expertise necessary to formulate ammendments to the National Standards more properly sites with the Board. Additionally, as this statute is now worded, no one can ammend the National Electrical Safety-Code regardless of the rationale behind such an ammendment. Please see attach-ment 1 to the exhibit for an example of why the Board needs this authority.

\* Section 13.AS 18.60.600 is repealed and re-enacted to read:

Sec 18.60.600 Powers and duties of the Board and the Department;

(A) The Board may:

1. Promulgate regulations to carry out the purposes of section 580-610 of this chapter.
2. Inspect, or cause to be inspected, the electrical wiring of any place of employment or public structure in the state.

*leave regulations w/ the Board.*

(B) The department shall:

1. Promulgate regulations to carry out the purposes of section 620-660 of this chapter.
2. Keep a record of all inspection fees collected.
3. Keep a record of all electrical inspections conducted.

Rationale: This revision is necessary to accomodate the other contemplated changes to this chapter.

*NO*  
-37-

*its not.*

\* Section 14.AS 18.60.610 is amended to read:

Sec 18.60.610 Delegation of Authority. Upon application to and approval of the Board (department), a person, corporation, electric utility firm, public utility district, Rural Electrification Association, or Municipal-Utility District furnishing electrical current may be authorized (by the commissioner) to inspect the electrical wiring for a public or commercial structure as defined in section 660 of this chapter to which it is to furnish electrical current before energizing the electrical system on, in, or about the premises. Authorization by the Board (commissioner) under this section constitutes a grant of full authority to act within the provisions of sections 580-660 of this chapter with the same immunities and privileges accorded to the state in the performance of these duties. A person or entity whose electrical wiring installation is found, by the authorized inspector, not to meet the standards prescribed, has the right to appeal to the Board (commissioner) for a new inspection. The Board (commissioner) shall, within 15 days, furnish a new inspection by a designee not associated with the person, firm, or utility who did the original inspection

Rationale: The board has the authority (Granted by AS.08.40.070) to conduct inspections but lacks the tool to implement it. Additionally, the technical direction required by the State Electrical Inspectors must come from the Board as the department has no source of expertise other than the inspectors themselves.

\* Section 15.AS 18.60.640 is amended to read:

Sec 18.60.640 Scope of work covered;

(A) Sections 580-660 of this chapter apply to (cover only) new installations and alterations to existing installations.

18.60.580

(B) These standards are the required (recommended) minimum standards for all new structures in the state

Rationale: The wording changes are necessary to bring this section into agreement with other sections of this chapter.

\* Section 16.AS 18.60.660 (4) is amended to read:

Sec 18.60.660 Definitions in sections 580-660 of this chapter. (4)

"Public Structures" means buildings such as hotels, resident housing, except homes owned by the installer and not intended for sale at the time of making the installation, (with more than one rental unit) restaurants, taverns, lodging houses, children's homes, auditoriums, town halls, or any structure designed or used for public assembly whether publicly or privately owned or financed.

Rationale: This change would allow for inspection of residential occupancies built by contractors and any other dwelling unit intended for rental occupancy regardless of the number of units involved. This authority is required to allow us to comply with the intent of AS 08.40 which again, is to protect the public.

*OK to add.*

\* Section 17. AS 18.60.660 is amended by enacting sub-section 5 to read:

Sec 18.60.660(5) "Board" means the board of Electrical Examiners as created by Alaska Statute AS 08.40.

Rationale: The necessity for this revision is self evident.

*is already stated this way. p 44*

\* Section 18.AS 18.62.010 is amended to read:

Sec 18.62.010 Certificate of fitness required. In connection with work performed subject to the standards established in (AS 18.60.580 and) AS 18.60.705, no person may be employed without a certificate of fitness to perform work.

Rationale: The board considers the certificate of fitness program to be an abrogation of an individual's constitutional right to work at his trade. Additionally, there is absolutely no need for two licensing programs within the same occupation. If the contractor is licensed and responsible for the work accomplished under his license, why then regulate the workman? "There is little justification for licensure if practitioners work under supervision. If regulation is needed, it should be the supervisor who is regulated".<sup>1</sup>

Cost Impact:

*good pt.*

The net result of the foregoing legislative package would be a cost increase of approximately \$2,500.00 a year to support the two new board members and a cost decrease of untold magnetude in the reduction of administrative costs pertinent to the certificate of fitness program. The machinery for supporting the balance of this legislative package already exists and would neither expand nor contract as a result of these changes.

1. Occupational licensing: questions a legislator should ask, Page 15; Shimberg & Roederer, 1978.

D

(Health and Safety)  
Article 6. Electrical Safety.

Section

- 580. Minimum electrical standards
- 590. Borough and city electrical safety codes
- 600. Powers and duties of the department
- 610. Delegation of authority
- 620. Inspection fees
- 630. Enforcement of compliance
- 640. Scope of work covered
- 650. Penalty for violations
- 660. Definitions

Sec. 18.60.580. Minimum electrical standards. The Department of Labor shall adopt the 1971 published edition of the National Electrical Code approved by the American Standards Association, and the latest published edition as of August 5, 1969 of the National Electrical Safety Code issued by the U.S. Department of Commerce, Bureau of Standards, as the minimum electrical safety standards of the state. (§ 1 ch 89 SLA 1969; am § 1 ch 37 SLA 1972)

Sec. 18.60.590. Borough and city electrical safety codes. (a) The department may by regulation adopt amendments to the 1971 National Electrical Code as approved and issued by the American Standards Association.

(b) This chapter does not affect the authority of any municipality or rural electrification association to prescribe by ordinance, rule, or order standards for their respective areas of jurisdiction not less stringent than the standards prescribed by the department or those established under § 580 of this chapter. (§ 1 ch 89 SLA 1969; am § 42 ch 69 SLA 1970; am § 29 ch 53 SLA 1973)

Sec. 18.60.600. Powers and duties of the department. (a) The department may

(1) promulgate regulations to carry out the purposes of §§ 580-660 of this chapter;

(2) inspect the electrical wiring of any place of employment or public structure in this state.

(b) The department shall

(1) keep a record of all inspection fees collected;

(2) keep a record of all electrical inspections conducted.  
(§ 1 ch 89 SLA 1969)

50-232 would  
Repeal  
this

*all repealed by SB-232*

Sec. 18.60.610. Delegation of authority. Upon application to the department, a person, corporation, electric utility firm, public utility district, rural electrification association, or municipal utility district furnishing electrical current may be authorized by the commissioner to inspect the electrical wiring for a public or commercial structure as defined in § 660 of this chapter to which it is to furnish electrical current before energizing the electrical system on, in, or about the premises. Authorization by the commissioner under this section constitutes a grant of full authority to act within the provisions of §§ 580-660 of this chapter with the same immunities and privileges accorded to the state in the performance of these duties. A person or entity whose electrical wiring installation is found, by the authorized inspector, not to meet the standards prescribed has the right to appeal to the commissioner for a new inspection. The commissioner shall, within 15 days, furnish a new inspection by a designee not associated with the person, firm or utility who did the original inspection. (§ 1 ch 89 SLA 1969)

Sec. 18.60.620. Inspection fees. A person, corporation, electric utility firm, public utility district, rural electrification association or municipal utility district authorized under § 610 of this chapter to provide inspection services may charge a fee for these services. After notice and hearing, the department shall set a schedule of maximum fees for inspection services rendered under §§ 580-660 of this chapter. The department may review the schedule every two years after giving notice and hearing. (§ 1 ch 89 SLA 1969)

Sec. 18.60.630. Enforcement of compliance. An authorized inspector under this chapter shall give written notice to the owner of constructed premises, or the contractor of premises under construction, of each violation of applicable electrical standards discovered as a result of his inspection. If within 15 days after receipt of written notice of an electrical violation, the person notified does not rectify the condition, the inspector shall notify the electric utility firm, public utility district, rural electrification association or municipality district supplying power to the premises. Upon notice in writing from the inspector, the supplier of electrical power may discontinue services to the premises where the alleged violation exists. (§ 1 ch 89 SLA 1969)

Sec. 18.60.640. Scope of work covered. (a) Sections 580-660 of this chapter cover only new installations and alterations to existing installations.

(b) These standards are the recommended minimum standards for all new structures in the state. (§ 1 ch 89 SLA 1969)

Sec. 18.60.650. Penalty for violations. A person who installs electrical wiring not in compliance with minimum electrical standards as set out in § 580 of this chapter, and who fails to correct this wiring

after having been notified in writing by an authorized inspector, upon conviction, is punishable by a fine of not more than \$1,000. (§ 1 ch 89 SLA 1969)

Sec. 18.60.660. Definitions. In §§ 580-660 of this chapter

- (1) "department" means the Department of Labor;
- (2) "commissioner" means commissioner of the Department of Labor;
- (3) "electrical wiring" means the entire electrical system, including all conducting and shielding material, all regulatory and safety apparatus, and all devices and techniques used in the process of installation;
- (4) "public structures" mean buildings such as hotels, resident housing with more than one rental unit, restaurants, taverns, lodging houses, children's homes, auditoriums, town halls, or any structure designed or used for public assembly whether publicly or privately financed. (§ 1 ch 89 SLA 1969)

(Health and Safety)  
Chapter 62. Certificates of Fitness.

## Section

- 10. Certificate of fitness required
- 20. Application for and issuance of certificate
- 30. Fee
- 40. Duration of certificate
- 50. Issuance and contents of certificate
- 60. Power of the department
- 70. Persons required to obtain certificate
- 80. Penalty

Sec. 18.62.010. Certificate of fitness required. In connection with work performed subject to the standards established in AS 18.60.580 and AS 18.60.705, no person may be employed without a certificate of fitness to perform the work. (§ 1 ch 12 SLA 1974)

Sec. 18.62.020. Application for and issuance of certificate. The department shall issue certificates of fitness. The certificate shall be issued only to an individual. An applicant for a certificate shall apply in writing, under oath, on a form prescribed by the department containing:

- (1) the name and address of the applicant;
- (2) his age;
- (3) his citizenship; and
- (4) other information relevant to licensing which the department requires. (§ 1 ch 12 SLA 1974)

Sec. 18.62.030. Fee. An applicant shall pay an initial fee of \$15 with his application. (§ 1 ch 12 SLA 1974)

Sec. 18.62.040. Duration of certificate. The department may cancel a certificate for cause. Certificates, if not cancelled for cause, are renewable upon payment of an annual renewal fee of \$5. (§ 1 ch 12 SLA 1974)

Sec. 18.62.050. Issuance and contents of certificate. (a) If, upon investigation and examination by the department, the applicant is found competent by reason of training and experience, the department shall issue a certificate of fitness. The certificate shall set out the competency of the applicant and provide for his positive identification, and shall be carried on the person engaged in work subject to the requirement of a certificate of fitness under this chapter.

(b) An applicant who engaged in a trade subject to the requirement of a certificate of fitness under this chapter who has been engaged in that trade in the state for one year or more before January 1, 1973, upon making a satisfactory showing of qualifications to the department, shall be issued a certificate without examination.

(c) Verification by an Alaska-based labor union of a member's qualification to meet the requirements for a certificate of fitness may be accepted in lieu of examination or other requirement for issuing a certificate under this chapter. (§ 1 ch 12 SLA 1974)

Sec. 18.62.060. Power of the department. The department shall issue orders, rules and regulations necessary to carry out the purposes of this chapter. (§ 1 ch 12 SLA 1974)

Sec. 18.62.070. Persons required to obtain certificate. A person engaged in one of the following trades shall first obtain from the department the appropriate certificate of fitness in that trade:

(1) electrical wiring subject to the standards established in AS 18.60.580; and

(2) plumbing subject to the uniform plumbing code, as established in AS 18.60.705. (§ 1 ch 12 SLA 1974)

Sec. 18.62.080. Penalty. A person, either an employer or employee, who violates a provision of this chapter or of a regulation issued under this chapter is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than \$500. (§ 1 ch 12 SLA 1974)

G

STATE OF ALASKA  
Real Estate Commission  
August, 1979

Findings

Review of the responsibilities and activities of the Real Estate Commission indicates that regulation of this profession is in the public interest and should continue. Substantial amounts of money may be involved in real estate transactions which are often difficult for the consuming public to interpret and rely upon. The Commission is carrying out its functions in a responsible manner and appears to be meeting needs and demands reasonably.

I. General Information

A. Regulated Parties

1. Real Estate Brokers
2. Associate Real Estate Brokers
3. Real Estate Salesmen

B. Definitions

"(1) 'real estate' means an interest or estate in land, corporeal or incorporeal;" (AS 08.88.431)

C. Nature and Composition of Commission

1. Commission members and terms:

Four-year term (no restrictions regarding consecutive terms or number of terms).

Lance Youngquist (Chairman)	ends January 31, 1981
Karen Morris	ends January 31, 1981
Carol Maser	ends January 31, 1980
Ken Calhoon	ends January 31, 1983
Frank Austin	ends January 31, 1980
Gary Wilkin	ends January 31, 1983
Gail Glad	ends January 31, 1983

2. Representation:

Profession = 5  
Public = 2

3. Qualifications:

"(a) Five members of the commission must be real estate brokers or associate brokers who have been licensed real estate brokers or licensed associate brokers in Alaska for at least three years before appointment. Two members of the board must be public members in accordance with AS 08.01.025.

(b) One member of the commission shall be from the First Judicial District, one shall be from the Second Judicial District, one shall be from the Third Judicial District, one shall be from the Fourth Judicial District and one shall be from the state at large. However, if no person is eligible or available for appointment from the Second Judicial District, then two shall be from the state at large." (AS 08.88.041)

D. Licensing Data

Current active licenses (effective through July, 1979)

Brokers	=	449
Associate Brokers	=	342
Salesmen	=	<u>1,967</u>
Total		2,758

All licentiates are in-State.

E. Fees

Real estate broker or associate broker

1. examination	\$ 50.00
2. reciprocity	50.00
3. initial license	100.00
4. biennial renewal - active license	100.00
5. beinnial renewal - inactive license	25.00
6. surety fee	125.00

Real estate salesmen

1. examination	\$ 50.00
2. reciprocity	50.00
3. initial license	50.00
4. biennial renewal - active license	50.00
5. biennial renewal - inactive license	25.00
6. surety fee	40.00

For amended license 2.00

F. Examination Information

1976

<u>Month</u>	<u>Broker Passed</u>	<u>Salesman Passed</u>	<u>Broker Failed</u>	<u>Salesman Failed</u>	<u>No Shows</u>	<u>Total Registered</u>
January	18	116	50	101	65	350
April	27	118	31	118	86	380
July	(126)		32	109	88	355
October	20	93	37	103	55	308

1977

<u>Month</u>	<u>Broker Passed</u>	<u>Salesman Passed</u>	<u>Broker Failed</u>	<u>Salesman Failed</u>	<u>No Shows</u>	<u>Total Registered</u>
January	52	126	24	127	68	397
April	46	218	15	133	83	495
July	48	223	13	113	123	520
October	31	181	13	153	117	495
Nov.	16	66	2	26	54	164

1978

<u>Month</u>	<u>Broker Passed</u>	<u>Salesman Passed</u>	<u>Broker Failed</u>	<u>Salesman Failed</u>	<u>No Shows</u>	<u>Total Registered</u>
January	11	130	11	104	79	335
February	4	21	1	13	13	52
March	28	112	11	90	69	310
April	20	135	9	92	68	324
May	17	76	8	75	91	267
June	12	49	9	45	40	155
July	7	83	14	48	30	182
August	3	55	0	51	41	150
September	7	22	6	38	33	106
October	28	52	7	107	51	245
November	13	71	10	62	54	210

1979

<u>Month</u>	<u>Broker Passed</u>	<u>Salesman Passed</u>	<u>Broker Failed</u>	<u>Salesman Failed</u>	<u>No Shows</u>	<u>Total Registered</u>
January	19	91	17	124	57	308
February	9	18	3	15	13	58
March	24	82	6	62	48	222
April	30	83	0	66	66	245
May	24	59	9	48	36	176
June	12	46	5	37	50	150

G. Commission Revenues and Expenditures

	FY '76	FY '77	FY '78	FY '79
Receipts	\$183,184.50	\$129,017.00	\$299,849.00	\$156,135.72
- refunds	<u>4,687.00</u>	<u>9,484.00</u>	<u>14,214.08</u>	<u>13,476.00</u>
Total	\$178,497.50	\$119,533.00	\$285,634.92	\$142,659.72

Expenditures

Transportation	\$ 3,153.63	\$ 3,213.48	\$ 4,079.75	\$ 5,824.75
Per Diem	3,157.15	5,230.50	6,035.89	7,623.76
Phone	800.82	1,334.15	1,687.91	3,118.78
Printing, Adver. & Postage	1,781.13	4,281.35	4,622.51	1,831.61
Fees & Services	10,054.55	15,500.47	20,517.25	20,072.50
Rents, Leases & Other	171.19	89.00	1,234.61	2,131.09
Exec. Officer (Salary & Benefits)	<u>18,083.29</u>	<u>29,331.19</u>	<u>30,310.73</u>	<u>34,324.92</u>
Total	<u>\$ 37,201.76</u>	<u>\$ 58,980.14</u>	<u>\$ 68,488.65</u>	<u>\$ 74,977.41</u>
Surplus	\$141,295.74	\$ 60,552.86	\$217,146.27	\$ 67,682.31
Deficit	--	--	--	--

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

H. Complaints\*

FY '78 Received 107 written complaints  
Closed 94

Two licenses were revoked.

One license was denied.

One applicant was denied admittance to the examination.

One hearing on two licensees is in progress.

One exam score was cancelled (cheating - 2 applicants).

One hearing was requested on 9/1/78 by the commission but  
has not occurred.

FY '79 Received 127 written complaints  
Closed 56

43 referred to investigations.

14 inactive.

One revoked license.

One referred to Banking and Securities.

Four advisory (letters but not actual complaints - no action  
is taken on these unless writer follows up).

Two conflict of interest - cases involving family, friends  
or commission members.

Six cases are still with the Executive Secretary pending receipt  
and/or evaluation of responses.

\*See Appendix F

## II. Analysis

- A. To what extent has the Real Estate Commission operated in the public interest?

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Duties of the Commission include passing on applicant qualifications, preparation and grading of examinations, suspension and/or revocation of licenses, prosecutions of licensing violations, and publication of subsequent disciplinary actions.

Activities by a licensee which constitute grounds for disciplinary action are detailed in Commission statutes and regulations. Enforcement and complaint procedures for real estate matters differ somewhat from the procedures delineated for other boards and commissions supported by the Division of Occupational Licensing. Those procedures (see Appendix A) are acceptable to all concerned parties but apparently are not being completely adhered to and, as a result, are not as effective as they might otherwise be. The Real Estate Commission, in contrast to all other boards and commissions except the Board of Nursing, enjoys the services of an Executive Secretary who is a Division of Occupational Licensing employee assigned specific duties with respect to the Commission (see Appendix B). This person is in a particularly significant position in that (s)he serves as liaison among Commission members, licensees and the public. Many questions and/or complaints can be and have been resolved at this level.

As of July 31, 1979, there were 2,758 active licenses in this profession. While the number of applicants per test has not particularly increased, the number of tests given each year has. In 1976, four examinations were given; in 1977, five; and in 1978, eleven. Total registered applicants for examination in 1978 was 2,636. Initial application forms and fees are received and processed by the Division of

Occupational Licensing. Information is submitted by that agency to the examination proctor(s) and to the Educational Testing Service, which provides the examination to this State and several others. If the individual subsequently passes the examination, (s)he then submits application and fee for a license. ETS has recently offered to take over the entire examination procedure and to provide results to the Division for licensure of those individuals who have passed. The fee owed by the applicant to ETS would be \$11.00 as opposed to the \$50 fee now being paid to the Division which is nonrefundable. By memorandum of July 5, 1979 (see Appendix C), the Department of Law, indicates that the \$11 could be credited toward the \$50 examination fee to "be consistent with the statute." Of course, if the statute were amended, this problem would be resolved. Adoption of the ETS proposal would eliminate a considerable amount of paperwork, would be less expensive for the applicant, and would require license application only after passing the examination.

Another pending issue is that of allowing reciprocity among all states utilizing the ETS examination. Under such a program, applicants from another jurisdiction would only be required to pass the Alaska law portion of the exam. Although AS 08.88.261 allows for licensure by reciprocity, the Commission does not use this method and has, in fact, cancelled its previous agreements with other states. Under reciprocity, only applicants from states with which agreements have been established may be admitted without examination regardless of individual qualifications. Endorsement, however, would allow licensure of those persons whose qualifications are substantially similar to those in Alaska at a given time, independently of formal interstate concurrence.

The Commission has taken positive action to inform and educate licensees and the public. Articles regarding real estate transactions and laws are prepared by the Executive Secretary and published in major newspapers as well as in the industry newsletter. Several references are

found in Commission minutes to development of seminars and educational programs. AS 08.88.091 provides that the Commission "may conduct and assist in conducting real estate clinics, meetings, courses or institutes" and may "assist libraries and education institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees." AS 45.85 (Real Estate Surety Fund) creates a special account into which payments are made by licensed real estate brokers and salesmen. Funds in excess of \$250,000 may be appropriated for real estate educational purposes. In 1979, \$75,000 was provided from these funds.

The surety fund provides financial recourse against licensees who have been adjudicated liable on grounds of fraud, misrepresentation, deceit or conversion of trust funds in a maximum amount of \$10,000 for each transaction. A court order must be obtained directing payment from the fund and application for payment must be served upon the Commissioner of the Department of Commerce and Economic Development.

In the first half of 1979 four claims were settled in the amounts of \$7,052.00, \$1,112.65, \$10,000.00, and \$8,070.95. The balance of the fund on July 30, 1979 was \$310,925.40.

The Commission has discussed at length the advisability of mandatory continuing education; however, no consensus of opinion has been reached. No evidence has been shown regarding the positive benefits of such requirements and administration aspects would have to be considered. The Commission also feels that upgrading of the profession is important. CSSB 212 (see Appendix D) addresses the matter of continuing education. The bill was introduced during the 1979 session of the Legislature and is in Committee.

The Real Estate Commission will hold five regular meetings in 1979. Meeting minutes are formulated by the Commission secretary rather than by its Executive Secretary or licensing examiner. Meetings are not tape

recorded. Several subcommittees of the Commission have been appointed to focus on special projects such as legislation, Sunset preparation and budget submission.

It is felt that the Commission has operated in the public interest through its examination, education and enforcement efforts. This Commission is actively concerned about enforcement of the laws and has requested assistance from the Division and Department of Law on numerous occasions. One of the Commission's more effective enforcement tools is education as a preventative measure. Public interests are served by making people more cognizant of the profession and disseminating information regarding common real estate practices and transactions.

B. To what extent has the operation of the Real Estate Commission been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

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The Real Estate Commission has the same operational impediments as do all boards: not enough money, time, support, or investigative services. It does, however, have an Executive Secretary and access to the Anchorage and Juneau Departments of Law. Those factors have put the Real Estate Commission in a considerably better position than other boards and commissions with respect to its operations and accomplishments. Additional support staff provided by the Division of Occupational Licensing includes a licensing examiner whose time is almost entirely devoted to real estate. It is worth noting that almost 3,000 individuals are currently licensed in this profession statewide.

Fees and revenues for all boards and commissions under the jurisdiction of the Division are collected through the Division and are deposited into the general fund. Monies deposited and withdrawn are identified by codes so that direct revenues and expenses may be determined.

Members of the real estate profession are regulated by portions of Title 34 (Property) as well as by AS 08.88 (Real Estate Commission) and AS 45.85 (Real Estate Surety Fund). Extensive regulations have been promulgated and adopted by the Commission. Bills for statutory amendments have been sponsored by the Commission and by the professional association.

The Division would support a transfer of examination responsibilities to the Educational Testing Service as being less cumbersome for the Commission, the Division, and the applicants. The Commission has elected not to have its meetings tape recorded. Goals and objectives have been established by the Commission but no Performance Report for FY '79 has been submitted as of this writing.

C. To what extent has the Real Estate Commission recommended statutory changes which are generally of benefit to the public interest?

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The Commission has recommended and supported numerous changes that are designed to clarify the law and improve services by licensees. As previously noted, CSSB 212 is currently in Committee. HB 328 (regarding exemptions from licensing) is also in Committee and is not supported by the Commission in its present form. HB 494 (an Act repealing the prohibition on licensng felons) is still in Committee. Proposed statutory amendments submitted by administration in 1978 are delineated in Appendix E.

D. To what extent has the Real Estate Commission encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of services which it has provided?

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The Commission appears to be conscientious and sensitive to the public interests; however, the bulk of participation concerning its affairs and services has come from individuals with particular problems. According to the Executive Secretary, a large portion of his time is spent with persons who are dissatisfied with, or seeking clarification of, real estate transactions. That person also feels that public awareness is increasing as well as that of licensees. Public media has been used to help accomplish this.

Public interests are also furthered by the presence of two public members on the Board. "In recent years a number of states have added one or more public members (citizens with no particular interest in the occupation or profession governed by the board) to licensing boards in an effort to ensure that the interests of the public would be represented in decisionmaking."<sup>1</sup> The State of California, which provides for a one-third public membership on health care boards and a public majority on others, has indicated that its experience with public members has been highly rewarding. The Commission has expressed satisfaction with its public members.

E. How efficiently are public inquiries or complaints regarding the activities of the Real Estate Commission processed and resolved?

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<sup>1</sup>Shimberg, B. and Roederer, D., Occupational Licensing Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March 1978, p. 20.

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As discussed elsewhere, complaints and investigative procedures have been established which were agreed upon by all concerned parties. Those procedures appear to be reasonable and workable but delays are encountered through the administrative process and as a result of complaint prioritization based on seriousness of offenses. Public inquiries are handled by Commission members and by Division personnel as appropriate.

- F. To what extent does the Real Estate Commission present qualified applicants to serve the public?

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One method of assuring qualified applicants is through an examination procedure. Individuals who pass the exam are then required to submit application and fees for licensure. All qualifications are outlined in AS 08.88; those who demonstrate compliance and a satisfactory level of knowledge are granted a license.

The Commission has previously terminated all reciprocity agreements with other states and will not license by this method. While there is not felt to be a shortage of licensees within the State, this should not be a basis upon which restrictions on entry into the field are postulated. Neither should the presumption that out-of-State licensees are not familiar with Alaska law; this could be addressed by utilization of a jurisprudence examination.

- G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Real Estate Commission in its own activities, and in its area of activity or interest?

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Commission staff consists of the support services of an Executive Secretary as well as a licensing examiner (most of whose time is spent on real estate matters). These individuals are employed by the Division of Occupational Licensing and are subject to the requirements and procedures of the State Personnel System.

Licenses in this profession are issued on the basis of specific statutory criteria to which affirmative action requirements are not applicable.

H. To what extent are statutory, budgetary or other changes necessary to enable the Real Estate Commission to better serve the interests of the public?

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As 08.88.026, regarding terms of office of initial Commission members should be repealed. A limitation on consecutive numbers of terms may also be considered. The Department has not been issuing inactive license certificates as cited in § 251, nor is this felt to be necessary in practice. CSSB 212 deletes this requirement and outlines appropriate procedures for reactivating a license. This bill also allows for endorsement of out-of-State licensees who pass an examination on Alaska law.

Statutory qualifications for examination require that the applicant not have been convicted of a felony involving "moral turpitude" within the previous ten years. This term has not been defined and should be either defined or deleted. Actions which constitute "unethical conduct" are cited in Commission regulations.

Sec. 08.88.241 provides that only those individuals who were licensed by examination can be reexamined if their license has lapsed for more than three years. It is not reasonable to exempt those persons licensed in

another manner, such as reciprocity or endorsement, should their license lapse.

Commission statutes require 90 days residency of applicants for licensure. This condition is not considered to serve any valid licensing purpose.

The Division has not been charging a \$2 fee for amendments to licenses, such as reactivation or changes of employment (§221).

The Division and the Commission are in favor of allowing ETS to take over examinations entirely provided that benefit would result as indicated in the current proposal.

Extensive regulations have been promulgated by the Commission as a result of problems encountered in its activities and operations.

## Chapter 88. Real Estate Brokers and Salesmen.

### Article

1. Real Estate Commission (§§ 08.88.011-08.88.141)
2. Licensing (§§ 08.88.161-08.88.261)
3. Miscellaneous Provisions (§§ 08.88.281-08.88.401)
4. General Provisions (§§ 08.88.421-08.88.431)

### Article 1. Real Estate Commission.

#### Section

11. Creation and membership of commission
21. Appointment and terms of office
26. Initial terms of office
31. Executive secretary of commission
41. Qualifications of commission members
51. Commission meetings and officers
61. Assistants
71. Duties of the commission
81. Commission regulations
91. Education
101. Administrative duties of department
111. Department regulations
121. Sale of register
131. Applicability of the Administrative Procedure Act
141. Compensation

Sec. 08.88.011. Creation and membership of commission. There is created a Real Estate Commission. It consists of seven members. (§ 1 ch 95 SLA 1964; am § 9 ch 258 SLA 1976)

Sec. 08.88.021. Appointment and terms of office. The governor shall appoint the members of the commission, with the confirmation of the legislature, for staggered terms of four years. A member serves at the pleasure of the governor. The governor shall fill a vacancy by appointment for the unexpired term. A member serves until his successor is appointed. (§ 1 ch 95 SLA 1964)

Sec. 08.88.026. Initial terms of office. Initial appointments of members are as follows: one member for one year, one member for two years, one member for three years, and two members for four years. Initial terms date from February 1 after appointment. (§ 1 ch 37 SLA 1965)

Sec. 08.88.031. Executive secretary of commission. The commissioner of commerce and economic development shall appoint a full-time staff administrator and delineate his authority and duties. He shall serve as the executive secretary of the Real Estate Commission. (§ 1 ch 95 SLA 1964; am § 1 ch 28 SLA 1974; am § 56 ch 218 SLA 1976)

Sec. 08.88.041. Qualifications of commission members. (a) Five members of the commission must be real estate brokers or associate brokers who have been licensed real estate brokers or licensed associate brokers in Alaska for at least three years before appointment. Two members of the board must be public members in accordance with AS 08.01.025.

(b) One member of the commission shall be from the First Judicial District, one shall be from the Second Judicial District, one shall be from the Third Judicial District, one shall be from the Fourth Judicial District and one shall be from the state at large. However, if no person is eligible or available for appointment from the Second Judicial District, then two shall be from the state at large. (§ 1 ch 95 SLA 1964; am § 1 ch 130 SLA 1966; am § 1 ch 14 SLA 1972; am § 10 ch 258 SLA 1976)

Sec. 08.88.051. Commission meetings and officers. (a) The commission shall hold a regular annual meeting. It may hold a special meeting at the call of the chairman or at the request of three commission members.

(b) At least two judicial districts shall be represented and at least a majority of the commission members shall be present in order to conduct business.

(c) The commission shall elect its officers. (§ 1 ch 95 SLA 1964; am § 2 ch 130 SLA 1966; am § 11 ch 258 SLA 1976)

Sec. 08.88.061. Assistants. The commission, with the approval of the commissioner of commerce and economic development, may employ assistants to

- (1) prepare questions on examinations;
- (2) grade examinations;
- (3) investigate alleged violations of this chapter. (§ 1 ch 95 SLA 1964; am § 57 ch 218 SLA 1976)

Sec. 08.88.071. Duties of the commission. (a) The commission shall

- (1) pass on qualifications of applicants for licenses and issue licenses to those who qualify;
- (2) prepare and grade examinations;
- (3) after hearing, have the authority to suspend or revoke the license of a licensee who

- (A) with respect to a real estate transaction;
    - (i) made a substantial misrepresentation;
    - (ii) made a false promise likely to influence, persuade, or induce;
    - (iii) in the case of a real estate broker, pursued a flagrant course of misrepresentation or made a false promise through an agent, associate real estate broker, or real estate salesman;
    - (iv) has engaged in conduct that is fraudulent or dishonest;
    - (v) violates § 391 of this chapter;
  - (B) procures his license by deceiving the commission, or aids another to do so;
  - (C) has engaged in conduct of which the commission had no knowledge at the time he was licensed demonstrating his unfitness to engage in the business for which he is licensed;
  - (D) knowingly authorizes, directs, connives at or aids in publishing, distributing, or circulating a material false statement or misrepresentation concerning his business or concerning real estate for sale in his business in this or any other state;
  - (E) if a real estate broker, wilfully violates § 171(d) or § 291 of this chapter;
  - (F) if an associate real estate broker, claims to be a real estate broker, or, if a real estate salesman, claims to be a real estate broker or associate real estate broker;
  - (G) if a real estate broker, employs an unlicensed associate real estate broker or real estate salesman;
  - (H) if an associate real estate broker or real estate salesman, fails immediately to turn money collected in a real estate transaction over to the employing real estate broker;
- (4) prosecute, through the Department of Law, violations of the provisions of this chapter or lawful regulations promulgated under this chapter;
- (5) publish, on three consecutive weekends in a newspaper of general circulation in the locale of the offending person's principal office licensed under this chapter, any disciplinary action taken by the commission against a person licensed under this chapter.

(b) When a payment is made from the real estate surty fund under AS 45.85 in settlement of a claim or toward satisfaction of a judgment against a licensed broker, associate broker or salesman for fraud, misrepresentation, deceit or conversion of trust funds, the commission, after a proper hearing establishing the misconduct, shall suspend or revoke the license of the broker, associate broker or salesman. The broker, associate broker or salesman may not be reinstated until he has satisfied in full any judgment based on any of the grounds listed in AS 45.85.030. (§ 1 ch 95 SLA 1964; and §§ 2, 3 ch 28 SLA 1974; § 3 ch 143 SLA 1974)

Sec. 08.88.081. Commission regulations. The commission shall adopt substantive regulations making more specific the general grounds for revoking or suspending a license. (§ 1 ch 95 SLA 1964)

Sec. 08.88.091. Education. The commission may conduct and assist in conducting real estate clinics, meetings, courses, or institutes. The commission may assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees. (§ 1 ch 95 SLA 1964)

Sec. 08.88.101. Administrative duties of department. (a) The department shall furnish the commission with administrative services, including collecting fees and issuing receipts; keeping records of receipts and disbursements; distributing and receiving application forms; notifying an applicant whether or not the commission has accepted his application; designating the dates on which examinations are to be held; at least 30 days before an examination is to be held, publishing notice that it is to be held; printing examinations; providing space for holding examinations; proctoring examinations; notifying applicants of the results of the examination; printing and distributing uniform license certificates, duplicate certificates to replace lost ones, and pocket-sized recognition cards; sending notice, before December 1 of each year, that licenses must be renewed; keeping a current register of licensees; employing secretarial assistants; replying to routine requests for information; printing and distributing forms and informational bulletins; maintaining records and completed examinations; recording suspensions and revocations of licenses; and recording office registrations.

(b) The department shall allow members of the commission free access to its records concerning the commission's activities. (§ 1 ch 95 SLA 1964)

Sec. 08.88.111. Department regulations. The department shall adopt procedural regulations describing

(1) how it conducts an examination;

(2) how a person applies to take an examination, applies for a license, and registers his office. (§ 1 ch 95 SLA 1964)

Sec. 08.88.121. Sale of register. The department shall offer for sale to the public publications containing the names, addresses, license classifications, and business associations of persons licensed by the commission. The department shall sell the publications at a price designed to recover costs of compilation, publication, and distribution. ( 1 ch 95 SLA 1964)

Sec. 08.88.131. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings under this chapter. (§ 1 ch 95 SLA 1964)

Sec. 08.88.141. Compensation. A commission member is entitled to transportation expenses and per diem allowances specified in AS 39.20.180. (§ 1 ch 95 SLA 1964)

## Article 2. Licensing.

### Section

- 161. License required
- 171. Entitlement to license
- 181. Content of examination
- 191. Administration of examination
- 201. Reexamination
- 211. Qualification for examination
- 221. Fees
- 231. Deposit in general fund
- 241. Reinstatement of lapsed license
- 251. Inactive license
- 261. Out-of-state licenses

Sec. 08.88.161. License required. Unless licensed as a real estate broker, associate real estate broker, or real estate salesman, no natural person, foreign or domestic corporation, or partnership, or limited partnership, or other entity may

(1) sell, exchange, rent lease, auction, or purchase real estate;

(2) list real estate for sale, exchange, rent, lease, auction, or purchase;

(3) collect rent for the use of real estate;

(4) as a business, buy, sell, or deal in

(A) options in real estate, or

(B) options in improvements to real estate;

(5) assist in or direct the procuring of prospective buyers or the negotiation of a transaction which results or is calculated to result in the sale, exchange, rent, lease, auction, or purchase of real estate;

(6) hold himself out to the public as being engaged in the business of doing any of the things listed in this section;

(7) attempt or offer to do any of the things listed in this section.

(8) (deleted) (§ 1 ch 95 SLA 1964; am § 1 ch 108 SLA 1970; am § 4 ch 28 SLA 1974)

Sec. 08.88.171. Entitlement to license. (a) A person is entitled to a real estate broker license if he has been a resident of the state for 90 days and if he applies for his license within six months after receipt of notice that he has passed the real estate examination, files the required bond, and is an owner of a real estate business or employed as a real estate broker by a corporation or a partnership, if the corporation or partnership does not have an existing licensed broker. Unless he fails to pay the biennial renewal fee or his license is suspended or revoked to pay the biennial renewal fee or his license is suspended or revoked under § 71(3) of this chapter, a real estate broker's license continues in effect so long as he is an owner of a real estate business, or he is employed as a real estate broker by a corporation or a partnership. If he stops being an owner of a real estate business, or stops being employed as a real estate broker by a corporation or partnership, his license is suspended from the time he stops until

(1) he again becomes an owner of a real estate business or is again employed as a real estate broker by a corporation or a partnership; or

(2) he is employed by a licensed real estate broker, in which case his real estate broker license is returned to the department, and the department issues him an associate real estate broker license.

(b) A person is entitled to an associate real estate broker license if he has been a resident of the state for 90 days and if he passes the real estate examination, applies for his license within six months after receipt of notice that he has passed the examination, files the required bond, and is employed by a licensed real estate broker.

Unless he fails to pay the biennial renewal fee or his license is suspended or revoked under § 71(3) of this chapter, an associate real estate broker's license continues in effect so long as he is employed by a licensed real estate broker. If he stops being employed by a licensed real estate broker, his license is suspended from the time he stops until

(1) he again is employed by a real estate broker, or

(2) he becomes an owner of a real estate business, in which case his associate real estate broker license is returned to the department, and the department issues him a real estate broker license.

(c) A person is entitled to a real estate salesman license if he has been a resident of the state for 90 days and if he passes the real estate salesman examination, applies for his license within six months after receipt of notice that he has passed the examination, files the required bond, and is employed by a real estate broker. Unless he fails to pay the biennial renewal fee or his license is suspended or revoked under § 71(3) of this chapter, a real estate salesman's license continues in effect so long as he is employed by a licensed real estate broker, his license is suspended from the time he stops until he again is employed by a licensed real estate broker.

(d) A licensee shall promptly inform the department of a change in his business association that affects the status of his license under this section. (§ 1 ch 95 SLA 1964; am § 3 ch 130 SLA 1966; am § 1 ch 55 SLA 1969; am §§ 5-7 ch 28 SLA 1974)

Sec. 08.88.181. Content of examination. (a) The real estate examination includes questions on business ethics; arithmetic; elementary principles of land economics and appraisal; the general principles in state statutes relating to deeds, mortgages, real estate contracts, subdivisions, legal descriptions, building restrictions, agency and brokerage; and the general provisions in this chapter and in regulations of the commission.

(b) The real estate salesman examination covers the same subjects as the real estate broker examination, but is less difficult.

(c) The only purpose of an examination under this chapter is to disqualify those whose lack of ability to participate in real estate transactions would create a serious risk of serious financial loss to members of the public. (§ 1 ch 95 SLA 1964; am § 2 ch 55 SLA 1969)

Sec. 08.88.191. Administration of examination. (a) The department shall offer examinations at least one a year and more frequently if more than two persons who are qualified to take an examination petition the department for an additional examination.

(b) Examinations shall be so administered that one who grades an examination does not know whose paper he is grading.

(c) The department shall maintain files of examination papers. A person, at any reasonable time within two months of the date he is notified of the results of the examination, is entitled to inspect his examination paper for the purpose of challenging the propriety of its questions, the method of grading, or the accuracy of grading.

(d) If a person fails to take an examination after he has paid the application fee, the department shall refund one-half of the fee.

(e) The provisions of (c) of this section are inapplicable if a nationally recognized testing service prepares and grades the examination provided the national testing service, if requested, will evaluate the examination results for an applicant. (§ 1 ch 95 SLA 1964; am § 2 ch 108 SLA 1970; am §§ 1, 2 ch 24 SLA 1972; am § 8 ch 28 SLA 1974)

Sec. 08.88.201. Reexamination. A person who fails an examination may apply for a subsequent examination, but shall pay the application fee each time he applies. He may not petition for an additional examination under § 191(a) of this chapter, but may take one if it is offered. (§ 1 ch 95 SLA 1964)

Sec. 08.88.211. Qualification for examination. (a) A person is entitled to take a real estate broker or associate broker examination if he

(1) has had at least 24 months of active and continuous experience as a licensed real estate salesman;

(2) Repealed by § 10 ch 28 SLA 1974.

(3) Repealed by § 25 ch 245 SLA 1970.

(4) has not been convicted of a felony involving moral turpitude within the past 10 years, is not under indictment for fraud or embezzlement and has not engaged in conduct that demonstrates that he is unfit to be a real estate broker;

(5) Repealed by § 17 ch 127 SLA 1974.

(6) Repealed by § 4 ch 55 SLA 1969.

(b) A person is entitled to take a real estate salesman examination if he

(1) is at least 19 years old;

(2) Repealed by § 11 ch 28 SLA 1974.

(3) has not been convicted of a felony involving moral turpitude within the past 10 years, is not under indictment for fraud or embezzlement and has not engaged in conduct that demonstrates that he is unfit to be a real estate salesman;

(4) Repealed by § 17 ch 127 SLA 1974.

(5) Repealed by § 4 ch 55 SLA 1969.

(c) In addition to the requirements of (a) or (b) of this section, to be qualified to take an examination a person must

(1) within the time specified by a department regulation, return application forms to the department showing information specified in regulations of the commission;

(2) pay the application fee.

(d) Repealed by § 9 ch 108 SLA 1970. (§ 1 ch 95 SLA 1964; am § 4 ch 130 SLA 1966; am § 1 ch 31 SLA 1968; am § 4 ch 55 SLA 1969; am §§ 3-5, 9 ch 108 SLA 1970; am § 25 ch 245 SLA 1970; am §§ 9-11 ch 28 SLA 1974; am § 17 ch 127 SLA 1974)

Sec. 08.88.221. Fees. (a) The following fees shall be charged a real estate broker or associate broker licensee or applicant when applicable:

(1) examination.....	\$ 50
(2) reciprocity.....	50
(3) initial license.....	100
(4) biennial renewal - active license.....	100
(5) biennial renewal - inactive license.....	25

(b) The following fees shall be charged a salesman licensee or applicant when applicable:

(1) examination.....	\$ 50
(2) reciprocity.....	50
(3) initial license.....	50

(4) biennial renewal - active license..... \$ 50

(5) biennial renewal - inactive license..... 25

(c) The fee for amending a license is \$2. (§ 1 ch 95 SLA 1964; am § 2 ch 31 SLA 1968; am §§ 12, 13 ch 28 SLA 1974)

Sec. 08.88.231. Deposit in general fund. The department shall deposit money collected under this chapter in the general fund. (§ 1 ch 95 SLA 1964)

Sec. 08.88.241. Reinstatement of lapsed license. A licensee who was required to take an examination before receiving a license and whose license has lapsed for more than three years shall be reexamined before reinstatement. (§ 1 ch 95 SLA 1964; am § 5 ch 130 SLA 1966; am § 3 ch 31 SLA 1968; am § 6 ch 94 SLA 1968; am § 6 ch 108 SLA 1970)

Sec. 08.88.251. Inactive license. (a) A person licensed by the commission may become inactive by returning to the department his license certificate and a form provided by the department. In the form, he shall state the date on which he intends to become inactive. His inactive status begins on the date stated. The department shall issue him an inactive license certificate.

(b) An inactive licensee may not do any of the things § 161 of this chapter authorizes an active licensee to do, nor is he required to have a bond.

(c) A person who is inactive may become active by returning to the department his inactive license certificate, the active license biennial renewal fee, if he becomes active more than five months before January 1 following, and a completed form provided by the department. In the form he shall state the date on which he intends to become active. His active status begins on the date stated. The department shall send him a license certificate. A person is entitled to change from an inactive to an active status without examination if he has not been inactive more than three years. If he has been inactive more than three years, he is required to take an examination. (§ 1 ch 95 SLA 1964; am § 4 ch 31 SLA 1968; am § 7 ch 108 SLA 1970)

Sec. 08.88.261. Out-of-state licenses. A person who holds a valid, active license from another state which grants an equivalent right to Alaskan licensees is entitled to a license of the kind he holds there without examination if he

(1) meets the requirements of § 211(a)(2)-(5) of this chapter for brokers or § 211(b) for salesmen, and files the required bond;

(2) passed an examination in the other state; and

(3) has actively practiced his profession for at least five out of the previous six years before filing his application. (§ 1 ch 95 SLA 1964; am § 3 ch 55 SLA 1969)

### Article 3. Miscellaneous Provisions.

#### Section

- 281. Real estate surety fund
- 291. Location
- 301. Change of location
- 311. Branch offices
- 321. Possession and display of license certificates
- 331. Making of transactions
- 341. Listings
- 351. Record of transaction
- 361. When commission is earned
- 371. Conduct by employee
- 381. Signs
- 391. Conflict of interest
- 401. Prohibited conduct

Sec. 08.88.281. Real estate surety fund. Before issuing a license to an applicant under this chapter, the board shall determine that the applicant has complied with the provisions of AS 45.85.020 and is covered by the real estate surety fund established in AS 45.85. (§ 1 ch 95 SLA 1964; am § 1 ch 54 SLA 1968; am § 2 ch 143 SLA 1974)

Sec. 08.88.291. Location. A licensed real estate broker shall inform the commission of his principal office and of any branch offices he has. He and the associate real estate brokers and real estate brokers and real estate salesmen he employs may do business only in or out of his principal office and his branch offices. Failure of a real estate broker to maintain a place of business or inform the department of its location and the names and addresses of all licensees under his jurisdiction at the location are grounds for the suspension or revocation of his broker license. (§ 1 ch 95 SLA 1964; am § 14 ch 28 SLA 1974)

Sec. 08.88.301. Change of location. If a real estate broker changes the location of his principal office or of a branch office, he shall immediately notify the department. (§ 1 ch 95 SLA 1964; am § 15 ch 28 SLA 1974)

Sec. 08.88.311. Branch offices. (a) A branch offices shall be under the direct supervision of a broker or an associate real estate broker whose principal place of business is that office and who is licensed under this chapter. An associate real estate broker may serve in the capacity of direct supervisor at one office only.

(b) All branch offices shall bear and be advertised only in the name of the principal office but may indicate that they are branch offices of the principal office. (§ 1 ch 95 SLA 1964; am § 8 ch 108 SLA 1970; am § 16 ch 28 SLA 1974; am § 1 ch 174 SLA 1976)

Sec. 08.88.321. Possession and display of license certificates. A real estate salesman or an associate real estate broker shall turn his license certificate over to the real estate broker who employs him. The employing real estate broker shall display his license certificate in his principal office and the license certificates of those he employs in the office where they do most of their work. (§ 1 ch 95 SLA 1964)

Sec. 08.88.331. Making of transaction. A real estate salesman or associate real estate broker may make a real estate transaction only through the real estate broker who employs him. All money collected on behalf of the broker shall immediately be turned over to the broker or his agent. All transactions in real estate by a real estate salesman or associate real estate broker shall be processed through his employing real estate broker's office, whether the transactions are for the real estate salesman's or associate real estate broker's own use or the use of a client. (§ 1 ch 95 SLA 1964)

Sec. 08.88.341. Listings. All real estate listings must be in writing and must be signed by the seller or by an agent of the seller. All exclusive listings must have a definite expiration date. (§ 1 ch 95 SLA 1964)

Sec. 08.88.351. Record of transaction. A real estate broker shall

(1) keep a complete record of all real estate transactions made by himself or persons in his employ for at least three years;

(2) make a closing statement showing disbursements and accounting for all money in the transaction;

(3) keep a separate trust account in a bank, into which he shall deposit all earnest money deposits and purchase money until it is proper for him to distribute the money to the proper persons;

(4) make available to the commission, on request, records and all other documents relating to transactions under (3) of this section which the commission may require in order to conduct a complete audit of trust accounts. (§ 1 ch 95 SLA 1964; am § 17 ch 28 SLA 1974)

Sec. 08.88.361. When commission is earned. A commission is earned when the real estate broker finds a buyer willing and able to purchase at a price and on terms set by the seller, providing negotiations with the buyer were initiated during the term of a valid listing agreement and within the time limit of the listing. (§ 1 ch 95 SLA 1964)

Sec. 08.88.371. Conduct by employee. For the purpose of § 71(3) of this chapter, the conduct of an employee is not attributable to a real estate broker unless the real estate broker has actual knowledge that the employee is going to engage in the conduct and agrees to the conduct, either actively or by remaining silent, or ratifies the conduct after it is engaged in. (§ 1 ch 95 SLA 1964)

Sec. 08.88.381. Signs. A licensed real estate broker shall maintain a sign at each of his offices, prominently showing the name of his business. (§ 1 ch 95 SLA 1964)

Sec. 08.88.391. Conflict of interest. A licensed real estate broker, associate real estate broker, or real estate salesman who has a personal financial interest in a real estate transaction shall disclose that interest to every person involved in the transaction. (§ 1 ch 95 SLA 1964)

Sec. 08.88.401. Prohibited conduct. (a) No licensee may use the term "Realtor" unless he is entitled to use it.

(b) No person, even though he is an obligor or escrow holder, may pay or deliver compensation to a person who is not licensed in this state or who does not hold a valid broker license in another state for doing work for which a license is required under this chapter.

(c) No person may

(1) knowingly authorize, direct, or aid in the publication of a false statement or misrepresentation concerning land or a subdivision or other real estate offered for sale or lease;

(2) with knowledge that an advertisement, pamphlet, or letter concerning land or a subdivision or other real estate contains a written statement that is false or fraudulent, issue, circulate, publish, or distribute it or cause it to be issued, circulated, published, or distributed.

(d) A person who violates a provision of this section or § 161 of this chapter is guilty of a misdemeanor. ( 1 ch 95 SLA 1964; am § 6 ch 130 SLA 1966; am § 18 ch 28 SLA 1974; am § 4 ch 143 SLA 1974)

#### Article 4. General Provisions.

Section

421. Exceptions

431. Definitions

Sec. 08.88.421. Exceptions. This chapter does not apply to

(1) a person making a real estate transaction with respect to real estate he owns or on his own behalf, unless the transaction involves land defined in AS 34.55.044(6);

(2) an attorney in fact under a power of attorney authorizing the consummation of a specific real estate transaction; an attorney in fact may not act in such for more than two transactions in a calendar year;

(3) a lawyer performing his duties as a lawyer;

(4) a public official in the conduct of his official duties;

(5) a person acting as receiver, trustee, administrator, executor, or guardian;

(6) a person acting under court order;

(7) a person acting under the authority of a will or trust instrument;

(8) a person dealing in mineral rights transactions;

(9) a domestic or foreign corporation, general or limited partnership, or a partner or regular employee of one of these, when performing acts described in § 161 of this chapter in the regular course, or as an incident to, the management, sale or other disposition of real estate owned by the corporation or partnership; however, the person may not perform these acts as a vocation or for compensation if the amount of the compensation is dependent upon or directly related to the value of the real estate with respect to which the acts are performed. (§ 1 ch 95 SLA 1964; am § 1 ch 38 SLA 1969; am § 19 ch 28 SLA 1974)

Sec. 08.88.431. Definitions. In this chapter

(1) "real estate" means an interest or estate in land, corporeal or incorporeal;

(2) "commission" means the Real Estate Commission;

(3) "department" means the Department of Commerce and Economic Development;

(4) "lease" includes a lease that is a part of another transaction. (§ 1 ch 95 SLA 1964; am § 58 ch 218 SLA 1976)

CHAPTER 64.  
REAL ESTATE COMMISSION

## Article

1. Examinations
2. Licensing
3. Place of Business
4. Prohibited Conduct
5. Trust Accounts

ARTICLE 1.  
EXAMINATIONS

## Section

10. Applications for examination
20. Time and places
30. (Repealed)
40. Notification of applicant
50. Appeals

12 AAC 64.010. APPLICATIONS FOR EXAMINATION. (a) All applicants for examination to act as real estate broker, associate real estate broker, or real estate salesman, shall be in writing to the Commissioner of Commerce upon a form to be prescribed and furnished by the Commissioner of Commerce. The fee required by law shall accompany the application.

(b) The applicant may be required to furnish additional information to demonstrate that he meets the minimum qualification of the law as to age, residence, citizenship, and has not engaged in conduct that demonstrates that he is unfit to be licensed.

(c) Applications for examination must reach the office of the Commissioner of Commerce not later than 45 days prior to the examination date. (Eff. 8/6/67, Reg. 24; am 8/9/72, Reg. 43)

Authority: AS 08.88.111  
AS 08.88.211

12 AAC 64.020. TIME AND PLACES. (a) Examinations shall be given at least three times each year at times and places to be designated by the Commissioner of Commerce, such notice to be given to the public as required by law.

(b) The Commissioner of Commerce shall arrange for space in which the examinations will be given and arrange for persons to proctor the examination. Such proctors shall be paid for their services, and conduct the examination

under instructions issued by the Commissioner of Commerce. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.101  
AS 08.88.111

**12 AAC 64.030. METHOD OF CONDUCTING.** Repealed 8/9/72, Reg. 43.

**12 AAC 64.040. NOTIFICATION OF APPLICANT.** (a) All applicants will be notified in writing of the time and place of examination by the Commissioner of Commerce at least seven days prior to the examination.

(b) The applicant will be advised of his grade in writing no later than 10 days following the grading of examinations by the commission. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.101  
AS 08.88.111

**12 AAC 64.050. APPEALS.** A contested scoring of an examination will be hand scored upon request in writing directly to Educational Testing Service, Princeton, New Jersey 08540. (Eff. 8/6/67, Reg. 24; am 8/9/72, Reg. 43; am 1/13/73, Reg. 44)

Authority: AS 08.88.191(e)

**ARTICLE 2. LICENSING**

**Section**

- 60. Applications for licenses
- 70. License year
- 80. Suspension and revocation of active licenses
- 90. Surrender of suspended or revoked licenses
- 100. Reissuance of a suspended license

**12 AAC 64.060. APPLICATIONS FOR LICENSES.** (a) All applications for license to act as real estate broker, associate real estate broker, or real estate salesman, shall be made in writing to the Commissioner of Commerce upon a form to be prescribed and furnished by the Commissioner of Commerce. The fee required by law shall accompany the application.

(b) The applicant may be required to furnish additional information to demonstrate that he meets the minimum qualification of the law as to age, residence, citizenship, and has not

engaged in conduct that demonstrates that he is unfit to be licensed. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.111  
AS 08.88.171  
AS 08.88.211

**12 AAC 64.070. LICENSE YEAR.** (a) The license year begins January 1 and ends December 31, on a biennial basis, to be effective January 1, 1968 and fees are not prorated for a fractional portion of the year.

(b) All licenses expire December 31, of the appropriate year, regardless of the date the license was issued. It shall be the duty of all persons licensed as a real estate broker, associate real estate broker, or a real estate salesman to register biennially with the Commissioner of Commerce and to renew their license, by paying for each biennial registration the fee for license, as set forth in the act, section, etc. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.111  
AS 08.88.221

**12 AAC 64.080. SUSPENSION AND REVOCATION OF ACTIVE LICENSES.** An active license is defined as a license which has been duly issued by the Department of Commerce for the purposes expressed in AS 08.88.161. An active license is one which has neither lapsed nor been exchanged for an inactive license. An active license shall be suspended or revoked under the following conditions:

(1) it shall be suspended when the licensee ceases to act in the capacity of or be employed as a real estate broker, associate real estate broker or real estate salesman as required under AS 08.88.171;

(2) it shall be revoked

(A) if the license is that of a real estate broker and he becomes employed by a licensed real estate broker (AS 08.88.171(a)(2));

(B) if the license is that of an associate real estate broker and he becomes an owner of a real estate business (AS 08.88.171(b)(2));

(3) it is suspended or revoked when, after hearing, it has been declared suspended or revoked by the commission as provided in AS 08.88.071 and these regulations;

(4) upon the suspension or revocation of a real estate broker's license, the license of every associate real estate broker, or real estate salesman employed by such broker is automatically suspended. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.071  
AS 08.88.081  
AS 08.88.111  
AS 08.88.161  
AS 08.88.171

#### 12 AAC 64.090. SURRENDER OF SUSPENDED OR REVOKED LICENSES. (a)

Every license which has been suspended or revoked, and the pocket part of such license shall be immediately surrendered by the employing broker to the Commissioner of Commerce; or if such license and pocket part are not in the possession of a broker, they shall be surrendered by the licensee. A license and pocket part have been surrendered when they have been placed in the United States mail, postage prepaid and properly addressed to the Commissioner of Commerce or when they have been delivered to the Commissioner of Commerce or his authorized agent.

(b) When a real estate broker surrenders his license, he shall at the same time surrender all licenses and pocket parts within his possession of all associate real estate brokers and salesmen employed by him.

(c) When an associate real estate broker or real estate salesman is discharged or otherwise terminates his employment with a broker, the broker shall inscribe the date and reason for termination on the reverse side of the license to be surrendered.

(d) The surrender of a license does not entitle the licensee to any refund of license fees and no refund shall be made by the department or the commission.

(e) A licensee whose license has been suspended or revoked may not engage in any of the activities authorized by AS 08.88.161 until

his license has been reissued. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.081  
AS 08.88.111  
AS 08.88.161

12 AAC 64.100. REISSUANCE OF A SUSPENDED LICENSE. A license which has been suspended and surrendered, together with its pocket part, will be reissued, without charge, for the unexpired balance of the license period, under the following conditions:

(1) if suspended by the commission for cause as provided in AS 08.88.071(3) or these regulations, the license will be reissued when the conditions imposed in the suspension order have been met and the licensee complies with the appropriate subsections (2) and (3) or (2) and (4) of this section;

(2) submission to the department of satisfactory evidence that the licensee's required bond is in full force and effect; and

(3) if the suspended license is that of an associate real estate broker or real estate salesman, he has met the employment requirements of AS 08.88.171(b) or (c) and has completed and returned to the department the required notice of release, transfer and re-employment; or

(4) if the suspended license is that of a real estate broker, he has met the ownership or employment requirements of AS 08.88.181(a) and he has completed and returned to the department his notice of compliance with Section 08.88.171 as to issuance of a broker license. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.071(3)  
AS 08.88.111  
AS 08.88.171

### ARTICLE 3. PLACE OF BUSINESS

#### Section

110. Defined

120. Branch offices

12 AAC 64.110. DEFINED. The commission recommends that the office of licensed real estate brokers be established in an office or

headquarters where the real estate broker conspicuously displays his license and the licenses of his employees, if any, and at or from which a real estate broker, either through his own efforts or through his employees, regularly transacts the business of a real estate broker as defined in the law, and where he or his employees can receive business calls and direct business calls to be made. (Eff. 8/6/67, Reg. 34)

Authority: AS 08.88.111

AS 08.88.291

**12 AAC 64.120 BRANCH OFFICES.** Branch offices shall be applied for on a form provided by the Commissioner of Commerce. Each application shall contain the following:

(1) address of the branch office;

(2) the name of the person in charge of the branch office;

(3) a branch office must be staffed at all times. Failure to staff a branch office will be grounds for withdrawing permission to operate a branch office. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.111

AS 08.88.311

#### ARTICLE 4. PROHIBITED CONDUCT

##### Section

- 130. Business ethics
- 140. Employment of unlicensed personnel
- 150. Failure to maintain a place of business
- 160. False or misstatement in obtaining a license
- 170. Investigation by commission

**12 AAC 64.130. BUSINESS ETHICS.** The following acts will be grounds for revocation or suspension of licenses for unethical business practices:

(1) those grounds specifically enumerated in AS 08.88.071(3);

(2) acting for more than one party in a real estate transaction without the knowledge of all parties for whom he acts;

(3) failure to account for or to remit or surrender to the person entitled thereto, any money, documents, or other property of value coming into the possession or control of the licensee in the course of a real estate transaction;

(4) paying or receiving any rebate, profit, compensation or commission in violation of these regulations;

(5) forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or other like offenses committed in the course of employment as a real estate broker, associate real estate broker or real estate salesman and who has been convicted thereof in a court of competent jurisdiction of this or any other state;

(6) placing a sign on a property offering it for sale, lease or rent without first obtaining the written authority of the owner or his authorized agent to sell, lease or rent the property;

(7) splitting fees with or otherwise compensating others not licensed here under AS 08.88 for referring business;

(8) advertising to buy, sell, rent or exchange any real property for another or others without including in the advertisement the name of the employing or selling real estate broker. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.031

AS 08.88.111

AS 08.88.401

**12 AAC 64.140. EMPLOYMENT OF UNLICENSED PERSONNEL.** Grounds for revocation or suspension of licenses for employment of unlicensed personnel are as follows:

(1) retaining the services of any person as a real estate salesman or an associate real estate broker who is unlicensed under Alaska Statutes;

(2) accepting a commission or valuable consideration as a real estate salesman for the performance of any of the acts specified in the

laws or these regulations from any person except the real estate broker whose name appears on his license. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.081  
AS 08.88.111  
AS 08.88.401

**12 AAC 64.150. FAILURE TO MAINTAIN A PLACE OF BUSINESS.** Failure of a real estate broker to maintain a place of business is grounds for suspension or revocation of his broker's license. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.081  
AS 08.88.111  
AS 08.88.401

**12 AAC 64.160. FALSE OR MISSTATEMENT IN OBTAINING A LICENSE.** Obtaining a license through false or fraudulent representation or making a material misstatement on his application for license or renewal or application for examination will be grounds for revocation or suspension of a license. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.081  
AS 08.88.111  
AS 08.88.401

**12 AAC 64.170. INVESTIGATION BY COMMISSION.** Reference to Section 08.88.261 - Applications under this section shall be processed at the next regular meeting of the commission following receipt of such application. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.071  
AS 08.88.081  
AS 08.88.111  
AS 08.88.261

**ARTICLE 5.  
TRUST ACCOUNTS**

**Section**

- 180. Establishment of trust account
- 190. Trust funds exempt from attachment, other process
- 200. Deposit to trust account
- 210. Trust account interest
- 220. Record of trust account transactions
- 230. Trust funds other than earnest money
- 240. Broker's commission
- 250. Prohibited activity
- 260. Violation

**12 AAC 64.180. ESTABLISHMENT OF TRUST ACCOUNT.** (a) Every real estate broker shall establish a trust account in a bank authorized to do business in this state, and the name of the account so established must include the words "trust account" or "trustee account."

(b) Every real estate broker shall file with the Department of Commerce and Economic Development the name of the account, the account number, and the name of the bank which holds the account for all trust accounts held by the broker.

(c) The broker who establishes the account shall be trustee of the account and responsible for all signatories to that account.

(d) If maintenance expenses are charged against a trust account, the broker shall deposit a sum of money not exceeding \$100 to the trust account for the purpose of paying the maintenance expenses of the account and shall make additional deposits when necessary, but not to exceed \$100 on deposit.

(e) All trust accounts must be demand accounts only. (Eff. 1/19/78, Reg. 65)  
Authority: AS 08.88.081  
AS 08.88.351

**12 AAC 64.190. TRUST FUNDS EXEMPT FROM ATTACHMENT, OTHER PROCESS.** No provision may be made for a bank to withhold issue of funds from a trust account except upon a court order. (Eff. 1/19/78, Reg. 65)  
Authority: AS 08.88.081  
AS 08.88.351

**12 AAC 64.200. DEPOSIT TO TRUST ACCOUNT.** All money deposited with the broker or person employed by or affiliated with the broker as trustee in real estate transactions must be deposited in or mailed to the trust account within five days following receipt unless factors such as geographical location, weather conditions, or transportation facilities make such depositing impossible or unreasonable. (Eff. 1/19/78, Reg. 65)  
Authority: AS 08.88.081  
AS 08.88.351

**12 AAC 64.210. TRUST ACCOUNT INTEREST.** If a trust account bears interest,

that fact and the rate of interest must be disclosed to the trustor. (Eff. 1/19/78, Reg. 65)

Authority: AS 08.88.081  
AS 08.88.351

**12 AAC 64.220. RECORD OF TRUST ACCOUNT TRANSACTIONS.** (a) A broker shall keep a complete record of all trust account transactions and assign a transaction account number to each transaction. The broker shall assign a transaction number to all written offers on real estate. For property management transactions, the broker shall assign a transaction number to each landlord for whom property is managed or to each property managed.

(b) The record of the trust transactions must include

(1) deposit slips showing date, transaction account number, amount of deposit, and trustor's name;

(2) all checks and check records, including voided checks, written on the trust account, showing the date, the payee, and the transaction account number; and

(3) a ledger or its equivalent showing transaction number, all deposits to the trust account, and all withdrawals from the trust account identified by check number and payee.

(c) Trust accounts must be reconciled monthly.

(d) A complete record must be kept in the trust ledger of all transactions in which deposits are not made to the broker's trust account, including direct deposits to an escrow agent's trust account. (Eff. 1/19/78, Reg. 65)

Authority: AS 08.88.081  
AS 08.88.351

**12 AAC 64.230. TRUST FUNDS OTHER THAN EARNEST MONEY.** (a) For trust funds other than earnest money including, but not limited to, rents or mortgage payments, records must be kept consistent with the requirements of sec. 220 of this chapter.

(b) Failure of a licensee engaged in property management to comply with the provisions of AS 34.03 is considered fraudulent or dishonest

conduct within the meaning of AS 08.88.071(a)(3)(A)(iv). (Eff. 1/19/78, Reg. 65)

Authority: AS 08.88.071  
AS 08.88.081  
AS 08.88.351

**12 AAC 64.240. BROKER'S COMMISSION.** (a) Each withdrawal of a broker's commission from a trust account must be separate and separate and identified as to the specific transaction.

(b) A broker shall withdraw his or her commission from a trust account within 15 days after the date that the transaction has been closed or otherwise settled. (Eff. 1/19/78, Reg. 65)

Authority: AS 08.88.071  
AS 08.88.081  
AS 08.88.351

**12 AAC 64.250. PROHIBITED ACTIVITY.** No broker may

(1) pay a salesman's commission directly from the trust account;

(2) pay bills for his or her business or personal obligations from the trust funds;

(3) use trust funds to pay the maintenance expenses of a trust account;

(4) deposit funds belonging to him or her in a trust account, except those described in sec. 180(d) of this chapter; or

(5) withdraw funds from a trust account without fully complying with the recordkeeping requirements of sec. 220 of this chapter. (Eff. 1/19/78, Reg. 65)

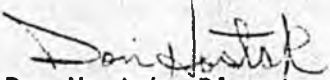
Authority: AS 08.88.071  
AS 08.88.081  
AS 08.88.351

**12 AAC 64.260. VIOLATION.** Failure to comply with secs. 180 - 260 of this chapter or the withholding of records or trust property which a broker is required to maintain, from that broker, or failure to turn over to the Real Estate Commission, upon the request of the commission, records that are required by this chapter is considered fraudulent and dishonest conduct within the meaning of AS

08.88.071(a)(3)(A)(iv). (Eff. 1/19/78, Reg. 65;  
Authority: AS 08.88.071  
AS 08.88.081  
AS 08.88.351

All Members, Real Estate Commission  
 Jim Magowan, Executive Secretary  
 Richard H. Long, Chief Investigator

January 17, 1979

  
 Don Hostak, Director  
 Division of Occupational Licensing  
 Department of Commerce &  
 Economic Development

Complaint Handling/  
 Investigations  
 Real Estate Licensees

This shall serve to clarify and establish the procedure for processing complaints received against real estate licensees only.

#### I. RECEIPTING

- A. All complaints received, whether received at the Juneau or Anchorage office, will be date-time stamped immediately on receipt and assigned a file control number, thereby entering the complaint into the main control system maintained by the Investigations Section. All complaints against real estate licensees are to be forwarded at the same time to the executive secretary for initial review and processing.
- B. A carbon copy of the complaint will be retained by the Investigations Section with no other action to be taken by the Investigations Section at this point. The executive secretary may continue to utilize whatever case number/control system which best applies to his purpose.

#### II. EXECUTIVE SECRETARY REVIEW

- A. The executive secretary will conduct the initial review of all complaints received against real estate licensees. The executive secretary will consider and attempt to establish jurisdictional authority and whether or not it appears that a violation has or may have occurred and proceed as follows:
  1. Matters determined not to be within the Commission's jurisdiction, no violation, or matters which may be closed informally will be brought before the Commission for formal concurrence to close.
  2. If the matter cannot be closed informally initially, the ten-day letter will be sent to the respondent to determine the respondent's position in the issue. Discretion should be used, as all complaints would not dictate the use of this letter.
  3. At this time, after receiving response to the ten-day letter, if the matter is to be closed informally, it will be brought before the Commission for formal concurrence to close.

4. As such matters are closed, a report of closure will be prepared and entered as a matter of record as the last transaction in the file.
  5. Matters not to be closed, which involve violations, will be transferred to the Investigations Section for further processing.
- B. The executive secretary will not receipt, review, or retain any complaint concerning possible conflicts of interest, i.e. complaints concerning the executive secretary or a Commission member or their relatives or business partners, past or present, or any matter involving unlicensed activity. These complaints will be immediately referred to the Investigations Section. The executive secretary will not be involved with these complaints.

### III. REFERRALS TO THE INVESTIGATIONS SECTION

At any time following receipt of a complaint it becomes evident that a violation has or may have occurred, it is to be transferred in its entirety to the Investigations Section with a cover memorandum. This memorandum will serve to provide a record of the transfer and will include a brief synopsis of the matter, a priority recommendation and an index of the record developed to that point. Details of the information developed to that point will not be exposed to the members of the Commission. Full responsibility for all files and case handling thereafter rests with the Investigations Section. The executive secretary will not be further involved except at the request of the Investigations Section, usually to provide input, advice or other appropriate assistance relating to the field of real estate or particular real estate matters.

### IV. INVESTIGATIONS SECTION - PROCESSING

- A. If the Investigations Section determines that no violation or jurisdiction exists, the Section will provide a full report and/or the investigative file, as appropriate, to the Commission for their formal concurrence to close.
- B. If the Investigations Section determines that a violation has occurred, the completed investigation file will be referred to the Department of Law for appropriate preparation for litigation. At the time an accusation is served on the respondent, a copy will be sent to the Commission members by the Investigations Section. This is a function of the Chief Investigator.
- C. If the Department of Law determines that a matter is not adequately supported, or if a matter is determined to be of such

insignificance not to warrant process in litigation, that matter will be otherwise processed by the Investigations Section for resolution or closure. This may be accomplished by the Department of Law, or will be in accordance with recommendations by that department which will probably include resolution directly by the Commission. Regardless, these matters will be brought before the Commission for formal concurrence to close or for the Commission to resolve and close.

#### V. CLOSURES, WITHOUT HEARINGS

All cases closed that do not require hearing or other litigation process by the Commission, whether closed by the executive secretary or the Investigations Section, will contain a report of closure as the last document in the file. This report of closure will include as a minimum the date closed before the Commission and a clear, but brief, explanation why the Commission closed the matter. Recommendations for referral, as appropriate, will also be written into the report of closure. The closed file will then be transferred with the cover memorandum (see III above) to the Investigations Section. The Investigations Section will then proceed to close the matter from the main Investigations Section files maintained by the Chief Investigator.

#### VI. REPORTS TO THE REAL ESTATE COMMISSION

- A. The Real Estate Commission will receive a written status report prior to each meeting on all cases currently handled by the Investigations Section. A similar report will be provided on all cases currently being handled by the executive secretary. This will consist of stating the number of cases open since the last report, number in progress, and the number closed since the last report.
- B. Status reports, whether prepared by the Investigations Section or the executive secretary, will not contain investigative details or developments or inferences of guilt or innocence. The Commission members will not be exposed to such information until the case is presented for closure by the Commission or presented in hearing.

#### VII. GENERAL

Cases currently under process by the executive secretary will be retained by the executive secretary until resolved or documented in detail what has been done to date pursuant to III above.

January 17, 1979

This procedure is effective on receipt and follows discussion before the Real Estate Commission during the meeting of December 6, 1978. Any problems which may develop on implementation of this procedure, or any requests for changes or additions, should be sent to this office immediately for consideration.

DH/mh/5/12

cc: Frank Moore, Investigator, Anchorage Field Office  
Bob Barton, Investigator, Anchorage Field Office

Executive Secretary to the Real Estate Commission  
Description of Duties

Administer and supervise the activities and functions of the Real Estate Commission office, arranging for efficient operation of office procedures in accordance with the law and policies set by the Real Estate Commission.

Resolve complaints from the public and the profession regarding violations of the Real Estate Act, AS 08.88, and provide for settlement or refer the matter to the proper court for appropriate action.

Interpret and administer the statutes (AS 08.88) and Regulations (12 AAC 64) in order to properly apply them to the functions of the office in the best interest of the public. Recommend any needed additions or amendments to regulations and/or statutes.

Establish policies to assure that the provisions of the statutes and regulations will be adequately administered for the protection of the public.

Assist the Office of the Attorney General and/or the District Attorney to compile and provide evidence to support and prosecute claims of violations of AS 08.88, Real Estate Act.

Attend and participate in professional meetings of District, State, and regional levels, and report in writing back to Commission and Department. Attend all regular Real Estate Commission meetings.

Approve real estate schools or classes in collaboration with the Real Estate Commission and review their curriculum to assure that it corresponds to the statutes, regulations and accepted real estate practices current in the State. Require reports by the schools as are deemed necessary to determine the students' course of study.

Keep the public alerted of the services available and to publicize violations.

Prepare figures on estimated expenditures to assist the Division in preparing the annual budget.

Compile and file a quarterly consolidated activities report with the Real Estate Commission and Department of Commerce.

Perform other duties as may be required by the Department of Commerce or the Real Estate Commission.

TO:  Elaine Garrett  
Dept. of Commerce  
Div. of Occupational Licensing

DATE: July 5, 1979

FILE NO: J-66-776-79

TELEPHONE NO:

FROM: AVRUM M. GROSS  
ATTORNEY GENERAL

SUBJECT: Educational Testing Service Contract

By: *Norm E. Staton*  
Norman E. Staton  
Assistant Attorney General

You have requested us to review the \$50 examination fee of the Alaska Real Estate Commission in light of the proposed change of the Educational Testing Service conducting the examination and charging \$11.

From the letter of James L. Magowan, Executive Secretary of the Alaska Real Estate Commission, we assume the following facts. Presently, each applicant is charged a \$50 examination fee by the Division of Occupational Licensing. In the future, the Educational Testing Service will be responsible for the total administration of the examination and will directly charge each applicant \$11 to take the exam. This change raises the issue of whether the commission should credit the \$11 examination fee charged by ETS to the general \$50 examination fee or in the alternative have the \$11 examination fee be in addition to the general \$50 examination fee.

We recommend that ETS's \$11 examination fee be credited to the general \$50 examination fee. Although Mr. Magowan proposes that the regulations could be drafted either way, we remind you that the regulations must be consistent with the statute. Under AS 08.88.111, 1/ the Department of Commerce shall adopt procedural regulations regarding examination. The proposed change appears consistent with AS 08.88.111, in that the examination will be separated into two parts. The first, a written examination of the applicant's minimum competence and the second, examination of the applicant's qualifications.

- 
- 1/ AS 08.88.111. Department Regulations. The department shall adopt procedural regulations describing
- (1) how it conducts an examination;
  - (2) how a person applies to take an examination, applies for a license, and registers his office.

However, under AS 44.62.030 2/ the proposed regulation must be consistent with the statute. AS 08.88.221 3/ provides for a \$50 examination fee and as a result of AS 44.62.030, the proposed regulation must not exceed that amount or it will be invalid.

Therefore, we recommend the proposed regulation provide that the ETS examination fee be credited to the general \$50 examination fee.

In addition, we feel it appropriate to comment on Mr. Magowan's statement that the regulations could be adopted on an emergency basis. The proposed regulation would not seem to be "necessary for the immediate preservation of the public peace, health, safety or general welfare" and as a result, would not qualify as a emergency regulation of AS 44.62.250. We recommend that you coordinate the time sequence for your regulations with your need requirements without the use of emergency regulations.

---

2/ AS 44.62.030. Consistency between regulation and statute. If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute.

3/ AS 08.88.221. Fees. (a) The following fees shall be charged a real estate broker or associate broker licensee or applicant when applicable: (1) examination ... \$50.

\* \* \*

NES:bwb

Original sponsor: Bennett by request

Offered: 4/16/79  
Referred: Rules

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

CS FOR SENATE BILL NO. 212 (Judiciary)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

ELEVENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the regulation of real estate

7

brokers and salesmen; and providing for an effective

8

date."

9

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

10

\* Section 1. AS 08.88.041(b) is amended to read:

11

(b) Of the five members of the commission who must be real estate

12

brokers or associate brokers, one [ONE] member [OF THE COMMISSION] shall

13

be from the First Judicial District, one shall be from the Second

14

Judicial District, one shall be from the Third Judicial District, one

15

shall be from the Fourth Judicial District and one shall be from the

16

state at large. However, if no licensed real estate broker or licensed

17

associate broker [PERSON] is eligible or available for appointment from

18

the Second Judicial District, then two licensed real estate brokers or

19

licensed associate brokers shall be appointed from the state at large.

20

\* Sec. 2. AS 08.88.071(a) is amended by adding a new paragraph to read:

21

(6) issue a temporary permit to the executor, administrator,

22

or personal representative of the estate of a deceased broker or to some

23

other person designated by the commission in order to secure proper

24

administration in concluding the affairs of decedent broker's real

25

estate business.

26

\* Sec. 3. AS 08.88.091 is repealed and re-enacted to read:

27

Sec. 08.88.091. EDUCATION. The commission shall

28

(1) initiate and maintain a program of continuing education

29

in real estate by

1 (A) reviewing and, when applicable, granting approval to  
2 courses of instruction which provide opportunity to persons engaged  
3 in the real estate business to gain knowledge and reasonable pro-  
4 ficiency in current real estate practices and procedures;

5 (B) defining course standards, to include a variety of  
6 subject material covering general and special areas of real estate  
7 practice and procedure in courses presented by

8 (i) accredited educational institutions;

9 (ii) private vocational schools;

10 (iii) correspondence schools; or

11 (iv) educational programs, seminars, and workshops  
12 offered by institutes, professional societies and organiza-  
13 tions, and equivalent offerings;

14 (C) qualifying instructors to present approved courses  
15 of instruction based on the academic qualifications and practical  
16 experience in real estate of the instructor and the specific course  
17 to be offered;

18 (2) assist in conducting real estate clinics, meetings,  
19 courses, or institutes;

20 (3) assist educational institutions in sponsoring studies and  
21 programs for the purpose of raising the standards of the real estate  
22 business and the competency of licensees; and

23 (4) maintain a list of those educational programs which  
24 receive approval under (1) of this subsection.

25 \* Sec. 4. AS 08.88.171(a) is amended to read:

26 (a) A person is entitled to a real estate broker license if he has  
27 been a resident of the state for 90 days and if he applies for his  
28 license within six months after the date he completed the real estate  
29 examination, furnishes satisfactory proof that he has successfully com-

1 pleted all requirements imposed by AS 08.88.173 [RECEIPT OF NOTICE THAT  
2 HE HAS PASSED THE REAL ESTATE EXAMINATION, FILES THE REQUIRED BOND], and  
3 is an owner of a real estate business or employed as a real estate  
4 broker by a corporation or a partnership, if the corporation or partner-  
5 ship does not have an existing licensed broker. Unless the broker [HE]  
6 fails to pay the biennial renewal fee or fails to furnish satisfactory  
7 proof that he has complied with all continuing educational requirements  
8 under AS 08.88.175, or unless his license is suspended or revoked under  
9 AS 08.88.071(3), the [A] real estate broker's license continues in  
10 effect so long as he is an owner of a real estate business, or he is  
11 employed as a real estate broker by a corporation or a partnership. If  
12 he stops being an owner of a real estate business, or stops being  
13 employed as a real estate broker by a corporation or partnership, his  
14 license is suspended from the time he stops until

15 (1) he again becomes an owner of a real estate business or is  
16 again employed as a real estate broker by a corporation or a partner-  
17 ship; or

18 (2) he is employed by a licensed real estate broker, in which  
19 case his real estate broker license is returned to the department, and  
20 the department issues him an associate real estate broker license.

21 \* Sec. 5. AS 08.88.171(b) is amended to read:

22 (b) A person is entitled to an associate real estate broker li-  
23 cense if he has been a resident of the state for 90 days and if he  
24 passes the real estate examination, applies for his license within six  
25 months after the date he completed the real estate examination, fur-  
26 nishes satisfactory proof that he has successfully completed all require-  
27 ments imposed by AS 08.88.173 [RECEIPT OF NOTICE THAT HE HAS PASSED THE  
28 EXAMINATION, FILES THE REQUIRED BOND], and is employed by a licensed  
29 real estate broker. Unless the associate broker [HE] fails to pay the

1 biennial renewal fee or fails to furnish satisfactory proof that he has  
2 complied with all continuing educational requirements under AS 08.88.175,  
3 or unless his license is suspended or revoked under AS 08.88.071(3), the  
4 [AN] associate real estate broker's license continues in effect so long  
5 as he is employed by a licensed real estate broker. If he stops being  
6 employed by a licensed real estate broker, his license is suspended from  
7 the time he stops until

8 (1) he again is employed by a real estate broker; or

9 (2) he becomes an owner of a real estate business, in which  
10 case his associate real estate broker license is returned to the depart-  
11 ment, and the department issues him a real estate broker license.

12 \* Sec. 6. AS 08.88.173(c) is amended to read:

13 (c) A person is entitled to a real estate salesman license if he  
14 has been a resident of the state for 90 days and if he passes the real  
15 estate salesman examination, applies for his license within six months  
16 after the date he completed the real estate examination, furnishes  
17 satisfactory proof that he has successfully completed all requirements  
18 imposed by AS 08.88.173 [RECEIPT OF NOTICE THAT HE HAS PASSED THE EXAM-  
19 INATION, FILES THE REQUIRED BOND], and is employed by a real estate  
20 broker. Unless the salesman [HE] fails to pay the biennial renewal fee  
21 or fails to furnish satisfactory proof that he has complied with all  
22 continuing educational requirements under AS 08.88.175, or unless his  
23 license is suspended or revoked under AS 08.88.071(3), the [A] real  
24 estate salesman's license continues in effect so long as he is employed  
25 by a licensed real estate broker. If he stops being employed as a real  
26 estate salesman, his license is suspended from the time he stops until  
27 he again is employed by a licensed real estate broker.

28 \* Sec. 7. AS 08.88 is amended by adding new sections to read:

29 Sec. 08.88.173. PREPARATORY REQUIREMENTS. (a) An applicant for

1 an initial license as a real estate broker or associate real estate  
2 broker shall provide evidence that he has passed the real estate examina-  
3 tion and, during the two years preceding submission of his license  
4 application, successfully completed 60 hours of courses, workshops,  
5 seminars, institutes or programs approved by the commission under AS 08.-  
6 88.091(1).

7 (b) An applicant for an initial license as a real estate salesman  
8 shall provide evidence that he has passed the real estate examination  
9 and, during the two years preceding submission of his license applica-  
10 tion, successfully completed 30 hours of courses, workshops, seminars,  
11 institutes or programs approved by the commission under AS 08.88.091(1).

12 Sec. 08.88.175. CONTINUING EDUCATION REQUIREMENTS. (a) A real  
13 estate broker, associate real estate broker, or real estate salesman who  
14 holds an active license or who seeks reinstatement of an inactive  
15 license shall provide evidence that he has, during the two years preced-  
16 ing the biennial renewal period, successfully completed 30 hours of  
17 courses, workshops, seminars, institutes or programs approved by the  
18 commission under AS 08.88.091(1).

19 (b) The provisions of (a) of this section do not apply to a person  
20 renewing an inactive license within two years of the date on which his  
21 license becomes inactive.

22 Sec. 08.88.177. CREDIT FOR INSTRUCTION. A real estate broker,  
23 associate real estate broker, or real estate salesman who provides  
24 evidence that he has been an instructor in a course, workshop, seminar,  
25 institute or program approved by the commission under AS 08.88.091(1)  
26 shall receive credit for his hours as an instructor against the require-  
27 ments of AS 08.88.175. The commission may give course instruction  
28 credit under this section only once for the same course of instruction.

29 \* Sec. 8. AS 08.88.211(a)(4) is amended to read:

1 (4) has not been convicted of forgery, embezzlement, obtain-  
2 ing money under false pretenses, larceny, extortion, conspiracy to de-  
3 fraud or similar offense or of a felony involving moral turpitude within  
4 the past 10 years, is not under indictment for fraud or embezzlement and  
5 has not engaged in conduct that demonstrates that he is unfit to be a  
6 real estate broker;

7 \* Sec. 9. AS 08.88.211(b) 3) is amended to read:

8 (3) has not been convicted of forgery, embezzlement, obtain-  
9 ing money under false pretenses, larceny, extortion, conspiracy to de-  
10 fraud or similar offense or of a felony involving moral turpitude within  
11 the past 10 years, is not under indictment for fraud or embezzlement and  
12 has not engaged in conduct that demonstrates that he is unfit to be a  
13 real estate salesman;

14 \* Sec. 10. AS 08.88.241 is amended to read:

15 Sec. 08.88.241. REINSTATEMENT OF LAPSED LICENSE. A licensee who  
16 was required to take an examination before receiving a license and whose  
17 license has lapsed for more than six months [THREE YEARS] shall be  
18 re-examined before reinstatement.

19 \* Sec. 11. AS 08.88.251(b) is amended to read:

20 (b) An inactive licensee may not do anything authorized by [ANY OF  
21 THE THINGS] AS 08.88.161 for [AUTHORIZES] an active licensee [TO DO, NOR  
22 IS HE REQUIRED TO HAVE A BOND].

23 \* Sec. 12. AS 08.88.251(c) is amended to read:

24 (c) A person who is inactive may become active by applying for an  
25 active license, paying the required fees, and providing evidence of com-  
26 pletion of educational requirements, when required [BY RETURNING TO THE  
27 DEPARTMENT HIS INACTIVE LICENSE CERTIFICATE, THE ACTIVE LICENSE BIENNIAL  
28 RENEWAL FEE, IF HE BECOMES ACTIVE MORE THAN FIVE MONTHS BEFORE JANUARY 1  
29 FOLLOWING, AND A COMPLETED FORM PROVIDED BY THE DEPARTMENT]. In the

1 application form he shall state the date on which he intends to become  
2 active. His active status begins on the date stated. The department  
3 shall send him a license certificate. A person is entitled to change  
4 from an inactive to an active status without examination if he has not  
5 been inactive more than three years. If he has been inactive more than  
6 three years, he is required to take an examination.

7 \* Sec. 13. AS 08.88. is amended by adding a new section to read:

8 Sec. 08.88.263. LICENSE BY ENDORSEMENT. A person who holds a  
9 valid active real estate license issued by another state shall be  
10 granted an equivalent Alaska real estate license if he

11 (1) passes the portion of the real estate examination which  
12 examines on Alaska law; and

13 (2) meets the requirements of AS 08.88.171 and 08.88.211.

14 \* Sec. 14. AS 08.88.361 is amended to read:

15 Sec. 08.88.361. WHEN COMMISSION IS EARNED. A commission is earned  
16 when the real estate broker fulfills the terms of a written agreement  
17 [FINDS A BUYER WILLING AND ABLE TO PURCHASE AT A PRICE AND ON TERMS SET  
18 BY THE SELLER, PROVIDING NEGOTIATIONS WITH THE BUYER WERE INITIATED  
19 DURING THE TERM OF A VALID LISTING AGREEMENT AND WITHIN THE TIME LIMIT  
20 OF THE LISTING].

21 \* Sec. 15. AS 08.88.261 is repealed.

22 \* Sec. 16. Section 1 of this Act takes effect February 1, 1981. Sections  
23 2, 3, 8 - 11, and 13 - 15 of this Act take effect immediately in accordance  
24 with AS 01.10.070(c). Sections 4 - 7 and 12 of this Act take effect  
25 February 1, 1980.

1978 Proposed Amendments by Commission

Add new statute

08.88.176 Death of a Broker. In the event of a death of a broker, the real estate commission shall have the authority to issue a temporary permit to the executor, administrator, or representative of the estate of the deceased broker or to some person designated by the real estate commission to continue to transact business for the sole purpose of concluding the affairs of the deceased broker.

Change Sec. 08.88.361. When commission is earned. To read: A commission is earned when the real estate broker fulfills the terms of a written employment agreement.

Change Sec. 08.88.091. Education. To read: The commission shall establish and assist in conducting real estate clinics, meetings, courses, or institutes. The commission shall assist educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees.

Add new statute

08.88.036. Educational Coordinator of Commission. The Commissioner of Commerce and Economic Development shall appoint a full time staff administrator whose duties shall be to serve with the Real Estate Commission to carry out the requirements of Sec. 08.88.091 of this chapter.

Change Sec. 08.88.171. Entitlement to license. To read: (a) A person is entitled to a real estate broker license if he has been a resident of the state for 90 days and if he applies for his license within six months after the date he took the exam, furnishes satisfactory proof that he has completed successfully all educational requirements adopted by the commission, and is an owner of a real estate business or employed as a real estate broker by a corporation or a partnership....(all of the rest of (a)(1)(2) remain the same)

(b) A person is entitled to an associate real estate broker license if he has been a resident of the state for 90 days and if he passes the real estate examination, applies for his license within six months after the date he took the exam, furnishes satisfactory proof that he has completed successfully all educational requirements adopted by the commission, and is employed by a licensed real estate broker.... (all of the rest of (b)(1)(2) remain the same)

(c) A person is entitled to a real estate salesman license if he has been a resident of the state for 90 days and if he passes the real estate salesman examination, applies for his license within six months after the date he took the exam, furnishes satisfactory proof that he has completed successfully all educational requirements adopted by the commission, and is employed by a real estate broker....(all of the rest of (c)(d) remain the same)

Delete Sec. 08.88.261

Add new statute

08.88.177. Reciprocity. A person who holds a valid active real estate license from another state shall be granted an equivalent Alaska real estate license upon passing the Alaska law portion of the exam and meeting the requirements of Sec. 171 and 211 of this chapter.

Delete from Sec. 08.88.251(b) nor is he required to have a bond.

Change Sec. 08.88.211(a)(4) to read: has not been convicted of forgery, embezzlement, obtaining money under false pretences, larceny, extortion, conspiracy to defraud, or any other similar offense or offenses or has not been convicted of a felony involving moral turpitude within the past 10 years, is not under indictment for fraud or embezzlement and has not engaged in conduct that demonstrates that he is unfit to be a real estate broker;

Change Sec. 08.88.211(b)(3) to read: has not been convicted of forgery, embezzlement, obtaining money under false pretences, larceny, extortion, conspiracy to defraud, or any other similar offense or offenses or has not been convicted of a felony involving moral turpitude within the past 10 years, is not under indictment for fraud or embezzlement and has not engaged in conduct that demonstrates that he is unfit to be a real estate salesman;

Delete from Sec. 08.88.251(c), if he becomes active more than five months before January 1 following,

Change Sec. 08.88.251(c) to read: A person is inactive may become active by applying for an active license and paying the required fees, and a completed form provided by the Department. (The rest of the section remain the same)

Change Sec. 08.88.241. Reinstatement of lapsed license. A licensee who was required to take an examination before receiving a license and whose license has lapsed for more than six months shall be re-examined before reinstatement.

## MEMORANDUM

TO: Elaine Garrett  
Management Analyst

DATE: August 29, 1979

FILE NO.

TELEPHONE NO.

FROM: James L. Magowan  
Executive Secretary  
Real Estate Commission

SUBJECT: Real Estate Investigation/  
Complaints (Memo of 8/23/79)

There is apparently some confusion of terms in regard to "investigations." Most cases before the real estate commission have not been investigated in great depth. What has been done since 1976 is as follows:

1. Receipt of written complaint
2. All licenses implicated are sent "10 day letter"
3. Response and complaint are evaluated - if there is reason to continue at this point. Further investigation is made - occasionally interviews etc., are conducted.
4. If response satisfies us the case is recommended to the commission for closing.
5. If case's further investigated or file is prepared for Attorney General to issue accusation.

As far as I have been concerned all written complaints are investigated - even if only to the extent of requiring a response to a 10-day letter.

The 10-day letter automatically requests trust account records - this is our only form of random "auditing."

Most "complaints" or inquiries are not written and no record of them exists. I receive many phone calls each day from persons who are not

pleased with real estate transactions. Most complaints - both written and phoned are from the public. We receive a few from licensees. Sometimes the caller is able to resolve the problem by calling the licensee and telling them what I said. Sometimes I make a call or two to find out "what is going on" which results in problems disappearing.

I estimate the phone complaints at better than 3 or 4 times the number of written complaints.

There are also innumerable calls from licensees asking clarification of the law with respect to specific situations. The phone inquiries absorb most of my time. Over the past four years I have been able to thoroughly investigate few cases because the initial receipt of cases and the phone inquiries have taken most of my time.

The following is a tabulation of written complaints for FY 78 and FY 79.

FY 1978 Received 107 written complaints

Closed 94

Two licenses were revoked.

One license was denied.

One applicant was denied admittance to the examination.

One hearing on two licensees is in progress.

One exam score was cancelled (cheating - 2 applicants)

One hearing was requested on 9/1/78 by the commission but this has not occurred.

Six cases are classed as inactive. This means that to all appearances violations occurred but we are unable to do anything about them. Most cases involving unlicensed activity or requiring an audit go into this category. We have not been able to interest the Attorney General's office in prosecuting unlicensed activity and we do not have auditors available.

It should be noted that in the past we have used Revenue Auditors on several occasions. This has not proven effective because the books often balance. The licensees simply do not maintain proper records for the problem transactions. It requires investigative auditors to uncover our violations.

FY 79      Received 127 written complaints

            Closed 56

                    43 referred to investigations

                    14 inactive

                    1 revoked license

                    1 referred to B & S

                    4 advisory (letters but not actual complaints - no action is taken on these unless writer follows up)

                    2 Conflict of Interest - cases involving family, friends or commission members.

Six cases still with the Executive Secretary pending receipt and/or evaluation of responses.

Total for 2 years            234 written complaints  
                                  150 Closed  
                                  84 referred to investigations  
                                  or inactive.

We are closing about 60% of our cases. A number of these have died of old age.

It should be noted that a number of serious cases have had hearings requested by the commission but there has been no action to proceed with hearings on most of these.

Most of our serious cases involve misrepresentation, fraud or embezzling. Misrepresentation, fraud and embezzling all require a considerable amount of investigation.

We know of brokers and salesmen who are repeat offenders but nothing happens.

Example: We currently are awaiting an accusation against [REDACTED], Broker. [REDACTED] confessed judgement in a \$45,000 embezzlement.

Over a year ago the commission requested a hearing against [REDACTED] in another complaint. Last October in an inspection of her trust account I found a \$7,000 embezzlement and again requested a hearing through the investigation section. There are about three other "old" complaints against her. Nothing has happened on these.

One case against her was referred to the ombudsman's office due to delay. The Legislative Audit felt the charge of delay was justified - and this case is the most difficult to prove and the most minor offense filed against her.

We get some complaints from licensees--usually difficulty in collecting earned commissions from brokers. Most of these are considered civil disputes and out of commission jurisdiction. The majority of our complaints are from aggrieved buyers and/or sellers.

H

STATE OF ALASKA  
Board of Public Accountancy  
(October, 1979)

Findings

The Board of Public Accountancy operates under AS 08.04 to license qualified applicants and regulate individuals within the profession. It is to the benefit of the public that business entities within communities can be competently evaluated and subsequently perpetuated on the basis of economic viability. The Board of Public Accountancy has demonstrated responsibility and conscientiousness in performing its duties. We believe that the Board and State regulation of the profession should continue.

I. General information

A. Regulated Parties

1. Certified Public Accountants
2. Public Accountants
3. Partnerships and Corporations

B. Definitions

"(1) 'accountant' means any person licensed in the state as either a certified public accountant or public accountant under AS 08.04;

(7) 'practice of public accounting' means the holding of a CPA certificate or a PA license and the performance for the general public of any auditing services, accounting services, tax services, management services or special accounting services for compensation; this definition does not apply to acts of public officials or public employees in the performance of their duties, or to any officer, employee, partner, or principal except for those employed as an employee, partner, principal, or practitioner of a certified public accountant firm or public accountant firm;" (12 AAC 04.290)

C. Nature and Composition of Board

1. Board members and terms:

Three-year term; no person who has served two successive complete terms may be reappointed until one year from the expiration of his term.

Charlotte Stuart, C.P.A., Inactive (Chairman)	ends April 25, 1981
James Dieringer, C.P.A. & P.A.	ends April 25, 1981
Vern Johnson, C.P.A. & P.A.	ends April 25, 1981
L. Pete Hogan, C.P.A.	ends April 25, 1980
Roxana Kemp (public member) (professional member vacancy) (public member vacancy)	ends April 25, 1981

2. Representation:

Profession = 5 (by statute)  
Public = 2 (by statute)

3. Qualifications:

"Each member shall be a resident of this state for at least one year. Three members shall be certified public accountants, two members shall be public members in accordance with AS 08.01.025, and the remaining members shall be public accountants." All professional members must hold a current certificate or license or must be eligible to receive a permit.  
(AS 08.04.020)

D. Licensing Data

Current Licenses	(through September, 1979)
in-State	364
out-of-State	<u>37</u>
Total	401

E. Fees

1. examination	\$ 50.00
2. partnership change	5.00
3. biennial permit (partnership or corporate practice)	60.00
4. annual permit	100.00

F. Board Revenues and Expenditures

	FY '76	FY '77	FY '78	FY '79
Receipts	\$21,437.00	\$15,780.00	\$39,265.00	\$21,471.00
- refunds	<u>660.00</u>	<u>645.00</u>	<u>590.00</u>	<u>285.00</u>
Total	\$20,777.00	15,135.00	\$38,675.00	\$21,186.00
Expenditures				
Transportation	2,399.90	2,645.48	4,263.76	4,022.26
Per Diem	2,051.53	3,117.17	2,723.50	3,638.00
Phone	131.26	316.55	393.17	875.08
Printing, Adver. & Postage	897.75	2,091.24	854.25	767.43
Fees & Services	6,773.90	6,532.17	8,356.70	10,370.01
Rents, Leases & Other	<u>71.15</u>	<u>436.09</u>	<u>657.43</u>	<u>562.15</u>
Total	<u>\$12,325.49</u>	<u>\$15,138.70</u>	<u>\$17,248.81</u>	<u>\$20,174.93</u>
Surplus	\$ 8,451.51	-	\$21,426.19	\$ 1,011.07
Deficit	-	\$ 3.70	-	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

## G. Complaints

One case remains open since August, 1976; this case went to litigation and in March, 1978, the individual's license was revoked. A March, 1977 case involving misuse of funds was responded to in August by the individual against whom the complaint was made; apparently no further action has been taken. Six complaints remain open from 1978: four show no action in the files, one is pending receipt of further information from the complainant, and one was resolved in July, 1978. Four complaints were received in 1979, all of which are pending investigation. Thirty-three cases have been purged from agency files and will be taken before the Board with a recommendation for closure due to age of complaint and lack of jurisdiction. (The Board considered and closed a number of these cases at its October, 1979 meeting.)

The twelve open cases consist of complaints regarding unlicensed activity, overcharging, misuse of funds, and criminal activities. Five were received from members of the profession and the remainder from the profession and/or Board.

## II. Analysis

- A. To what extent has the Board of Public Accountancy operated in the public interest?

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The Board of Public Accountancy has acted in the public interest in assuring qualified practitioners and availability of services throughout the State. Recommendations and observations made in this review are designed to enhance Board operations in regulating the profession in a manner which is most desirable for the continued protection of the public.

The Board is given broad authority in its affairs under AS 08.04.070(b) which provides that the Board "may adopt and amend regulations for the orderly conduct of its affairs and for the administration of this chapter." Extensive regulations have been adopted by the Board (and more are being promulgated) concerning rules of professional conduct, meetings of the Board, requirements for certificate or license, examination procedures, reciprocity (endorsement), general provisions, and continuing education.

Applicants for licensure as Certified Public Accountants or Public Accountants must be at least 19 years old, Alaska residents, and of good moral character. They must also meet the education and experience requirements prescribed by the Board. All applicants for initial licensure in Alaska (who are not licensed by endorsement) must take the uniform CPA examination prepared and graded by the American Institute of Certified Public Accountants. The applicant may take and pass all parts of the CPA examination prior to obtaining the necessary experience. The examination consists of four major parts: auditing, theory, business law, and accounting practice; accounting practice consists of two "sub-parts." Applicants who have passed all of the accounting practice portion of any other two parts are considered to be "conditioned," and may retake all or any one of the remaining parts at subsequent examinations. The ability of Alaska applicants to take only portions of the test has been a matter of concern to the Board because some states require the "all or nothing" procedure; licensees who obtained their certificates in another manner may not be eligible for reciprocity or endorsement in those states. Alaska proctors for other states' candidates and most states proctor for Alaska candidates. The Board will also be requiring applicants who have passed the Uniform CPA examination to take and pass an ethics examination, graded by the American Institute.

As of September, 1979, there were 27 resident and 11 nonresident partnerships registered with the Department of Commerce and Economic Development, and 16 corporations. Eight individuals are licensed Public

Accountants, two of which are Board members, yet AS 08.04.020 requires two Public Accountants to serve on the Board. The Board is supposed to consist of seven members, three CPAs, two PAs, and two public members. Five members is considered to be adequate but is not in keeping with statutes.

Temporary certifications are statutorily provided for CPA applicants who do not meet residency requirements, or who do not have a place of business in the State, or are not regularly employed in the State. The Board does not issue temporary certificates. Residency requirements have not been shown to affect the job performance of licensees and have no relationship to their professional ability. It is suggested that all such requirements be deleted from Board statutes.

AS 08.04.425 mandates Board regulations prescribing criteria for continuing education as a condition of relicensure. Regulations effective January 18, 1978 accomplished this and will be utilized for December 31, 1979 renewals. Based upon a memorandum from the Department of Law dated October 27, 1978, renewal applicants will be required to have completed 58.5 hours of continuing education in 1979 and 60 hours each renewal prior thereafter (see Appendix A). Exceptions to continuing education requirements are instances of chronic illness, retirement, military service or as individually determined by the Board.

The Board has the authority to revoke or suspend certificates, licenses, registrations or permits. This has been done in some cases. The Board is actively concerned about enforcement and has suggested development and implementation of a positive enforcement program which would, of course, require additional funding.

Maintenance of records and supporting documents by the administrative agency is an area of some concern. Minutes clearly reflect approval and denial of applicants, Board policies and resolutions, and indications of

intent for actions (or inaction). Agency records, however, are lacking some pertinent information and follow through material. Steps have recently been taken to organize records and files for all boards and commissions, and relevant statistics on activity are being maintained. Efforts in this area will continue.

- B. To what extent has the operation of the Board of Public Accountancy been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

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Generally speaking, the Board of Public Accountancy has done very well with the resources provided to it. As with all boards and commissions for which support services are furnished by the Department, it has been adversely affected by limitations in budget and personnel. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs; however, past employee turnover has impeded continuity and follow-up on Board requests. Fees and revenues for all boards and commissions under the jurisdiction of the Division of Occupational Licensing are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct board revenues and expenses may be determined.

The Board has encountered the same difficulties as have all other boards and commissions with respect to investigative services provided by the administrative agency. During FY '78 two investigator positions were vacant; as a result, one position was abolished by the Legislature. At the present time, two investigators are located in Anchorage with a Chief Investigator located in Juneau. An additional investigator position was approved in the FY '80 budget but will probably not be filled immediately due to vacancy factors incorporated into the personal ser-

vice category of the budget. Procedural constraints of the administrative adjudication article of the Administrative Procedure Act (AS 44.62.330-.630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

Statutory authority given the Board allows it to develop regulations, policies and procedures suitable and appropriate for its operations. The Board actively formulates and institutes changes as necessary. Further regulations are now pending hearings, approval and adoption.

C. To what extent has the Board of Public Accountancy recommended statutory changes which are generally of benefit to the public interest?

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Two public members were added to the Board in 1976; the examination fee was increased from \$25 to \$50; continuing education requirements were added; and several clarifying and housekeeping amendments were made. The Board supports CSSB 185, now in Senate Rules Committee, which concerns issuance of temporary permits. As previously noted, the Board reviews its statutes and regulations routinely.

D. To what extent has the Board of Public Accountancy encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

The bulk of participation at Board meetings and hearings has come from applicants for certification and/or members of the profession. Among these, substantial interest has been demonstrated in proposed regulations, particularly with respect to experience requirements. As a result of professional participation, changes were incorporated into experience provisions prior to final adoption of regulations in August, 1979.

The Board has considered methods of encouraging public interest in its activities. Effective August, 1979, form letters to applicants will contain a statement inviting them to attend Board meetings. There is also a requirement under AS 08.04.080 that all licensees be notified of proposed Board rules.

Public interests are furthered by a presence of public members on the Board. "In recent years a number of states have added one or more public members (citizens with no particular interest in the occupation or profession governed by the board) to licensing boards in an effort to ensure that the interests of the public would be represented in decision-making."<sup>1</sup> The State of California, which provides for a one-third public membership on health care boards and a public majority on others, has indicated that its experience with public members has been highly rewarding.

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Public Accountancy processed and resolved?

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<sup>1</sup>Shimberg, B and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

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General inquiries regarding the activities of the Board are responded to by Department staff and by members of the Board. Indications are that these responses are both accurate and timely and that efforts are made to disseminate appropriate information.

Twelve open cases involving the profession were delineated earlier in this review, as were cases pending closure. Several were closed by the Board at its October, 1979, meeting.

F. To what extent does the Board of Public Accountancy present qualified applicants to serve the public?

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Individuals wishing certification must submit fees and application to the administrative agency. They must have passed the CPA examination and meet the experience requirements. The examination and qualification procedure is designed to insure competency.

The Board is also making an active effort to insure quality service subsequent to certification through continuing education requirements and enforcement against abuses in practice.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Public Accountancy in its own activities, and in its area of activity or interest?

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Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (also responsible to two other boards), who is hired through the State Personnel System and is subject to affirmative action requirements.

Licenses in this profession are issued on the basis of specific statutory criteria. Affirmative action requirements are not applicable to licensure qualifications.

H. To what extent are statutory, budgetary or other changes necessary to enable the Board of Public Accountancy to better serve the interests of the public?

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Recommended statutory changes include: reduction of Board membership from seven to five and deletion of requirement for two Public Accountants on the Board (§ 200); deletion of requirement for notice of proposed rules to all licentiates (§ 080); repeal of residency and age requirements (§§ 110 and 280); repeal of § 120(1) as outdated; and repeal of § 260, regarding temporary certificates, as unnecessary.

Investigation and complaint procedures are being addressed by the administrative agency with emphasis being placed on magnitude of offense and public safety.

Board and administrative expenses outweigh revenues collected through regulation of this profession. Fees collected are not adequate to cover transportation and per diem for meetings and examinations, and Division of Occupational Licensing administrative overhead such as staff salaries, examination expenses, and investigative services.

- 180. Prior applicants
- 190. Examination fee
- 200. Use of title "certified public accountant"
- 210. Effect on existing certificates
- 220. Certification of foreign accountants
- 230. [Repealed]
- 240. Registration of partnerships and corporations composed of certified public accountants
- 250. [Repealed]
- 260. Temporary certificate as certified public accountant

Sec. 08.04.100. Certificate granted. The certificate of "Certified Public Accountant" shall be granted by the board to any person who meets the requirements of §§ 110-130 of this chapter. (§ 3(1) ch 187 SLA 1960)

Sec. 08.04.110. Personal requirements. An applicant for the certified public accountant certificate shall be

- (1) Repealed by § 3 ch 127 SLA 1974.
- (2) a resident of this state;
- (3) at least 19 years of age; and
- (4) of good moral character. (§ 3(2) ch 187 SLA 1960; am § 3 ch 127 SLA 1974)

Sec. 08.04.120. Educational and experience requirements. An applicant shall meet the following requirements of education and experience.

(1) During the period from April 26, 1960, to and including April 26, 1965, the educational requirement is graduation from a high school or the substantial equivalent thereof. The experience requirement is four years of accounting experience satisfactory to the board.

(2) After April 26, 1965, the educational requirement is

(A) satisfactory completion of two years of study at one or more colleges or universities recognized by the board, or

(B) graduation from a junior or community college in Alaska or otherwise recognized by the board, or

(C) the substantial equivalent of (2)(A) or (B) of this section.

The experience requirement is four years of accounting experience satisfactory to the board.

(3) After April 26, 1960, the education and experience requirements may also be satisfied by

(A) the satisfactory completion of four years of study with a nonaccounting major at one or more colleges or universities recognized by the board, and three years of accounting experience satisfactory to the board, or

(B) the satisfactory completion of four years of study with an accounting major at one or more colleges or universities recognized by the board, and two years of accounting experience satisfactory to the board. (§ 3(3)-(6) ch 187 SLA 1960)

Sec. 08.04.130. Examination. An applicant shall pass a written examination in theory of accounts, in accounting practice, in auditing and in other related subjects which the board determines appropriate. The examination shall be designated in advance by the board as an examination for the certificate of certified public accountant. The board shall use the uniform certified public accountants' examination and advisory grading service, if available. (§ 3(7) ch 187 SLA 1960)

Sec. 08.04.140. Frequency of examination. The examination shall be held by the board as often as it determines desirable but not more than three times each year. If the uniform certified public accountants' examination is available less frequently, an examination shall be held not less than once each year. (§ 3(8) ch 187 SLA 1960)

Sec. 08.04.150. Experience prerequisite for certificate. An applicant who meets the educational requirements of § 120 of this chapter may take the examination whether or not he has met the experience requirements of that section. However an applicant shall meet the experience requirements of § 120 of this chapter before he is entitled to receive a certificate. (§ 3(9) ch 187 SLA 1960)

Sec. 08.04.160. Re-examination. An applicant who fails an examination may take as many examinations as he chooses. An applicant who receives a passing grade in accounting practice or in at least two of the other subjects has the right to be re-examined in only the remaining subjects at succeeding examinations within five years after the first examination, if he takes an examination in the remaining subjects at least once each calendar year unless excused by the board for good cause. If the applicant receives a passing grade in the remaining subjects he has passed the entire examination. (§ 3(10) ch 187 SLA 1960)

Sec. 08.04.170. Examination standards. An applicant passes the examination by attaining a grade of at least 75 in each subject in which he is examined. The board may give credit to an applicant who has passed all or part of the examination in another state if the board determines that the standards under which the examination was held are

as high as the standards established for the examination in this State. (§ 3(10) ch 187 SLA 1960)

Sec. 08.04.180. Prior applicants. Any applicant who, before April 26, 1960, applied to take an examination for the certificate of certified public accountant, or held a valid license as a public accountant, or was regularly enrolled in any college or correspondence course in accounting, or any person whose registration under this chapter is accepted by the board, shall receive a certificate when he has met either the requirements of this chapter, or the requirements which were effective at the time his first application was filed, at the option of the applicant. (§ 3(11) ch 187 SLA 1960)

Sec. 08.04.190. Examination fee. The board shall charge each application a fee of \$50 for the initial examination and for each re-examination. The applicant shall pay the fee at the time he applies for examination or reexamination. (§ 3(12) ch 187 SLA 1960; am § 1 ch 147 SLA 1976)

Sec. 08.04.200. Use of title "certified public accountant". A person who has received a certificate from the board as a certified public accountant and who holds a current permit issued under §§ 390-440 of this chapter shall be known as a certified public accountant and may use the abbreviation "CPA". (§ 3(13) ch 187 SLA 1960)

Sec. 08.04.210. Effect on existing certificates. A person who, on April 26, 1960, held a certificate as a certified public accountant issued under the laws of the Territory or State of Alaska is not required to obtain a certificate under this chapter but is otherwise subject to this chapter. Certificates issued before April 26, 1960, shall be considered certificates issued under this chapter. (§ 3(14) ch 187 SLA 1960)

Sec. 08.04.220. Certification of foreign accountants. Upon finding that an applicant meets the requirements of §§ 110 and 120 of this chapter the board may issue a certified public accountant certificate to an applicant who holds a certified public accountant certificate in effect under the laws of any state, or who holds a certificate, license or degree in effect in a foreign country which constitutes a recognized qualification for the practice of public accounting in that country comparable to that of a certified public accountant in this state. (§ 3(15) ch 187 SLA 1960)

Sec. 08.04.230. Registration of foreign accountants. Repealed by § 2 ch 147 SLA 1976.

Sec. 08.04.240. Registration of partnerships and corporations composed of certified public accountants. (a) A partnership engaged in this state in the practice of public accounting may register with the board as a partnership of certified public accountants if it meets the following requirements:

(1) at least one general partner must be a certified public accountant of this state in good standing;

(2) each partner must be a certified public accountant of some state in good standing; and

(3) except as otherwise provided in this chapter, each resident manager in charge of an office of a firm in this state, and each partner personally engaged in this state in the practice of public accounting as a member of that firm must be a certified public accountant of this state in good standing.

(b) A corporation organized for the practice of public accounting may register with the board as a corporation of certified public accountants if it meets the following requirements:

(1) the sole purpose and business of the corporation must be to furnish to the public services not inconsistent with this chapter or the regulations promulgated under it by the board; however, the corporation may invest its funds in a manner not incompatible with the practice of public accounting;

(2) each shareholder of the corporation must be a certified public accountant of some state in good standing and must be principally employed by the corporation or actively engaged in its business; no other person may have any interest in the stock of the corporation; the principal officer of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be a certified public accountant of some state in good standing;

(3) at least one shareholder of the corporation must be a certified public accountant of this state in good standing;

(4) except as otherwise provided in this chapter, each resident manager in charge of an office of the corporation in this state and each shareholder or director personally engaged in this state in the practice of public accounting must be a certified public accountant of this state in good standing;

(5) to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement binding the corporation or the qualified shareholders to purchase shares offered for sale by, or not under the ownership or effective control of, a qualified shareholder and binding a holder not a qualified shareholder to sell these shares to the corporation or the qualified shareholders; the agreement must be noticed on each certificate of corporate stock; the corporation may purchase any amount of its stock for this purpose, notwithstanding any impairment of capital, so long as one share remains outstanding;

(6) the corporation must be in compliance with those other regulations pertaining to corporations practicing public accounting in this state that the board may prescribe.

(c) Application for registration must be made upon the affidavit of a general partner or shareholder who is a certified public accountant of this state in good standing. The board shall in each case determine whether the applicant is eligible for registration. A partnership or corporation which is so registered and which holds a permit issued under § 400 of this chapter may use the words "certified public accountants" or the abbreviation "CPA's" in connection with its partnership or corporate name. Notification shall be given the board, within one month, after the admission or withdrawal of a partner or shareholder from a partnership or corporation registered under this section. (§§ 5(1), 10(3) ch 187 SLA 1960; § 3 ch 147 SLA 1976)

Sec. 08.04.250. Requirements for registration. Repealed by § 4 ch 147 SLA 1976.

Sec. 08.04.260. Temporary certificate as certified public accountant. If an applicant for a certificate as a certified public accountant meets all the requirements for a certificate except the residence requirement, or the requirement that he have a place of business in the state or be an employee regularly employed in this state, the board may issue a temporary certificate as a certified public accountant. The certificate is effective until the board notifies the applicant that his application has been granted or rejected. A temporary certificate is effective for a period not exceeding six months. No fee may be charged for the issuance of a temporary certificate. (§ 6 ch 187 SLA 1960)

### Article 3. Public Accountants.

#### Section

- 270. License granted
- 280. Personal requirements
- 290. Educational and experience requirements
- 300. Examination for license
- 310. Use of term "public accountant"
- 320. Effect on existing licenses
- 330. Partnerships of public accountants
- 340. Requirements for registration

Sec. 08.04.270. License granted. A license as a public accountant shall be granted by the board to a person who meets the requirements of §§ 280-320 of this chapter. (§ 7(1) ch 187 SLA 1960)

Sec. 08.04.280. Personal requirements. Any person is qualified to apply for a license who

(1) Repealed by § 4 ch 127 SLA 1974.

(2) is a resident of this state or has a place of business in this state or is an employee regularly employed in this state;

(3) is at least 19 years of age; and

(4) is of good moral character. (§ 7(2) ch 187 SLA 1960; am § 4 ch 127 SLA 1974)

Sec. 08.04.290. Educational and experience requirements. The requirements of education and experience shall be

(1) graduation from a high school or the substantial equivalent, and

(2) four years of accounting experience satisfactory to the board. (§ 7(3) ch 187 SLA 1960)

Sec. 08.04.300. Examination for license. (a) An applicant shall pass a written examination on subjects the board determines appropriate. The board shall designate the examination in advance as an examination for the license of public accountant.

(b) The examination shall be given by the board as often as it considers desirable but not less than once each year.

(c) The board shall charge each applicant a fee of \$50 for an initial examination and for each reexamination. The applicant shall pay the fee at the time he applies for examination or reexamination. (§ 7(4)-(6) ch 187 SLA 1960; am § 5 ch 147 SLA 1976)

Sec. 08.04.310. Use of term "public accountant". A person who receives a license as a public accountant and who holds a permit issued under §§ 390-440 of this chapter, which are both in effect, shall be known as a public accountant and may use the abbreviation "PA." (§ 7(7) ch 187 SLA 1960)

Sec. 08.04.320. Effect on existing licenses. A person who, on April 26, 1960, held a license as public accountant issued under the laws of this state or the Territory of Alaska is not required to obtain a license under this chapter but is otherwise subject to this chapter. A license issued prior to April 26, 1960, shall be considered a license issued under this chapter. (§ 7(8) ch 187 SLA 1960)

Sec. 08.04.330. Partnerships of public accountants. A partnership engaged in this state in the practice of public accounting may register with the board as a partnership of public accountants, if it meets the requirements of § 340 of this chapter. In each case the board shall determine whether the applicant is eligible for registration. Applica-

tion for registration of a partnership shall be made upon the affidavit of a general partner of the partnership who is a certified public accountant or public accountant of this state in good standing. A partnership which is registered and holds a permit issued under §§ 390-440 of this chapter may use the words "public accountants" or the abbreviation "PA's" in connection with its partnership name. The partnership shall notify the board of any change in partners within one month from the date of the change, and pay a fee of \$5. The board shall prescribe registration procedure by regulation. (§§ 8(1), 10(3) ch 187 SLA 1960)

Sec. 08.04.340. Requirements for registration. The board shall register a partnership if

(1) at least one general partner is a certified public accountant or public accountant of this state in good standing;

(2) each partner personally engaged in this state in the practice of public accounting is a certified public accountant or public accountant in good standing and holds a valid permit to practice issued under §§ 390-440 of this chapter;

(3) each nonresident partner is a certified public accountant in good standing in any state; and

(4) all offices of a partnership established or maintained in this state for the practice of public accounting in this state are maintained and registered as required by §§ 350-380 of this chapter. (§ 8(2) ch 187 SLA 1960)

#### Article 4. Regulation of Accountants.

##### Section

350. Registration of offices

360. Supervision required

370. Use of title "certified public accountant" by registered office

380. Waiver of requirements

390. Permit for individual practice as a public accountant

400. Permit for partnership or corporate practice as a public accountant

410. Permit for person not engaged in practice

420. Permit for general practice as a certified public accountant

425. Continuing education

430. Expiration and renewal

440. Effect of failure to obtain permit

450. Revocation or suspension of certificate, license, registration or permit

460. Suspension or revocation of license revokes permit

470. Revocation or suspension of partnership or corporate registration or permit

480. Grounds for revocation or suspension of partnership or corporate permit

#### 490. Reinstatement

Sec. 08.04.350. Registration of offices. Each office established or maintained in this state for the practice of public accounting in this state

(1) by a certified public accountant, partnership or corporation of certified public accountants, or

(2) by a public accountant, partnership or corporation of public accountants, shall registered annually with the board. No fee may be charged for registration. The board shall prescribe registration procedure by regulation. (§ 9(1) ch 187 SLA 1960; am § 6 ch 147 SLA 1976)

Sec. 08.04.360. Supervision required. Each office established or maintained in this state for the practice of public accounting shall be under the direct supervision of a person in residence who holds a permit under §§ 390-440 of this chapter. The supervisor may be either a sole proprietor, partner, principal or staff employee. A supervisor may serve in this capacity at one office only. (§ 9(?) ch 187 SLA 1960)

Sec. 08.04.370. Use of title "certified public accountant" by registered office. The title "certified public accountant" or the abbreviation "CPA" shall not be used in connection with an office registered under this chapter unless the "person in residence" required by § 360 of this chapter is a certified public accountant in this state. (§ 9(3) ch 187 SLA 1960)

Sec. 08.04.380. Waiver of requirements. The board may waive the requirements of §§ 240(a)(3) and (b)(4), 360 and 370 of this chapter if

(1) the community has a population of 2,000 or less; and

(2) the firm opening or maintaining the office maintains another office in the state which meets the requirements outlined in §§ 360 and 370 of this chapter. (§ 9(4) ch 187 SLA 1960; am § 2 ch 70 SLA 1964; am § 7 ch 147 SLA 1976)

Sec. 08.04.390. Permit for individual practice as a public accountant. The board shall issue a permit to engage in the practice of public accounting to a holder of a certificate or license if all offices of the certificate holder or licensee are maintained and registered as required by §§ 350-380 of this chapter. The biennial permit fee is \$60. (§ 10(1), (2) ch 187 SLA 1960; am § 8 ch 147 SLA 1976)

Sec. 08.04.400. Permit for partnership or corporate practice as a public accountant. The board shall issue a permit to engage in the practice of public accounting as a partnership or as a corporation to a

partnership or corporation registered under §§ 240 or 330-340 of this chapter. The biennial permit fee is \$60. A permit is valid only for practice under the registered name of the partnership or corporation. (§ 10(3) ch 187 SLA 1960; am § 9 ch 147 SLA 1976)

Sec. 08.04.410. Permit for person not engaged in practice. A person holding a certificate or license not engaged in the practice of public accounting may maintain his certificate or license in good standing by registering with the board and paying an annual registration fee of \$10. (§ 10(4) ch 187 SLA 1960; am § 10 ch 147 SLA 1976)

Sec. 08.04.420. Permit for general practice as a certified public accountant. A certified public accountant, or a partnership or corporation of certified public accountants in good standing in a state, not holding a permit under §§ 390 or 400 of this chapter nor maintaining an office in this state but engaging in the practice of public accounting in this state, shall apply to the board for a permit to practice. The board shall determine whether the applicant is eligible for the permit. The annual fee for the issuance of a permit is \$100. (§ 10(5) ch 187 SLA 1960; am § 11 ch 147 SLA 1976)

Sec. 08.04.425. Continuing education. (a) the board shall by regulation prescribe requirements for continuing education for persons licensed to practice as certified public accountants under this chapter. In adopting these regulations, the board may

(1) use and rely upon guidelines and pronouncements with respect to continuing education issued by recognized educational and professional associations in the field; and

(2) prescribe content, duration and organization of courses or programs that will satisfy the continuing education requirements.

(b) After the expiration of two years immediately following the effective date of regulations promulgated by the board under (a) of this section, every application for renewal of a permit to practice as a certified public accountant by a person who has held a certificate as a certified public accountant for two years or more shall be accompanied or supported by documents or other evidence indicating satisfaction of the continuing education requirements prescribed by the board during the two years immediately preceding the application.

(c) Failure by an applicant for renewal of a permit to practice to furnish that evidence constitutes grounds for revocation, suspension or refusal to renew the permit under § 450 of this chapter, unless the board determines that failure to have been due to reasonable cause or excusable neglect. However, the board may renew a permit to practice despite failure to furnish evidence of satisfaction of the continuing education requirements established under (a) of this section if the applicant agrees to follow a particular program or schedule of continuing education prescribed by the board.

(d) In adopting regulations under (a) of this section, or in issuing individual orders under (c) of this section,

(1) the board shall consider

(A) the accessibility of applicants to the continuing education courses or programs that it may require; and

(B) any impediments to interstate practice of public accountancy which may result from differences in continuing education requirements prescribed by other states; and

(2) the board may relax or suspend the continuing education requirements

(A) for applicants who certify that they do not intend to engage in the practice of public accountancy; or

(B) in instances of individual hardship. (§ 12 ch 147 SLA 1976)

Sec. 08.04.430. Expiration and renewal. A permit or registration under §§ 390-420 of this chapter, unless revoked or suspended, shall be renewed biennially upon payment of a renewal fee in the same amount as the initial biennial fee. (§ 10(6) ch 187 SLA 1960; am § 3 ch 94 SLA 1968)

Sec. 08.04.440. Effect of failure to obtain permit. Failure of a person, partnership or corporation to apply for the annual permit to practice or to pay the annual fee within (1) three years from the expiration date of the permit to practice or annual registration last obtained or renewed, or (2) three years from the date upon which the certificate holder or licensee was granted his certificate as a certified public accountant or license as a public accountant deprives him of the right to a permit or annual registration or renewal of a permit, unless the board determines that the failure is excusable. In case of excusable failure, the fee shall not exceed three times the annual fee. (§ 10(7) ch 187 SLA 1960; am § 13 ch 147 SLA 1976)

Sec. 08.04.450. Revocation or suspension of certificate, license, registration or permit. The board may revoke or suspend a certificate or license, or may revoke, suspend, or refuse to renew any permit, or may censure any certificate holder, licensee, registrant, or permit holder for

(1) fraud or deceit in obtaining any certificate, license, registration, or permit required by this chapter;

(2) dishonesty or gross negligence in the practice of public accounting, or other acts discreditable to the accounting profession;

- (3) violation of any provision of §§ 500-610 of this chapter;
- (4) violation of a rule of professional conduct or other regulation promulgated by the board;
- (5) conviction of a felony under the laws of any state or of the United States;
- (6) conviction of any crime, an essential element of which is dishonesty or fraud, under the laws of any state or of the United States;
- (7) cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant or public accountant in any other state for any cause other than failure to pay an annual registration fee;
- (8) suspension or revocation of the right to practice before any state or federal agency; or
- (9) [delete]
- (10) failure of a certified public accountant to satisfy the continuing education requirements prescribed by the board under § 425 of this chapter, except as conditioned, relaxed or suspended by the board under § 425(c) and (d) of this chapter. (§ 11(1) ch 187 SLA 1960; am § 14 ch 147 SLA 1976)

Sec. 08.04.460. Suspension or revocation of license revokes permit. Revocation or suspension of a certificate, license, or registration required for the issuance of a permit under §§ 390-440 of this chapter revokes or suspends the permit. (§ 11(2) ch 187 SLA 1960)

Sec. 08.04.470. Revocation or suspension of partnership or corporate registration or permit. The board shall revoke the registration and permit to practice of a partnership or corporation if at any time it does not meet the qualifications prescribed by the sections of this chapter under which it qualified for registration. (§ 12(1) ch 187 SLA 1960; am § 15 ch 147 SLA 1976)

Sec. 08.04.480. Grounds for revocation or suspension of partnership or corporate permit. The board may revoke or suspend the registration and permit to practice of a partnership or corporation, may revoke, suspend or refuse to renew its permit to practice or may censure the partnership or corporation for any of the causes enumerated in §§ 450 and 460 of this chapter, or for the following additional causes:

- (1) the revocation or suspension of the certificate, license or registration of any partner or shareholder;

(2) the revocation, suspension, or refusal to renew the permit to practice of any partner or shareholder;

(3) the cancellation, revocation, suspension, or refusal to renew the authority of the partnership or any partner or the corporation or a shareholder to practice public accounting in any other state for any cause other than failure to pay an annual registration fee in that state. (§ 12(2) ch 187 SLA 1960; am § 16 ch 147 SLA 1976)

Sec. 08.04.490. Reinstatement. Upon application in writing and after a hearing, the board may issue a new certificate to a certified public accountant whose certificate has been revoked, or may permit reregistration of one whose registration has been revoked, or may modify the suspension of or may reissue any certificate, license, or permit to practice public accounting which has been revoked or suspended. (§ 14 ch 197 SLA 1960)

#### Article 5. Unlawful Acts and Penalties.

##### Section

- 500. Individual posing as a certified public accountant
- 510. Partnership or corporation posing as a certified public accountant
- 520. Individual posing as public accountant
- 530. Partnership or corporation posing as public accountant
- 540. Use of deceptive title or abbreviation
- 550. [Repealed]
- 560. Individual may not assume title
- 570. Persons not affected
- 580. Partnership posing as accountants or auditors
- 590. Use of title with corporate name
- 600. Disclosure of lack of permit
- 610. Deceptive use of partnership or corporation title
- 620. Exceptions
- 630. Injunction against unlawful act
- 640. Penalty
- 650. Single act evidence of practice

Sec. 08.04.500. Individual posing as a certified public accountant. (a) No person may assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that he is a certified public accountant, unless he has received a certificate, holds a permit issued under §§ 390-440 of this chapter, hereinafter referred to as a "live" permit, and all of his offices in this state for the practice of public accounting are maintained and registered as required by §§ 350-380 of this chapter.

(b) This section does not prohibit

(1) a certified public accountant in good standing in any state holding a permit under § 420 of this chapter from using the title certified public accountant;

(2) Repealed by § 17 ch 147 SLA 1976. (§ 15(1) ch 187 SLA 1960; am § 17 ch 147 SLA 1976)

Sec. 08.04.510. Partnership or corporation posing as a certified public accountant. (a) No partnership or corporation may assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that it is composed of certified public accountants, unless the partnership or corporation is registered and holds a live permit, is practicing under its registered name, and its offices in this state for the practice of public accounting are maintained and registered as required by §§ 350-380 of this chapter.

(b) A partnership or corporation of certified public accountants in good standing in any state, not registered as a partnership or corporation of certified public accountants under §§ 240 and 250 of this chapter but holding a permit under § 420 of this chapter, may use the title or designation "certified public accountants." (§ 15(2) ch 187 SLA 1960; am § 18 ch 147 SLA 1976)

Sec. 08.04.520. Individual posing as public accountant. No person may assume or use the title or designation "public accountant" or the abbreviation "PA" or other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that he is a public accountant, unless he holds a live permit and his offices in this state for the practice of public accounting are maintained and registered as required by §§ 350-380 of this chapter. (§ 15(3) ch 187 SLA 1960)

Sec. 08.04.530. Partnership or corporation posing as public accountant. No partnership or corporation may assume or use the designation "public accountant" or the abbreviation "PA" or any other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that the partnership or corporation is composed of public accountants, unless the partnership or corporation holds a live permit, is practicing under its registered name, and its office in this state for the practice of public accounting is maintained and registered as required by §§ 350-380 of this chapter. (§ 15(4) ch 187 SLA 1960; am § 19 ch 147 SLA 1976)

Sec. 08.04.540. Use of deceptive title or abbreviation. No person, partnership or corporation may assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant," "registered accountant", or any other title or designation likely to be confused with "certified public accountant" or "public accountant," or any of the abbreviations "CA," "EA," "LA," "RA", or similar abbreviations likely to be confused with

"CPA", or "PA"; however, a person, partnership or corporation holding a live permit and whose offices in this state for the practice of public accounting are maintained and registered as required by §§ 350-380 of this chapter may hold himself or itself out to the public as an accountant or auditor. (§ 15(5) ch 187 SLA 1960; am § 20 ch 147 SLA 1976)

Sec. 08.04.550. Corporation may not assume title. Repealed by § 21 ch 147 SLA 1976.

Sec. 08.04.560. Individual may not assume title. No person may sign or affix his name or any trade or assumed name used by him to any accounting or financial statement, or opinion or report on any accounting or financial statement with any wording indicating that he is a certified public accountant or public accountant or with any wording indicating that he has expert knowledge in accounting or auditing, unless he holds a live permit and his offices in this state for the practice of public accounting are maintained and registered as required by §§ 350-380 of this chapter. (§ 15(7) ch 187 SLA 1960)

Sec. 08.04.570. Persons not affected. Section 560 does not prohibit

(1) an officer, employee, partner, or principal of any organization from affixing his signature to any statement or report in reference to the financial affairs of the organization together with any wording designating the position, title or office which he holds;

(2) an act of a public official or public employee in the performance of his duties;

(3) a person maintaining a bookkeeping or tax service from affixing his signature to any record, statement or report maintained or prepared by him. (§ 15(7) ch 187 SLA 1960)

Sec. 08.04.580. Partnership posing as accountants or auditors. No person may sign or affix a partnership name with any wording indicating that it is a partnership composed of accountants or auditors or persons having expert knowledge in accounting or auditing to any accounting or financial statement, or to any opinion, or report on or certificate to any accounting or financial statement unless the partnership holds a live permit, is practicing under its registered name, and its offices in this state for the practice of public accounting are maintained and registered as required by §§ 350-380 of this chapter. (§ 15(8) ch 187 SLA 1960)

Sec. 08.04.590. Use of title with corporate name. No person may sign or affix a corporate name with any wording indicating that it is a corporation performing services as accountants or auditors, or composed of accountants or auditors or persons having expert knowledge in accounting or auditing to any accounting or financial statement, or to any

opinion or report on or certificate to any accounting or financial statement unless the corporation holds a live permit, is practicing under its registered name, and its offices in this state for the practice of public accounting are maintained and registered as required by §§ 350-380 of this chapter. (§ 15(9) ch 187 SLA 1960; am § 22 ch 147 SLA 1976)

Sec. 08.04.600. Disclosure of lack of permit. No person, partnership or corporation not holding a live permit may hold himself or itself out to the public as a certified public accountant or public accountant by use of such words or abbreviations on any sign, card, letterhead or in any advertisement or directory, without indicating that the person, partnership, or corporation does not hold a permit. This section does not prohibit (1) an officer, employee, partner, or principal of an organization from describing himself by the position, title, or office which he holds in the organization, (2) an act of a public official or public employee in the performance of his duties, or (3) any person from maintaining a bookkeeping or tax service. (§ 15(10) ch 187 SLA 1960; am § 23 ch 147 SLA 1976)

Sec. 08.04.610. Deceptive use of partnership or corporation title. No person may assume or use the title or designation "certified public accountant" or "public accountant" or an abbreviation of them, in conjunction with a name indicating or implying that there is a partnership or corporation, or in conjunction with the designation "and Company" or "and Co." or any similar designation unless there is a bona fide partnership or corporation registered under that name. However, a sole proprietor or partnership lawfully using the title or designation "certified public accountant" or "public accountant" or an abbreviation of them in conjunction with such names or designation on April 26, 1960, may continue to do so if the person or partnership otherwise complies with this chapter. (§ 15(11) ch 187 SLA 1960; am § 24 ch 147 SLA 1976)

Sec. 08.04.620. Exceptions. Nothing in this chapter prohibits

(1) a person not a certified public accountant or public accountant from serving as an employee of or as an assistant to any person, partnership or corporation holding a live permit so long as the employee or assistant does not use his name in connection with any accounting or financial statement,

(2) a certified public accountant or public accountant from indicating that he holds a certificate or license entitling him to that designation if he holds a valid certificate or license in any state, but the person shall not indicate that his services are available to the public unless he holds a live permit issued under this chapter;

(3) a holder of a certificate, license, or degree from a foreign country which constitutes a recognized qualification for the practice of public accounting in that country from indicating that he

holds the certificate, license, or degree, but the person shall not indicate that his services are available to the public unless he holds a live permit issued under this chapter. (§ 16 ch 187 SLA 1960; am § 25 ch 147 SLA 1976)

Sec. 08.04.630. Injunction against unlawful act. Whenever, in the judgement of the board, any person has engaged in any act which constitutes a violation of §§ 500-610 of this chapter, the board may apply to the appropriate court for an order enjoining the act. Upon a showing by the board that a person has engaged in the act, the court shall grant an injunction or any other appropriate order without bond. (§ 17 ch 187 SLA 1960; am § 3 ch 70 SLA 1964)

Sec. 08.04.640. Penalty. Any person who violates any provision of §§ 500-610 of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$500, or by imprisonment for not more than one year, or by both. Whenever the board has reason to believe that any person has violated any provision of §§ 500-610 of this chapter it may certify the facts to the attorney general of this state or other appropriate enforcement officer, who may cause appropriate proceedings to be brought. (§ 18 ch 187 SLA 1960)

Sec. 08.04.650. Single act evidence of practice. The display or uttering by a person of a card, sign, advertisement or other printed, engraved, or written instrument or device, bearing a person's name in conjunction with the words "certified public accountant," or any abbreviation thereof, or with the words "public accountant," or any abbreviation thereof, or any words or abbreviations likely to be confused with any of them is prima facie evidence in any action brought under §§ 630 or 640 of this chapter that the person whose name is displayed caused the display or uttering of the card, sign, advertisement or written instrument or device, and that the person is holding himself out to be a certified public accountant or public accountant. In any action, evidence of the commission of a single act prohibited by this chapter is sufficient to justify an injunction or a conviction without evidence of a general course of conduct. (§ 18 ch 187 SLA 1960)

#### Article 6. Miscellaneous Provisions.

##### Section

660. Ownership of accountant's working papers

670. Construction

Sec. 08.04.660. Ownership of accountant's working papers. Statements, records, schedules, working papers, and memoranda made by a certified public accountant, public accountant, or registered foreign accountant incident to or in the course of professional service to a client, except reports submitted to a client, are the property of the accountant, in the absence of an express agreement between the accountant and the client to the contrary. No statement, record, schedule,

working paper, or memorandum may be sold, transferred, or bequeathed to a person other than a partner of the accountant without the consent of the client or his personal representative or assignee. (§ 20 ch 187 SLA 1960)

Sec. 08.04.670. Construction. If any provision of this chapter or the application of any provision to any person or to any circumstances is invalid, the remainder shall not be affected. (§ 22 ch 187 SLA 1960)

#### Article 7. General Provisions.

##### Section

680. Definitions

690. Short title

Sec. 08.04.680. Definitions. As used in this chapter

(1) "board" means the Alaska State Board of Public Accountancy;

(2) "certificate" means certificate as a certified public accountant;

(3) "license" means license as a public accountant. (§ 21 ch 187 SLA 1960)

Sec. 08.04.690. Short title. This chapter may be cited as the Accountancy Act. (§ 1 ch 167 SLA 1960; am § 5 ch 127 SLA 1974; am § 26 ch 147 SLA 1976)

ARTICLE 1.  
RULES OF PROFESSIONAL CONDUCT

## Section

- 05. Integrity and objectivity
- 10. Independence
- 15. Competence
- 20. Confidential relationship
- 30. Contingent fees
- 33. Accounting principles
- 36. Auditing standards
- 40. Use of work of others
- 50. Responsibility and disclosure
- 60. Form of opinions and reports
- 70. Forecasts
- 80. Advertising
- 90. Solicitation
- 100. Commissions
- 110. Services performed by employees
- 120. Referrals

12 AAC 04.005. INTEGRITY AND OBJECTIVITY. An accountant may not knowingly misrepresent facts, and when engaged in the practice of public accounting, including the rendering of tax and management advisory services, may not subordinate his or her judgment to others in matters relating to professional accounting decisions. In tax practice, an accountant may resolve doubt in favor of his or her client as long as there is reasonable support for his or her position. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)  
AS 08.04.080

12 AAC 04.010. INDEPENDENCE. (a) An accountant or accounting firm shall express a disclaimer of an opinion on financial statements of any enterprise if he or she or the firm is not independent of that enterprise and shall disclose the lack of independence.

(b) An accountant or accounting firm is not independent if

(1) during the period of professional engagement or at the time of expressing an opinion he or any member of the firm had or was committed to acquire a direct or indirect financial interest in the enterprise; or

(2) during the period of professional engagement or the period covered by the

CHAPTER 04.  
BOARD OF PUBLIC ACCOUNTANCY

## Article

- 1. Rules of Professional Conduct
- 2. The Board
- 3. Requirements for Certificate or License
- 4. Examination
- 5. Certificates and Licenses
- 6. General Provisions
- 7. Continuing Education

financial statements or at the time of expressing an opinion he or any member of the firm was connected with the enterprise as a promoter, underwriter, voting trustee, director, officer, or employee.

(c) For purposes of this section, the word "director" shall not include gratuitous service to a charitable, religious, or nonprofit organization. (Eff. 1/20/63, Reg. 7; am 9/9/72, Reg. 43; am 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)  
AS 08.04.080

12 AAC 04.015. **COMPETENCE.** An accountant may not undertake any engagement which he or she or his or her firm cannot reasonably expect to complete with professional competence. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)  
AS 08.04.080

12 AAC 04.020. **CONFIDENTIAL RELATIONSHIP.** Unless required by law or court order, an accountant shall not violate a confidence of his client. A confidence is violated when information gained through the professional relationship is disclosed to another without the client's consent. (Eff. 1/20/63, Reg. 7; am 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)  
AS 08.04.080

12 AAC 04.030. **CONTINGENT FEES.** Unless imposed by a court of law, no accountant may render or offer professional services for a fee which is contingent upon his findings. (Eff. 1/20/63, Reg. 7; am 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)  
AS 08.04.080

12 AAC 04.033. **ACCOUNTING PRINCIPLES.**

(a) An accountant may not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if those statements contain any departure from a generally accepted accounting principle which has a material effect on the statements taken as a whole unless the accountant can demonstrate that due to unusual circumstances the financial statements would otherwise have been misleading. In such cases his or her report must describe the departure, the approximate effects of it, if practicable, and the

reasons why compliance with the principle would result in a misleading statement.

(b) Generally accepted accounting principles include, but are not limited to,

(1) statements of financial accounting standards adopted by the Financial Accounting Standards Board which are in effect when the financial statements are issued;

(2) accounting research bulletins and opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants which are not superseded by action of the Financial Accounting Standards Board. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)  
AS 08.04.080

12 AAC 04.036. **AUDITING STANDARDS.**

(a) An accountant may not permit his or her name to be associated with financial statements in such a manner as to imply that he or she is acting as an independent public accountant unless he or she has complied with generally accepted auditing standards or can justify departure from them.

(b) Generally accepted auditing standards include, but are not limited to, statements of auditing standards issued by the American Institute of Certified Public Accountants in effect when financial statements are examined. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)  
AS 08.04.080

12 AAC 04.040. **USE OF WORK OF OTHERS.** No accountant may express an opinion on financial statements which is based in part upon work performed by another accountant unless

(1) such work was performed in accordance with generally accepted auditing standards; and

(2) employed generally accepted accounting principles; and

(3) was performed by an independent accountant as defined in sec. 10 of this chapter. (Eff. 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)  
AS 08.04.080

**12 AAC 04.050. RESPONSIBILITY AND DISCLOSURE.** An accountant may not issue an opinion on representations in financial statements he has examined unless he

(1) discloses any relevant, material fact known to him which is not disclosed in the financial statements; and

(2) discloses any material misstatement contained in the financial statements; and

(3) has exercised that degree of skill which is customary in the profession; and

(4) discloses any deviation in the financial statements from customary accounting procedures. (Eff. 1/20/63, Reg. 7; am 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)  
AS 08.04.080

**12 AAC 04.060. FORM OF OPINIONS AND REPORTS.** (a) In every report and opinion, an accountant shall clearly state the scope of responsibilities undertaken, all material information used, all audited facts, and when unaudited financial statements are included, the fact that they were not audited.

(b) An accountant shall not permit his name to be associated with financial statements unless he has with regard to those statements

(1) expressed an unqualified opinion; or

(2) expressed a qualified opinion which clearly specifies the reason for the qualification; or

(3) expressed an adverse opinion; or

(4) disclaimed an opinion on the statements which clearly indicates his reasons therefor. (Eff. 1/20/63, Reg. 7; am 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)  
AS 08.04.080

**12 AAC 04.070. FORECASTS.** An accountant shall not permit his name to be used with a forecast or prediction of future events in a manner which may lead to a belief that he vouches or warrants that the events will in fact

occur. (Eff. 1/20/63, Reg. 7; am 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)  
AS 08.04.080

**12 AAC 04.080. ADVERTISING.** Advertising and other public communication by an accountant must not

(1) misrepresent facts or fail to disclose relevant facts;

(2) create false or unjustified expectations of favorable results;

(3) imply abilities not supported by valid educational or professional attainments or licensing recognition;

(4) set forth fees without disclosing all variables and other relevant factors;

(5) imply the ability to influence improperly any court, tribunal or other public body or official; or

(6) contain any other representation or implication that is false, fraudulent or unfair, or that probably would deceive or mislead an ordinarily prudent person. (Eff. 1/20/63, Reg. 7; am 9/9/72, Reg. 43; am 2/10/78, Reg. 64)

Authority: AS 08.04.070(b)  
AS 08.04.080

**12 AAC 04.090. SOLICITATION.** An accountant may not solicit clients or offer professional services to anyone who has not explicitly indicated a desire for such services. (Eff. 1/20/63, Reg. 7; am 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)  
AS 08.04.080

**12 AAC 04.100. COMMISSIONS.** (a) Commissions, brokerage, or other participation in the fees or profits of professional work shall not be paid by an accountant to any person not regularly engaged in the practice of accounting.

(b) Commissions, brokerage, or other participation in the fees or profits or work recommended or turned over to any person not regularly engaged in the practice of accounting

shall not be accepted by an accountant. (Eff. 1/20/63, Reg. 7; am 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)  
AS 08.04.080

**12 AAC 04.110. SERVICES PERFORMED BY EMPLOYEES.** An accountant shall not permit an employee to perform any services which the accountant himself or his firm is not permitted to perform. (Eff. 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)  
AS 08.04.080

**12 AAC 04.120. REFERRALS.** An accountant who receives an engagement for services by referral from another accountant shall not discuss or accept an extension of his services beyond the specific engagement without first consulting with the referring accountant. (Eff. 1/20/63, Reg. 7; am 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)  
AS 08.04.080

## ARTICLE 2. THE BOARD

### Section

130. Annual meeting  
140. Special meeting

**12 AAC 04.130. ANNUAL MEETING.** The board shall hold an annual meeting at such time and place as may be designated by the present. Notice of such annual meeting shall be given at least 30 days prior to the date designated unless such notice is waived by unanimous consent of all board members. (Eff. 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)

**12 AAC 04.140. SPECIAL MEETING.** Special meetings may be held upon the call of the president or a majority of the members of the board, at the time and place as may be designated in the call. (Eff. 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)

## ARTICLE 3. REQUIREMENTS FOR CERTIFICATE OR LICENSE

### Section

150. (Repealed)  
160. References  
170. Resident defined

180. Experience  
181. Experience requirement point system  
185. Education defined for certified public accountant applicants  
187. Education verified

**12 AAC 04.150. CITIZENSHIP.** Repealed 2/10/78.

**12 AAC 04.160. REFERENCES.** Every candidate must submit names of at least three persons, one of whom must be a resident of the state who can vouch for his moral character. The board may make such other inquiries as it deems appropriate to satisfy itself that the candidate is of good moral character. (Eff. 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)

**12 AAC 04.170. RESIDENT DEFINED.** (a) The term "resident" as used in AS 08.04 shall include only a person who actually resides in the state. Any applicant who has not so resided for a period of at least one year may be required to furnish the board evidence that he is in fact a bona fide resident.

(b) An applicant may meet the resident requirement by having a place of business in this state or being an employee regularly employed in the state. (Eff. 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)

**12 AAC 04.180. EXPERIENCE.** (a) In order to fulfill the experience requirements set out in AS 08.04.120 and AS 08.04.290, an applicant shall show to the satisfaction of the board that his or her audit experience includes all of the following:

(1) experience in applying a variety of auditing procedures and techniques to the usual and customary financial transactions recorded in accounting records;

(2) experience in preparation of audit working papers covering the examination of the accounts usually found in accounting records;

(3) experience in planning programs of audit work and selecting the procedures to be followed;

(4) experience in the preparation of written explanation and comments on the findings of

the examination and on the content of the accounting records; and

(5) experience in the analysis, review, or preparation of audited or unaudited financial statements and of explanations and notes on them.

(b) Each year of experience required by AS 08.04.290 must consist of 12 calendar months' cumulative work experience, but not necessarily consecutive. (Eff. 9/9/72, Reg. 43; am 8/3/79, Reg. 70)

Authority: AS 08.04.070(b)

**12 AAC 04.181. EXPERIENCE REQUIREMENT POINT SYSTEM.** (a) In evaluating the experience of an applicant for a certified public accounting certificate, one of the following is required:

(1) a minimum of four experience points for an applicant with a four-year accounting degree recognized by the board, including 850 hours performing the attest function under the direct supervision of a CPA of which

(A) 50 hours include experience in planning programs of audit work and procedures to be followed; and

(B) 150 hours include experience in the analysis, review, or preparation of audited or unaudited financial statements and of explanations and notes on them; or

(2) a minimum of six experience points for an applicant with a four-year nonaccounting degree recognized by the board, including 850 hours performing the attest function under the direct supervision of a CPA of which

(A) 50 hours include experience in planning programs of audit work and procedures to be followed; and

(B) 150 hours include experience in the analysis, review, or preparation of audited or unaudited financial statements and of explanations and notes on them; or

(3) a minimum of eight experience points for an applicant with 60 college semester hours recognized by the board including 850 hours

performing the attest function under the direct supervision of a CPA of which

(A) 50 hours include experience in planning programs of audit work and procedures to be followed; and

(B) 150 hours include experience in the analysis, review, or preparation of audited or unaudited financial statements and of explanations and notes on them.

(b) Experience points are allocated as follows:

(1) one year experience working in public accounting under the direct supervision of a certified public accountant two experience points;

(2) one year experience working in private accounting or governmental accounting under the direct supervision of a certified public accountant, one and one-third experience points; or

(3) one year experience working as an accountant not under the direct supervision of a certified public accountant, one experience point.

(c) The board will, in its discretion, require an applicant for a certified public accountant certificate to provide work papers or other documentation to substantiate the statement of accounting experience.

(d) The requirements of this section apply to all applicants for certified public accountant certificates after January 1, 1980. (Eff. 8/3/79, Reg. 70)

Authority: AS 08.04.070(b)

**12 AAC 04.185. EDUCATION DEFINED FOR CERTIFIED PUBLIC ACCOUNTANT APPLICANTS.** (a) As used in AS 08.04.120(2), "two years of study at one or more colleges or universities recognized by the board" and "graduation from a junior or community college" means the accumulation, from a college or university whose credits would be accepted by the University of Alaska toward a degree granted by it, of

(1) 60 semester credit hours, 12 of which are in accounting subjects; or

(2) 90 quarter credit hours, 18 of which are in accounting subjects.

(b) AS used in AS 08.04.120(3)(B), an accounting major consists of not less than

(1) 24 semester credit hours or 36 quarter credit hours in subjects such as, but not limited to

- (A) accounting principles;
- (B) intermediate accounting;
- (C) income tax;
- (D) cost accounting;
- (E) auditing;
- (F) advanced accounting; or
- (G) accounting theory;

(2) three semester credit hours or five quarter credit hours of business law;

(3) three semester credit hours of five quarter credit hours of economics; and

(4) three semester credit hours or five quarter credit hours of

- (A) statistics;
- (B) computer science; or
- (C) algebra.

(c) The requirements of (a) of this section apply to a person making initial application for examination after January 18, 1978.

(d) The requirements of (b) of this section apply to a person applying for a certified public accountant certificate after January 18, 1978. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)  
AS 08.04.120(2) and (3)

12 AAC 04.187. EDUCATION VERIFIED. (a) An applicant for a public accountant examination or license shall submit a transcript from his or her high school of graduation.

(b) An applicant for a certified public accountant examination or certificate shall submit a transcript or transcripts from colleges or universities necessary to verify that he or she meets the appropriate education requirements of sec. 185 of this chapter.

(c) A transcript submitted by an applicant for examination need not be certified. A transcript submitted by an applicant for a public accountant license or certified public accountant certificate must be certified unless considered impossible or impracticable by the board.

(d) If an applicant cannot submit a transcript as required by this section, the board may accept as evidence of education

(1) verification from the licensing authority of accountants in another jurisdiction;

(2) verification from a governmental agency, employer, or association which

(A) previously required documentary evidence of education; or

(B) directly verified education;

(3) oral testimony and sworn statements of the applicant and other parties; and

(4) other documentary evidence.

(c) An applicant applying under the substantially equivalent provisions of AS 08.04.120(2)(C) or AS 08.04.290(1) shall provide the board with such documentary evidence, sworn statements, and oral testimony as it requires. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)  
AS 08.04.120(2) and (3)  
AS 08.04.290(1)

#### ARTICLE 4. EXAMINATION

- Section
- 190. Time and place for filing applications
  - 200. Examination
  - 210. Time and place of examination
  - 220. Notice of examination
  - 230. Examination papers

**12 AAC 04.190. TIME AND PLACE FOR FILING APPLICATIONS.** (a) Each candidate must file a written application on forms furnished on request by the department.

(b) The application, together with the required fee, must be received in the department not less than 60 days before the date set for the examination except that the applications received after that date may be accepted upon a showing of good cause.

(c) Candidates who will not be in the state on the date set for the examination may request the department to arrange for the examination to be proctored in another state.

(d) If a candidate fails to take an examination without notifying the department in writing 30 days before the examination date, the candidate's examination fee will be forfeited except upon a showing of good cause. (Eff. 9/9/72, Reg. 43; am 2/10/78, Reg. 64; am 8/3/79, Reg. 70)

Authority: AS 08.04.070(b)

**12 AAC 04.200. EXAMINATION.** The examination for certified public accountant and public accountant is the Uniform Certified Public Accountant Examination prepared by the American Institute of Certified Public Accountants. A grade of at least 75 in each subject of the examination, considered passing. In the absence of exceptional circumstances, grades are those reported by the Advisory Grading Service of the American Institute of Certified Public Accountants. (Eff. 9/9/72, Reg. 43; am 2/10/78, Reg. 64)

Authority: AS 08.04.070(b)  
AS 08.04.130  
AS 08.04.300(a)

**12 AAC 04.210. TIME AND PLACE OF EXAMINATION.** Examinations will be offered semiannually on dates set by the American Institute of Certified Public Accountants in, but not limited to, Juneau, Anchorage and Fairbanks. (Eff. 9/9/72, Reg. 43; am 2/10/78, Reg. 64)

Authority: AS 08.04.070(b)  
AS 08.04.140  
AS 08.04.300(b)

**12 AAC 04.220. NOTICE OF EXAMINATION.** Candidates whose applications for examination have been accepted will be notified of the time and place of examination at least two weeks before the examination. Notice of the examination will also be published in major newspapers at least 90 days before the examination. (Eff. 9/9/72, Reg. 43; am 2/10/78, Reg. 64)

Authority: AS 08.04.070(b)

**12 AAC 04.230. EXAMINATION PAPERS.** All examination papers remain the property of the board and none will be returned to the candidate. All examination papers shall be preserved for a period of at least six months after notification of grading at which time any candidate shall have the right to inspect his papers only in the presence of a board member or his designee. (Eff. 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)

## ARTICLE 5. CERTIFICATES AND LICENSES

### Section

- 240. (Repealed)
- 250. Registration
- 260. Roster
- 270. Reciprocity for CPA's

**12 AAC 04.240. WHEN ALL REQUIREMENTS ARE MET.** Repealed 2/10/78.

**12 AAC 04.250. REGISTRATION.** Registration prescribed by AS 08.04.350, 390, 400, 410 and 420 shall be on forms provided by the department and shall be due on December 31 of each biennium. (Eff. 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)

**12 AAC 04.260. ROSTER.** By March 15 following each biennial licensing period, the department shall prepare a roster of all registered individuals and partnerships. (Eff. 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)

**12 AAC 04.270. RECIPROCITY FOR CPA'S.** Certificates will be granted to the holders of certified public accountant certificates granted by other states or of equivalent certificates granted by the recognized authority of foreign countries provided

(1) the applicant meets all of the personal and education requirements of AS 08.04;

(2) the applicant holds a currently valid and unrevoked certificate as a certified public accountant, or its equivalent, issued under the laws of any state or foreign country; and

(3) that the standards under which the applicant received the certificate or equivalent, on which he bases his application for a certificate are, in the opinion of the board, equivalent to those established by this state for the issuance of a certificate as a certified public accountant. (Eff. 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)

#### ARTICLE 6. GENERAL PROVISIONS

##### Section 280. Complaints 290. Definitions

12 AAC 04.280. COMPLAINTS. A complaint against a licensed or unlicensed person or firm must be made to the department in compliance with the established complaint procedures of the department. (Eff. 9/9/72, Reg. 43; am 2/10/78, Reg. 64)

Authority: AS 08.04.070(b)

12 AAC 04.290. DEFINITIONS. In this chapter

(1) "accountant" means any person licensed in the state as either a certified public accountant or public accountant under AS 08.04;

(2) "board" means the Board of Public Accountancy;

(3) "department" means the Department of Commerce and Economic Development;

(4) "attest function" means the ordinary examination of financial statements by a CPA or PA resulting in the expression of an opinion on the fairness with which the financial statement presents the financial position, results of operations, and changes in financial position in conformity with generally accepted accounting principles; the CPA's or PA's report is the

medium through which he or she expresses his or her opinion or, if circumstances require, disclaim an opinion;

(5) "financial statement" includes, but is not limited to, a statement of position, a statement of operation, a statement of change in equity and notes, a balance sheet, an income statement, a statement of change in financial position, a statement of assets and liabilities, a statement of change in excess of assets over liabilities, and any other statement which purports to represent a statement of position or operation;

(6) "opinion" means a written conclusion, based on the use of expert knowledge in accounting and auditing, in matters for which advice is sought or required;

(7) "practice of public accounting" means the holding of a CPA certificate or a PA license and the performance for the general public of any auditing services, accounting services, tax services, management services or special accounting services for compensation; this definition does not apply to acts of public officials or public employees in the performance of their duties, or to any officer, employee, partner, or principal except for those employed as an employee, partner, principal, or practitioner of a certified public accountant firm or public accountant firm;

(8) "report" means a written presentation containing a record of facts derived from review, investigation, and examination;

(9) "statement" means a financial statement. (Eff. 9/9/72, Reg. 43; am 2/10/78, Reg. 64; am 8/3/79, Reg. 70)

Authority: AS 08.04.070(b)

#### ARTICLE 7. CONTINUING EDUCATION

- ##### Section
- 300. Hours of continuing education required
  - 310. Computation of nonacademic continuing education hours
  - 320. Computation of academic continuing education hours
  - 330. Challenged courses
  - 340. Approved subjects
  - 350. Nonacademic program criteria

360. Approved nonacademic continuing education programs
370. Individual study
380. Instructor or discussion leader
390. Publications
400. Report of continuing education
410. "Reasonable cause or excusable neglect" defined
420. Applicability of continuing education requirement
430. Reentry to practice

is not acceptable for continuing education. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)  
AS 08.04.425(a)

12 AAC 04.340. APPROVED SUBJECTS. In order to be approved by the board, a subject must contribute directly to the professional competence of a person licensed to practice as a certified public accountant. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)  
AS 08.04.425(a)

12 AAC 04.300. HOURS OF CONTINUING EDUCATION REQUIRED. Except as provided for in sec. 430 of this chapter, an applicant for renewal of a license to practice as a certified public accountant must have completed 60 hours of approved continuing education during the two years immediately preceding the application. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)  
AS 08.04.425(a)

12 AAC 04.310. COMPUTATION OF NONACADEMIC CONTINUING EDUCATION HOURS. (a) For the purpose of secs. 300-430 of this chapter, 50 minutes of instruction constitutes one hour.

(b) Credit is given only for full hours of instruction and not for a fraction of an hour.

(c) Credit is given only for class hours and not for hours devoted to class preparation. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)  
AS 08.04.425(a)

12 AAC 04.320. COMPUTATION OF ACADEMIC CONTINUING EDUCATION HOURS. (a) One quarter hour academic credit from college or university constitutes 10 hours of continuing education.

(b) One semester hour academic credit from a college or university constitutes 15 hours of continuing education. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)  
AS 08.04.425(a)

12 AAC 04.330. CHALLENGED COURSES. Academic credit earned for a challenged course

12 AAC 04.350. NONACADEMIC PROGRAM CRITERIA. (a) Nonacademic continuing education programs requiring class attendance are approved by the board if

(1) a course outline is prepared in advance and preserved;

(2) the program is at least one hour in length;

(3) the program is conducted by a qualified instructor; and

(4) a record of registration or attendance is maintained.

(b) A qualified instructor or discussion leader is anyone whose background, training, education, or experience makes it appropriate for him to lead a discussion on the subject matter of the particular program. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)  
AS 08.04.425(a)

12 AAC 04.360. APPROVED NONACADEMIC CONTINUING EDUCATION PROGRAMS. The following programs are approved by the board if they meet the requirements of secs. 340 and 350 of this chapter:

(1) professional development programs of the American Institute of Certified Public Accountants and its state societies;

(2) technical sessions at meetings of the American Institute of Certified Public Accountants and its state societies;

(3) formal, organized, in-firm education programs;

(4) college or university short courses not carrying academic credit;

(5) other accounting, industrial, or professional programs. (Eff. 1/18/78, Reg. 64)  
Authority: AS 08.04.070(b)  
AS 08.04.425(a)

12 AAC 04.370. INDIVIDUAL STUDY. The number of hours of continuing education credit awarded for completion of a formal correspondence or other individual study program which requires registration and provides evidence of satisfactory completion will be determined by the board on an individual basis. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)  
AS 08.04.425(a)

12 AAC 04.380. INSTRUCTOR OR DISCUSSION LEADER. (a) One hour of continuing education credit is awarded for each hour completed in preparation for instruction or discussion as an instructor or discussion leader of educational programs meeting the requirements of secs. 300-430 of this chapter. The number of hours of credit so awarded may

not exceed twice the number of hours awarded under (b) of this section.

(b) One hour of continuing education credit is awarded for each hour completed as an instructor or discussion leader of educational programs meeting the requirements of secs. 300-430 of this chapter. Credit is awarded only for the initial course of instruction of the subject matter unless there have been substantial new developments in the subject since the prior presentation.

(c) Credit awarded under (a) and (b) of this section may not exceed 30 hours in any two-year period. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)  
AS 08.04.425(a)

**12 AAC 04.390. PUBLICATIONS.** Continuing education credit may be awarded for publication of articles or books. The amount of credit so awarded will be determined by the board on an individual basis. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)  
AS 08.04.425(a)

**12 AAC 04.400. REPORT OF CONTINUING EDUCATION.** An applicant for renewal of a license to practice public accounting shall submit, on a form provided by the department, a sworn statement of the continuing education in which he or she has participated. The statement must indicate

- (1) the sponsoring organization;
- (2) the location of the course or correspondent;
- (3) the title or description of the course or both;
- (4) the principal instructor;
- (5) the dates of attendance or period of correspondence; and
- (6) the hours of continuing education credit claimed. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)  
AS 08.04.425(b)

**12 AAC 04.410. "REASONABLE CAUSE OR EXCUSABLE NEGLIGENCE" DEFINED.** For the purpose of AS 08.04.425(c), "reasonable cause or excusable neglect" includes, but is not limited to

- (1) chronic illness;
- (2) retirement;
- (3) military service; and

(4) hardships as individually determined by the board. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)  
AS 08.04.425(c)

**12 AAC 04.420. APPLICABILITY OF CONTINUING EDUCATION REQUIREMENT.** The continuing education requirement of AS 08.04.425(a) does not apply to a person registered under the provisions of AS 08.04.410. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)  
AS 08.04.425(d)(2)(A)

**12 AAC 04.430. REENTRY TO PRACTICE.** A person licensed under AS 08.04.410 applying for reentry as a holder of an active biennial permit to practice as a Certified Public Accountant under AS 08.04.390 may be granted an active permit on the condition that he or she complete ten hours of continuing education for each full calendar quarter between the date of reentry and the next biennial renewal date up to a maximum of 60 hours. Forty of the hours required under this section and sec. 300 of this chapter for the subsequent biennial period must be completed within six months following the date of reentry. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)  
AS 08.04.425(c)

CHAPTER 08.  
BOARD OF BARBER EXAMINERS

## Article

1. Examinations
2. Operation of Barber Shops, Barber Schools and Colleges
3. Standards for Barber Colleges and Schools

school owner, manager, instructor, or any person to communicate with or help an applicant in any way while taking the examination, or any attempt by an applicant to secure information from another applicant will disqualify the applicant from completing the examination. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030  
AS 08.12.220

ARTICLE 1.  
EXAMINATIONS

## Section

10. Filing of application
20. Location and date
30. Form of application
40. Applicants failing to pass
50. Disqualification during examination
60. Form of examination, required equipment, grading

12 AAC 08.060. FORM OF EXAMINATION, REQUIRED EQUIPMENT, GRADING. (a) Written examination. The applicant must obtain a grade of at least 75 percent on sanitation, Barber Science, sterilization, and common contagious and infectious diseases of the face, skin, and scalp.

(b) Practical examination. The applicant must obtain a grade of at least 75 percent on each of the following subjects: haircut, shave, massage, shampoo, condition of tools.

(c) Authorized textbooks. The following are the authorized textbooks to be used by applicants: *Standard Textbook of Barbering*, published by Associated Master Barbers of America, Chicago, Illinois, and *Textbook of Practical and Scientific Barbering*, published by Journeymen Barbers, Educational Department, Indianapolis, Indiana.

(d) Equipment. Each applicant must furnish his own smock, tools, and model.

(e) Standards for grading examinations. In grading each applicant, the examiners will consider the following: care and neatness of supplies and equipment; appearance and posture of applicant; time consumed in completion of each operation. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030  
AS 08.12.070  
AS 08.12.220

12 AAC 08.010. FILING OF APPLICATION. The application for examination must be on file 10 days before the examination date. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030

12 AAC 08.020. LOCATION AND DATE. The location and date of the examination shall be published by the Board of Examiners at least 30 days in advance of the date of examination. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030

12 AAC 08.030. FORM OF APPLICATION. The application shall be on a form provided by the board and shall be mailed to the secretary of the board accompanied by a \$25 examination fee; and two photographs signed on the front. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030  
AS 08.12.070  
AS 08.12.080

12 AAC 08.040. APPLICANTS FAILING TO PASS. Applicants failing to pass an examination or failing to appear for examination may take another examination by filing the required \$25. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030

12 AAC 08.050. DISQUALIFICATION DURING EXAMINATION. Any attempt by a

STATE  
of ALASKA

# MEMORANDUM JM

APPENDIX "A"

TO: Don Hostak  
Director  
Division of Occupational  
Licensing  
Department of Commerce and  
Economic Development

DATE: October 27, 1978

FILE NO: J-66-183-79

TELEPHONE NO.

FROM: Bruce M. Botelho *BMB*  
Assistant Attorney General

SUBJECT: Education Regulations  
for Accountants

OCT 31 1978  
RECEIVED  
GENERAL  
52 PM '78

This memorandum is in response to your request for a determination as to whether 12 AAC 04.400, effective on January 18, 1978, will apply to those licenses expiring on December 31, 1979.

12 AAC 04.300 requires that an applicant for renewal of a license to practice as a certified public accountant complete 60 hours of approved continuing education during the two years immediately preceding the application. 12 AAC 04.400, in turn, requires that an applicant for renewal of a license to practice public accounting submit, on a form provided by the department, a sworn statement of the continuing education in which he or she has participated. The issue which you pose is, then, whether 12 AAC 04.400 may be applied to the current registration period which expires on December 31, 1979 in view of the fact that applicants for renewal will not have had an entire two year period within which to satisfy the requirements of 12 AAC 04.300.

It is our opinion that the continuing education requirements should be imposed on licensees whose licenses expire on December 31, 1979. While the effective date of 12 AAC 04.400 and the date upon which licenses will expire (December 31, 1979), is 18 days short of two years, we regard this time period to substantially satisfy the requirements of 12 AAC 04.400. However, in order to avoid any inference of unfairness in application, we propose that the board pro-rate the credit hour requirement so that an applicant for renewal of licensure who has completed 58.5 hours of continuing education on or before December 31, 1979 may be deemed to have satisfied the requirements of 12 AAC 04.300.

BMB:cb

I

STATE OF ALASKA  
Board of Registration for Architects,  
Engineers and Land Surveyors  
October, 1979

Findings

Present statutes (enacted in 1972) regulating Architects, Engineers and Land Surveyors supplanted a 1949 Act which provided for registration and licensing of professional architects and engineers.

The current Board of Registration for Architects, Engineers and Land Surveyors operates under AS 08.48 to license qualified applicants and regulate individuals within the professions. Support services are provided by the Department of Commerce and Economic Development, Division of Occupational Licensing.

The stated purpose of the Act is to safeguard life, health and property and to promote the public welfare. In its operations and application of the Act the Board has demonstrated compliance with, and furtherance of, this purpose. We believe that the Board and State regulation of these professions is in the public interest and should continue.

I. General Information

A. Regulated Parties

1. Architects
2. Land Surveyors
3. Engineers (Chemical, Civil, Electrical, Mechanical, Mining, Petroleum)
4. Corporate Authorizations

B. Definitions

"(7) 'practice of architecture' means professional services or creative work in the functional and aesthetic design of structures, the teaching of advanced architectural courses in institutions of higher learning, consultation, investigation, evaluation, planning, design and professional observation of construction of public or private structures, buildings, works or projects, and architectural review of plans and specifications by regulatory agencies; it may by regulation of the board include mechanical, electrical or structural design of relatively minor importance to the project as a whole;

(8) 'practice of engineering' means professional or creative work, the adequate performance of which requires the application of specialized knowledge of mathematics and sciences, dealing with the functional and economic design of buildings, structures, machines, equipment, utilities systems, materials, processes, works or projects, public or private; the teaching of advanced engineering courses in institutions of higher learning, the direction of or the performance of engineering surveys, consultation, investigation, evaluation, planning, design, and professional observation of construction of public and private structures, buildings, works or

projects and engineering review of plans and specifications by regulatory agencies; it may by regulation of the board include architectural design of relatively minor importance to the project as a whole, but it does not include comprehensive architectural services;

(9) 'practice of land surveying' means any service or work the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related sciences, and the relevant requirements of law for adequate evidence of the act of measuring and locating land, geodetic and cadastral surveys for the location and monumentation of property boundaries, for the platting and planning of land and subdivisions, and for the preparation and perpetuation of maps, record plats, field note records and property descriptions that represent these surveys;" (AS 08.48.341)

C. Purpose of Regulation

"The object of this Act is to safeguard life, health and property, and to promote the public welfare." (Section 2, ch. 179, SLA 1972)

D. Nature and Composition of Board

1. Board members and terms:

Six-year term (no restrictions regarding consecutive terms or number of terms).

Wallace DeBoff (Chairman)	ends July 1, 1982
Wayne Jensen	ends July 1, 1984
Jim Bridges	ends July 1, 1980
Donald Cook	ends July 1, 1981
James Lake	ends July 1, 1981
Loren Lounsbury	ends July 1, 1982
Paul Stutzman	ends July 1, 1984
Gordon Unwin	ends July 1, 1980
Wallace Wellenstein	ends July 1, 1983

The combined licenses of these members provides representation by three architects, three civil engineers, three land surveyors, one mechanical engineer, one electrical engineer, and one mining engineer.

2. Representation:

Profession = 9  
Public = 0

3. Qualifications:

The Board consists of two civil engineers, one land surveyor, one mining engineer, two engineers from other branches of the profession, and three architects. Members must have been a resident in the State for three consecutive years immediately preceding appointment, must be registered, and must have a minimum of five years' professional practice in their fields.

E. Licensing Data

Current licenses (effective September 30, 1979)

Architects	in-State	160
	out-of-State	204
Land Surveyors	in-State	423
	out-of-State	220
Engineers	in-State	841
	out-of-State	1,129
Corporate Authorizations	in-State	59
	out-of-State	<u>59</u>
		3,095

F. Fees

1. examination	\$ 50.00
2. reexamination	50.00
3. application by comity	50.00
4. corporate authorization	100.00
5. registration fee	15.00
6. corporate authorization registration fee	50.00
7. registration renewal (biennially)	30.00
8. corporate authorization renewal (biennially)	100.00
9. amendment to corporate authorization	20.00
10. delinquent renewal fee	30.00
11. postponement of examination	20.00
12. duplicate certificate	10.00

G. Board Revenues and Expenditures

	FY '76	FY '77	FY '78	FY '79
Receipts	\$101,502.00	\$31,086.00	\$112,970.75	\$27,608.35
- refunds	<u>125.00</u>	<u>30.00</u>	<u>2,100.00</u>	<u>219.92</u>
Total	\$101,377.00	\$31,056.00	\$110,870.75	\$27,388.43
Expenditures				
Transportation	4,879.28	5,180.64	6,740.23	5,909.11
Per Diem	5,719.75	7,062.50	7,021.73	4,874.64
Phone	166.49	304.42	452.26	930.58
Printing, Adver. & Postage	3,020.76	2,268.31	1,823.13	866.35
Fees & Services	4,054.98	4,307.27	5,099.23	5,956.24
Rents, Leases & Other	<u>35.50</u>	<u>-</u>	<u>113.90</u>	<u>5,290.98</u>
Total	<u>\$ 17,876.76</u>	<u>\$19,323.14</u>	<u>\$ 21,250.48</u>	<u>\$23,827.90</u>
Surplus	\$ 83,500.24	\$11,732.86	\$ 89,620.27	\$ 3,560.53
Deficit	-	-	-	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

H. Complaints

1. Number of cases received in FY '78 and FY '79 39
2. Number of cases closed in FY '78 and FY '79 4
3. Number of cases to litigation in FY '79 0
4. Number of cases pending closure by board 63
5. Total cases open effective September 30, 1979 121  
(includes cases prior to FY '78)

Of the 39 cases received in FY '78 and '79, 8 concerned architects, 23 concerned engineers, and 8 concerned land surveyors.

## I. Useful Abbreviations

1. NCARB = National Council of Architectural Registration Boards
2. NCEE = National Council of Engineering Examiners
3. NAAB = National Architectural Accrediting Board
4. ECPD = Engineer's Council for Professional Development
5. PE = Professional Engineer
6. PLS = Professional Land Surveyor
7. EIT = Engineer in Training
8. LSIT = Land Surveyor in Training
9. AKLS = Alaska Land Surveying (examination)
10. ETS = Educational Testing Service

## II. Analysis

- A. To what extent has the Board of Registration for Architects, Engineers and Land Surveyors operated in the public interest?

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Statutory duties of the Board include: holding at least four regular meetings each year, submission of an annual (fiscal year) report to the Governor, holding written examinations at least twice each year, adoption of regulations, disciplinary actions when warranted, authority to request injunctions, and passing on applicant qualifications.

During calendar year 1978, the Board held five meetings; in 1979 six will be held with one special meeting having been financed by a particular company which requested the meeting for the purpose of reviewing its employees' qualifications. An annual report was submitted by the Board for FY'79 but this has not been done in the past few years. Examinations for engineers and land surveyors are given twice each year; two different examinations for architects are given once each year. With one exception (the Alaska Land Surveyor exam) all examinations are prepared and graded nationally.

In comparison to some other boards, this one has almost unlimited latitude in promulgating and adopting regulations, the only limitations being legality and reasonableness. Regulations currently in effect outline the application and examination procedures, eligibility requirements, fees charged, rules of conduct, and definitions of terms.

Because the professions under discussion are highly technical in many aspects, the following breakdowns were prepared to condense an otherwise lengthy and involved narrative. Consideration of each profession separately may serve to clarify individual classifications as well as their interrelationships.

## ARCHITECTS

### A. Two Categories

#### 1. Qualifying Category

A. those with no degree must take qualifying exam

1. given once each year
2. consists of four sections
  - a. A through D
3. passing score is 75
4. may retake only failed sections
5. graded by ETS

#### 2. Professional Category\*

A. those holding degrees or passed qualifying take professional exam

1. given once each year
2. consists of two parts
  - A. part "A" is design

\*If graduated from NAAB approved school, may take part "A" immediately;  
three years' experience needed for part "B"

1. graded "pass-fail" by region members of NCARB

- b. part "B" has four subparts

1. must pass or retake all

2. passing score is 75

3. graded by ETS

3. All applicants must submit treatise on sub-arctic conditions

B. Applicants for Comity

1. must have taken NCARB examination

2. must submit treatise on sub-arctic conditions

- a. must also submit treatise on seismic forces if:

1. registered in California before May, 1933

2. registered by exam in Washington before 1963

3. registered in any other state before 1964

## ENGINEERS

### A. Two categories

1. Fundamentals of Engineering Category (EIT - Engineer in Training)
  - a. one examination
    1. waived for 20 years professional experience
    2. must pass entire examination
      - a. given twice each year
      - b. graded by ETS
  - b. if waived, or passed, may take Professional Exam
2. Professional Engineer Category
  - a. two years professional experience in responsible charge under a PE
  - b. must have passed or received waiver for EIT exam to be eligible
    1. six branches of engineering and examination
      - a. chemical engineering

- b. civil engineering
- c. electrical engineering
- d. mechanical engineering
- e. mining engineering
- f. petroleum engineering

2. one examination

- a. must pass entire examination
  - 1. given twice each year
  - 2. graded by NCEE

3. All applicants must submit treatise on sub-arctic conditions

B. Applicants for Comity

- 1. must have taken 16 hour NCEE examination
- 2. must have four years professional experience
- 3. must submit treatise on sub-arctic conditions

## LAND SURVEYORS

### A. Two categories

1. Fundamentals of Land Surveying Category (LSIT) - Land Surveyor in Training)
  - a. must have four years professional experience and/or education
    1. one examination
      - a. no exemptions or waivers
      - b. must pass entire examination
        1. given twice each year
        2. graded by NCEE
2. Professional Land Surveyor Category
  - a. must have passed or be approved for LSIT
  - b. appropriate professional experience and/or education
  - c. three years professional experience in responsible charge under a registered Land Surveyor
    1. professional examination portion

a. must pass entire examination

1. given twice each year

2. graded by NCEE

2. Alaska examination portion

a. must pass entire examination

1. given twice each year

2. prepared and graded by University of  
Alaska professor

3. may take LSIT, PLS and Alaska portion at the same exam

B. Applicants for Comity

1. must have taken 12 hour NCEE examination, and

2. must take 4 hour Alaska Land Surveyor examination

Applications submitted to the Board must be timely and complete and are evaluated by the Board during a regular meeting. There is no indication that the Board has acted in an arbitrary or capricious manner in approving or denying applications. On the contrary, applicants are encouraged to appear before the Board to address any questions or present additional information.

In general, the Board has operated in the public interest assuring qualified practitioners through its qualification and examination procedures and by its efforts in maintaining integrity of the profession through regulation.

- B. To what extent has the operation of the Board of Registration for Architects, Engineers and Land Surveyors been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

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Board minutes reflect its ongoing concern regarding inadequacy of operating funds and its dissatisfaction with complaint and investigative procedures. The Board wants to be as active as possible in enforcement and disciplinary actions but is frustrated by what it feels is slow action on the part of the Departments of Law and Commerce and Economic Development. The possibility of obtaining an Executive Secretary has been discussed by the Board as one way of improving its efficiency in this and other activities. It should, however, be noted that a licensing examiner from the Division of Occupational Licensing is assigned only to this Board rather than to three to five boards which is usually the case. Fees and revenues for all boards and commissions under the jurisdiction of the Division of Occupational Licensing are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct board revenues and expenses may be determined.

The Board has encountered the same difficulties as have all other boards and commissions with respect to investigative services provided by the administrative agency. During FY'78 two investigator positions were vacant; as a result, one position was abolished by the Legislature. At the present time, two investigators are located in Anchorage with a Chief Investigator located in Juneau. An additional investigator position was approved in the FY '80 budget but will probably not be filled immediately due to vacancy factors incorporated into the personal service category of the budget. Procedural constraints of the administrative adjudication article of the Administrative Procedure Act (AS 44.62.330-630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

Consideration should be given to restructuring of the Board to provide more equitable representation of the professions regulated and to provide for public representation.

C. To what extent has the Board of Registration for Architects, Engineers and Land Surveyors recommended statutory changes which are generally of benefit to the public interest?

The Board is opposed to SB 257 (now in the Senate Commerce Committee) which would add Landscape Architects as another regulated profession under the Board, as being unnecessary for the health, welfare and safety of the public.

Board minutes for 1978 and 1979 cite no recommended statutory changes; minutes from the September, 1979 meeting state that the Board is concerned about ability to budget its own dollars, an executive secretary and enforcement powers (as statutory concerns.) The board would also like to have some legislative clarification of AS 08.48.261 as it pertains to waiver requirements for State employees.

- D. To what extent has the Board of Registration for Architects, Engineers and Land Surveyors encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

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Participation concerning Board affairs has come from the professions and users of professional services. Very little "public" interest has been shown in the form of attendance at meetings or hearings although schedules are published in newspapers in the State. It may be assumed that members of the public are somewhat reluctant to involve themselves in areas of a technical nature which may be seen as too complex for consideration by laypersons. A technical and professional barrier therefore exists, due to the natures of the professions involved, which probably tends to deter public participation and knowledgeability.

The Board has not reacted favorably to the proposals for public membership; however, we believe public interests would be furthered by the presence of public members on the Board. "In recent years a number of states have added one or more public members (citizens with no particular interest in the occupation or profession governed by the board) to licensing boards in an effort to ensure that the interests of the public

would be represented in decisionmaking."<sup>1</sup> The State of California, which provides for a one-third public membership on health care boards and a public majority on others, has indicated that its experience with public members has been highly rewarding.

- E. How efficiently are public inquiries or complaints regarding the activities of the Board of Registration for Architects, Engineers and Land Surveyors processed and resolved?

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Inquiries regarding Board activities may be answered by members of the Board, the Board as a whole, or by personnel from the Department of Commerce and Economic Development. Review of files indicates that responses made are timely, appropriate and informative.

- F. To what extent does the Board of Registration for Architects, Engineers and Land Surveyors present qualified applicants to serve the public?

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The Board has established definitive qualification criteria to which it adheres on a consistent basis. Applicants are encouraged to appear before the Board to discuss their qualifications and must present further information in cases of irregularities or questions. Only when the Board is satisfied that the applicant is truly qualified is (s)he approved examination or licensure. This process, in conjunction with viable enforcement and regulation elements, helps to insure initial and on-going competence in professional services.

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<sup>1</sup>Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

- G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Registration for Architects, Engineers and Land Surveyors in its own activities, and in its area of activity or interest?

Board staff consists of the support services of a licensing examiner (responsible only to this Board) employed by the Division of Occupational Licensing. This position and others, such as Division Director, Regulations Specialist, etc., are hired through the State personnel system and are subject to affirmative action.

Examination and licensing privileges in these professions are based on specific criteria to which affirmative action requirements are not applicable.

- H. To what extent are statutory, budgetary or other changes necessary to enable the Board of Registration for Architects, Engineers and Land Surveyors to better serve the interests of the public?

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Public members should be included on the Board and numbers of consecutive terms should be limited for all members. The Board should submit its fiscal report annually as required by statute; goals and objectives and a performance report were submitted by the Board this year.

AS 08.48.081 requires that a complete roster showing names and last known addresses of all licentiates be published at least once each year and mailed to each person registered, and that it may be distributed or sold to the public. The cost of printing 4,000 rosters in April, 1979 was \$2,536.00 (free of charge to registrants); postage fees for 3,000 registrants at \$.40 each would be approximately \$1,200.00; estimated time involved for labeling and mailing is ten days for one person. We believe that this information could be made available to those desiring

it without statutory requirements and taking into consideration less costly and time consuming methods.

## Chapter 48. Architects, Engineers and Land Surveyors.

### Article

1. Board of Registration (§§ 08.48.011-08.48.141)
2. Registration and Practice (§§ 08.48.171-08.48.261)
3. Unlawful Acts (§§ 08.48.281-08.48.291)
4. General Provisions (§§ 08.48.311-08.48.351)

### Article 1. Board of Registration.

#### Section

11. Board created
21. Appointments and terms
31. Qualifications
41. Removal of members
51. Organization and meetings
61. Finances
71. Records and reports
81. Roster
91. Written examinations and examination fees
101. Regulations; bylaws; code of ethics
111. Power to revoke, suspend, or reissue certificate
121. Disciplinary action and procedure
131. Injunction
141. Legal counsel

Sec. 08.48.011. Board created. (a) There is created the State Board of Registration for Architects, Engineers and Land Surveyors. The board shall administer the provisions of this chapter and comply with the Administrative Procedure Act (AS 44.62).

(b) The board consists of nine members appointed by the governor having the qualifications as set out in § 31 of this chapter. The board consists of two civil engineers, one land surveyor, one mining engineer, two engineers from other branches of the profession of engineering, and three architects. (§ 3 ch 179 SLA 1972; am § 1 ch 44 SLA 1975)

Sec. 08.48.021. Appointments and terms. (a) The governor shall give each member of the board a certificate of his appointment, and the member shall file with the lieutenant governor his written oath or affirmation for faithful discharge of his official duty.

(b) The term of office for board members is six years. The first board shall be appointed with two members having two-year terms, two members having three-year terms, two members having four-year terms, one member having a five-year term and two members having six-year terms. A member of the board may be appointed to succeed himself. Each member shall hold office until the expiration of the term for which he is

appointed or until his successor has been appointed. If a vacancy occurs on the board due to resignation, death or other cause, the governor shall appoint a qualified person to serve the unexpired term. (§ 3 ch 179 SLA 1972)

Sec. 08.48.031. Qualifications. Each member of the board must have been a resident in the state for three consecutive years immediately preceding his appointment and must be registered and have a minimum of five years of professional practice in his respective field. (§ 3 ch 179 SLA 1972; am § 2 ch 44 SLA 1975)

Sec. 08.48.041. Removal of members. The governor may remove a member of the board for misconduct, incompetency or neglect of duty. (§ 3 ch 179 SLA 1972)

Sec. 08.48.051. Organization and meetings. The board shall hold at least four regular meetings each year. Special meetings may be held as the bylaws of the board provide. The board shall elect or appoint annually from its members the following officers: president, vice-president and secretary. A quorum of the board consists of not less than five members. (§ 3 ch 179 SLA 1972)

Sec. 08.48.061. Finances. (a) All money derived under the provisions of this chapter shall be deposited in the general fund.

(b) Each member of the board is entitled to receive per diem and travel expenses as authorized by law for other boards and commissions.

(c) The board may make expenditures from appropriated funds for any purpose which is reasonably necessary for the proper performance of its duties under this chapter. This may include the expenses of the board delegates to meetings of councils of architect examiners, engineering examiners, or land surveyor examiners, or any of their subdivisions. The total amount of warrants issued in payment of the expenses incurred under this chapter may not exceed the amount of money appropriated by the legislature. (§ 3 ch 179 SLA 1972)

Sec. 08.48.071. Records and reports. (a) The following record of the board's proceedings and of all applications for registration or authorization shall be kept by the Department of Commerce and Economic Development under AS 08.01.050:

- (1) the name, age and last known address of each applicant;
- (2) the date of application;
- (3) the place of business of the applicant;

- (4) the education, experience and other qualifications;
- (5) the type of examination required;
- (6) whether or not the applicant was rejected;
- (7) whether or not a certificate of registration or authorization was granted or endorsed;
- (8) the date of the action of the board;
- (9) other action taken by the board;
- (10) other information which may be considered necessary by the board.

(b) The record of the board is prima facie evidence of the proceedings of the board, and a transcript, certified by the secretary, is admissible as evidence with the same effect as if the original were produced.

(c) Annually, at the end of the fiscal year, the board shall submit to the governor a report of its transactions of the preceding year, and shall transmit to him a complete statement of the receipts and expenditures of the board, attested by affidavits of its president and its secretary. Board records and papers of the following class are of a confidential nature and are not public records: examination material for examinations not yet given, file records of examination problems, solutions, letters of inquiry and reference concerning applicants, board inquiry forms concerning applicants, investigation files if an investigation is still pending, and all other matters of a like confidential nature. (§ 3 ch 179 SLA 1972; am § 46 ch 218 SLA 1976)

Sec. 08.48.081. Roster. A complete roster showing the names and last known addresses of all architects, engineers and land surveyors, based on the register prepared under AS 08.01.050(12), shall be published by the secretary of the board once each year, or at lesser intervals as established by board regulations, and shall include the registrants' authorization numbers if applicable. Copies of this roster shall be mailed to each person registered, placed on file with the lieutenant governor and borough and city officials, and, upon request, may be distributed or sold to the public. (§ 3 ch 179 SLA 1972)

Sec. 08.48.091. Written examinations and examination fees. Written examinations shall be held at least twice each year at places determined by the board. A candidate failing an examination may apply for reexamination. The examination fee for applicants shall be established by the board in an amount not to exceed \$50 and shall accompany the application. (§ 3 ch 179 SLA 1972)

Sec. 08.48.101. Regulations; bylaws; code of ethics. (a) The board may adopt regulations to carry out the purpose of this chapter, including, but not limited to

- (1) describing the contents of an examination;
- (2) establishing the conduct of an examination;
- (3) establishing a minimum score for passing an examination;
- (4) establishing bylaws governing its meetings and activities;
- (5) publishing a code of ethics or professional conduct for those persons regulated by this chapter, including corporations under § 241 of this chapter.

(b) The regulations, bylaws and code of ethics or professional conduct promulgated by the board shall be published in the annual report to the governor. (§ 3 ch 179 SLA 1972)

Sec. 08.48.111. Power to revoke, suspend, or reissue certificate. The board may suspend, refuse to renew, or revoke the certificate of or reprimand a registrant or corporation who is found guilty of (1) fraud or deceit in obtaining a certificate; (2) gross negligence, incompetence, or misconduct in the practice of architecture, engineering or land surveying; (3) violation of this chapter, a regulation adopted under it, or the code of ethics or professional conduct as promulgated by the board; or (4) a crime involving moral turpitude relevant to one of those professions. The code of ethics or professional conduct shall be made known in writing to every registrant and applicant for registration under this chapter, and shall be published with the roster provided for in § 81 of this chapter. This publication constitutes due notice to all registrants. The board may revise and amend its code and, upon doing so, shall immediately notify each registrant in writing of the revision or amendments. The board may, upon petition of the registrant or corporation, reissue a certificate if a majority of the members of the board vote in favor of the reissuance. (§ 3 ch 179 SLA 1972)

Sec. 08.48.121. Disciplinary action and procedure. Any person may file with the secretary of the board a charge of fraud, deceit, gross negligence, incompetence, misconduct or violation of this chapter, a regulation adopted under it, or the code of ethics of the board. Such a charge, constituting an accusation under the Administrative Procedure Act (AS 44.62), shall be in writing and sworn to by the person making it. A charge may be dismissed by the board as unfounded or trivial. (§ 3 ch 179 SLA 1972)

Sec. 08.48.131. Injunction. The board may bring an action in the superior court to enforce compliance with this chapter or an order of

the board, or to enjoin a person from doing an act that violates this chapter. (§ 3 ch 179 SLA 1972)

Sec. 08.48.141. Legal counsel. The attorney general of the state shall act as legal advisor to the board and render legal assistance upon request of its president. (§ 3 ch 179 SLA 1972)

## Article 2. Registration and Practice.

### Section

- 171. General requirements and qualifications for registration
- 181. Registration upon examination
- 191. Registration by comity or endorsement
- 201. Application and fees for registration
- 211. Certificate of registration
- 221. Seals
- 231. Expirations and renewals
- 241. Corporations
- 251. Partnerships
- 261. State employees

Sec. 08.48.171. General requirements and qualifications for registration. An applicant for registration as an architect, engineer or land surveyor must be of good character and reputation and must submit evidence satisfactory to the board of his education, training and experience. (§ 3 ch 179 SLA 1972)

Sec. 08.48.181. Registration upon examination. Except as provided in § 191 of this chapter, for registration as a professional architect, professional engineer or professional land surveyor, a person shall be examined in this state in accordance with the regulations of procedure and standards adopted by the board in accordance with the Administrative Procedure Act (AS 44.62), which procedure and standards shall at least meet the requirements adopted by recognized national examining councils for these professions. (§ 3 ch 179 SLA 1972)

Sec. 08.48.191. Registration by comity or endorsement. (a) A person holding a certificate of registration authorizing him to practice architecture in a state, territory or possession of the United States, the District of Columbia, or a foreign country, or holding a certificate of qualification issued by the national Council of Architectural Registration Board, which, in the opinion of the board, meets the requirements of this chapter, based on verified evidence, may, upon application, be registered in accordance with the regulations of the board.

(b) A person holding a certificate of registration authorizing him to practice engineering in a state, territory or possession of the United States, the District of Columbia, or a foreign country, which, in the opinion of the board meets the requirements of this chapter, based on verified evidence, may, upon application, be registered in accordance

with regulations of the board. A person holding a certificate of qualification issued by the National Council of Engineering Examiners; Committee on National Engineering Certification may, upon application, be registered in accordance with the regulations of the board.

(c) A person holding a certificate of registration authorizing him to practice land surveying in a state, territory or possession of the United States, the District of Columbia, or a foreign country, may, upon application, be registered in accordance with the regulations of the board if his certificate was issued under requirements comparable to those in this state. (§ 3 ch 179 SLA 1972)

Sec. 08.48.201. Application and fees for registration. (a) Application for registration as a professional architect, a professional engineer or a professional land surveyor shall (1) be on a form prescribed and furnished by the board; (2) contain statements made under oath, showing the applicant's education and a detailed summary of his technical experience; and (3) contain five references, three of whom must be architects for architectural registration, engineers for engineering registration and land surveyors for land surveying registration, having personal knowledge of the applicant's architectural, engineering or land surveying education, training or experience.

(b) The registration fee for professional architects, professional engineers and professional land surveyors shall be established by the board in an amount not to exceed \$100 and shall accompany the application for registration. (§ 3 ch 179 SLA 1972)

Sec. 08.48.211. Certificate of registration. (a) An applicant who fulfills the requirements set out by the board shall be awarded a certificate of registration as a professional architect, engineer or land surveyor, authorizing the holder to offer or perform architectural, engineering or land surveying services or work for the public, or to certify or sign architectural, engineering or land surveying documents. Certificate of registration issued under this section shall be inscribed on their face in a manner determined by the board.

(b) The certificate of registration sealed by the board is prima facie evidence that the person named in it is entitled to all rights and privileges of a professional architect, professional engineer or professional land surveyor, while the certificate remains unrevoked or unexpired. (§ 3 ch 179 SLA 1972)

Sec. 08.48.221. Seals. Each registrant may obtain a seal of the design authorized by the board, bearing the registrant's name, registration number, and the legend, "Registered Professional Architect," "Registered Professional Engineer," or "Registered Professional Land Surveyor," as appropriate. Final drawings, specifications, surveys, plats, plates, reports and other similar documents shall, when issued,

be signed and stamped with the seal. It is unlawful for an architect, engineer or land surveyor to affix or permit his seal and signature to be affixed to an instrument after the expiration of a certificate or for the purpose of aiding or abetting another person to evade or attempt to evade a provision of this chapter. The registrant, by affixing his seal to final drawings, specifications, surveys, plats, plates, reports and other similar documents, and signing them, certifies that these documents were prepared by or under his direct supervision, unless he certifies on the face of the document to the extent of his responsibility. (§ 3 ch 179 SLA 1972)

Sec. 08.48.231. Expirations and renewals. (a) To remain valid, certificate shall be renewed in accordance with AS 08.01.100. Notice of renewal dates, given under AS 08.01.050(11), shall be mailed to the registrant or corporation at his or its last known address at least one month in advance of the date of the expiration of the certificate. If the certificate has been suspended or revoked, the board may take action independent of this section.

(b) The renewal of a certificate does not require reapplication if the certificate has not expired or has not been suspended or revoked. The renewal fee for a certificate may not exceed \$100.

(c) Renewal of an expired certificate may be effected under regulations promulgated by the board regarding requirements of reexamination and penalty fees. (§ 3 ch 179 SLA 1972)

Sec. 08.48.241. Corporations. (a) This chapter does not prevent a corporation from offering architectural, engineering or land surveying services; however, the corporation shall file with the board

(1) an application for a certificate of authorization upon a form to be prescribed by the board and containing information required to enable the board to determine whether the corporation is qualified in accordance with the provisions of this chapter to offer to practice architecture, engineering or land surveying in this state;

(2) a certified copy of a resolution of the board of directors of the corporation designating persons holding certificates of registration under this chapter as responsible for the practice of architecture, engineering or land surveying by the corporation in this state and providing that full authority to make all final architectural, engineering or land surveying decisions on behalf of the corporation with respect to work performed by the corporation in this state is granted by the board of directors to the persons designated in the resolution; however, the filing of this resolution does not relieve the corporation of any responsibility or liability imposed upon it by law or by contract;

(3) a designation in writing setting out the name of one or more persons holding certificates of registration under this chapter who are in responsible charge of each major branch of the architectural, engineering or land surveying activities in which the corporation specializes in this state; if a change is made in the person in responsible charge of a major branch of the architectural, engineering or land surveying activities, the change shall be designated in writing and filed with the board within 30 days after the effective date of the change.

(b) Upon filing with the board the application for certificate of authorization, certified copy of resolution, affidavit, and designation of persons specified in this section, the board shall, subject to (c) of this section, issue to the corporation a certificate of authorization to practice architecture, engineering or land surveying in this state upon a determination by the board that

(1) the bylaws of the corporation contain provisions that all architectural, engineering or land surveying decisions pertaining to architectural, engineering or land surveying activities in this state will be made by the specified architect, engineer or land surveyor in responsible charge, or other registered architects, engineers or land surveyors under his direction or supervision;

(2) the application for certificate of authorization states the type of architecture, engineering or land surveying practiced or to be practiced by the corporation;

(3) the applicant corporation has the ability to provide architectural, engineering or land surveying services;

(4) the application for certificate of authorization states the professional records of the designated person who is in responsible charge of each major branch of architectural, engineering or land surveying activities in which the corporation specializes;

(5) the application for certificate of authorization states the experience of the corporation, if any, in furnishing architectural, engineering or land surveying services during the preceding five-year period;

(6) the applicant corporation meets other requirements related to professional competence in the furnishing of architectural, engineering or land surveying services as may be established and promulgated by the board in furtherance of the objectives and provisions of this chapter.

(c) The board may, in the exercise of its discretion, refuse to issue, or may suspend or revoke a certificate of authorization to a corporation if the board finds that any of the officers, directors,

incorporators or the stockholders holding a majority of the stock of the corporation has committed misconduct or malpractice, or has been found personally responsible for misconduct or malpractice under the provisions of this chapter.

(d) The certificate of authorization shall specify the major branches of architecture, engineering or land surveying of which the corporation has designated a person in responsible charge as provided in this section. The certificate of authorization shall be conspicuously displayed in the place of business of the corporation, together with the names of persons designated as being in responsible charge of the professional activities.

(e) If a corporation, organized solely by either a group of architects, a group of engineers, or a group of land surveyors, each holding a certificate of registration under this chapter, applies for a certificate of authorization, the board may, in its discretion, grant a certificate of authorization to the corporation based on a review of the professional records of the incorporators, in place of the required qualifications set out in this section. If the ownership of the corporation is altered, the corporation shall apply for a revised certificate of authorization, based upon the professional records of the owners, if exclusively architects, engineers or land surveyors, or otherwise under the qualifications required by (b)(1)-(4) of this section.

(f) A corporation authorized to offer architectural, engineering or land surveying services under this chapter, together with its directors and officers for their own individual acts, is responsible to the same degree as the designated individual registered architect, engineer or land surveyor, and must conduct its business without misconduct or malpractice in the practice of architecture, engineering or land surveying as defined in this chapter.

(g) If the board, after a proper hearing, finds that a corporation holding a certificate of authorization has committed misconduct or malpractice, the board shall suspend or revoke the certificate of authorization. The board shall also suspend or revoke the certificate of registration of any registered individual architect, engineer or land surveyor who, after a proper hearing, is found by the board to have participated in committing the misconduct or malpractice.

(h) Plans, specifications, designs and reports, when issued in connection with work performed by a corporation under its certificate of authorization, shall be prepared by or under the responsible charge of and shall be signed by and shall be stamped with the official seal of a person holding a certificate of registration under this chapter.

(i) For each certificate of authorization issued to a corporation under the provisions of this chapter, there shall be paid an initial fee not to exceed \$300. (§ 3 ch 179 SLA 1972)

Sec. 08.48.251. Partnerships. This chapter does not prevent the practice of architecture, engineering or land surveying by partnership if all of the members of the partnership are architects, engineers or land surveyors legally registered under this chapter. (§ 3 ch 179 SLA 1972)

Sec. 08.48.261. State employees. The head of each principal department in which there are positions necessitating use of architectural, engineering, or land surveying knowledge or skills shall specify, in the job descriptions, the positions for which registration under this chapter is required. This requirement for any position in a department may be waived by the head of the department. When the requirement is waived, the head of the department shall transmit to the division of personnel a written statement to the effect that the person filling the position is qualified to perform the duties of that position and a statement of the reasons for waiving the requirement, explaining why the employee was hired or was retained as an employee even though not registered under this chapter. The head of the department shall send a copy of the statement to the board. (§ 3 ch 179 SLA 1972)

### Article 3. Unlawful Acts.

#### Section

281. Prohibited practice

291. Violations and penalties

Sec. 08.48.281. Prohibited practice. No person may practice or offer to practice the profession of architecture, engineering or land surveying in Alaska, as defined in this chapter, or use in connection with his name or otherwise assume or advertise a title or description tending to convey the impression that he is a registered architect, engineer or land surveyor unless he has been registered under the provisions of this chapter or is a person to whom these provisions do not apply, or, in the case of a corporation, unless it has been authorized under this chapter. (§ 3 ch 179 SLA 1972)

Sec. 08.48.291. Violations and penalties. A person who practices or offers to practice architecture, engineering or land surveying in Alaska without being registered or authorized to practice in accordance with the provisions of this chapter, or a person presenting or attempting to use the certificate or the seal of another, or a person who gives false or forged evidence of any kind to the board or to a member of the board in obtaining or attempting to obtain a certificate, or a person who impersonates a registrant, or a person who uses or attempts to use an expired or revoked or nonexistent certificate, knowing of the certificate's status, or a person who falsely claims that he is registered and authorized to practice under this chapter, or a person who violates any of the provisions of this chapter, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$10,000, or by imprisonment for not more than one year, or by both. (§ 3 ch 179 SLA 1972)

## Article 4. General Provisions.

### Section

- 311. Individual right
- 321. Evidence of practice
- 331. Exemptions
- 341. Definition;
- 351. Short title

Sec. 08.48.311. Individual right. The right to engage in the practice of architecture, engineering or land surveying is considered a personal and individual right, based on the qualifications of the individual as evidenced by his certificate of registration, which is not transferable. (§ 3 ch 179 SLA 1972)

Sec. 08.48.321. Evidence of practice. A person practices or offers to practice architecture, engineering or land surveying who

(1) practices a branch of the profession of architecture, engineering or land surveying as defined in § 341 of this chapter;

(2) by verbal claim, sign, advertisement, letterhead, card, or other means represents himself to be an architect, engineer or land surveyor, or through the use of some other title implies that he is an architect, engineer or land surveyor;

(3) holds himself out as able to perform or who does perform an architectural, engineering or land surveying service recognized by the professions covered by this chapter, and specified in regulations of the board, as architectural, engineering or land surveying. (§ 3 ch 179 SLA 1972)

Sec. 08.48.331. Exemptions. This chapter does not apply to

(1) the execution as a contractor of work designed by a professional architect or engineer, or the supervision of the construction of this work as a foreman or superintendent for a contractor;

(2) superintendents, foremen, inspectors, or building trades craftsmen in the performance of their customary duties;

(3) an officer or employee of the United States government practicing architecture, engineering or land surveying as required by his official capacity;

(4) an officer or employee of the state practicing architecture, engineering or land surveying as required by his official capacity and registration is not required in his job description;

(5) the work of an employee or a subordinate of a person legally registered under this chapter, if the work or service does not include final designs or decisions or surveys, and is done under the direct supervision of and verified by a person legally registered under this chapter;

(6) the services ordinarily performed by locomotive, stationary and marine engine men, power plant operators, and manufacturers who supervise the operation of or operate machinery or equipment, or supervise construction within their own plant which affects only the property or interest of the manufacturer, unless the public health or safety is involved;

(7) the practice of any other lawfully recognized profession;

(8) associates, consultants or specialists retained by an individual, a partnership of legally registered individuals, or a corporation authorized under this chapter, in the performance of the professional services offered by the legally registered individual, partnership, or authorized corporation if responsible charge of the work remains with the individual, partnership or designated representative of the corporation;

(9) a person preparing plans, drawings, or specifications for

(A) a building for his own use and occupancy unless the public health, safety, or welfare is substantially involved;

(B) farm or ranch buildings unless the public health, safety, or welfare is substantially involved;

(C) a building intended to be used only as a residence by not more than four families and not more than two stories high;

(D) a building with a total of not more than 500 square feet of floor space;

(10) a specialty contractor licensed under appropriate Alaska Statutes, while engaged in the business of contracting, designing systems or facilities as otherwise permitted by law for work within the specialty for which his license was issued to be performed or supervised by the contractor, or any licensed contractor preparing shop or field drawings for work which he has contracted to perform;

(11) a person furnishing, either alone or with subcontractors, labor and materials, with or without plans, drawings, specifications, instruments of service, or other data covering the labor and materials to be used for any of the following:

(A) storefronts (facades), interior alterations or additions, fixtures, cabinetwork, furniture, or other appliances or equipment;

(B) work necessary to provide for installation of an item listed in (A) of this paragraph;

(C) alterations or additions to a building necessary to or attendant upon installation of an item listed in (A) of this paragraph, if the alteration or addition does not change or affect the structural system or safety of the building;

(12) an officer or employee of an individual, firm, partnership, association or corporation which officer or employee practices architecture, engineering or land surveying when required by his official capacity or work duties connected with his employment if the individual firm, partnership, association or corporation is not engaged in the business of offering architectural, engineering or land surveying services to the public. (§ 3 ch 179 SLA 1972)

Sec. 08.48.341. Definitions. In this chapter

(1) "architect" means a professional architect;

(2) "board" means the State Board of Registration for Architects, Engineers and Land Surveyors;

(3) "certificate of authorization" means a certificate issued by the board authorizing a corporation to provide professional services in architecture, engineering or land surveying through individuals legally registered by the board;

(4) "certificate of registration" means a certificate issued by the board recognizing the individual named in the certificate as meeting the requirements for registration under this chapter;

(5) "engineer" means a professional engineer;

(6) "land surveyor" means a professional land surveyor;

(7) "practice of architecture" means professional service or creative work in the functional and aesthetic design of structures, the teaching of advanced architectural courses in institutions of higher learning, consultation, investigation, evaluation, planning, design and professional observation of construction of public or private structures, buildings, works or projects, and architectural review of plans and specifications by regulatory agencies; it may by regulation of the board include mechanical, electrical or structural design of relatively minor importance to the project as a whole;

(8) "practice of engineering" means professional or creative work, the adequate performance of which requires the application of specialized knowledge of mathematics and sciences, dealing with the functional and economic design of buildings, structures, machines, equipment, utilities systems, materials, processes, works or projects, public or private; the teaching of advanced engineering courses in institutions of higher learning, the direction of or the performance of engineering surveys, consultation, investigation, evaluation, planning, design, and professional observation of construction of public and private structures, buildings, works or projects and engineering review of plans and specifications by regulatory agencies; it may by regulation of the board include architectural design of relatively minor importance to the project as a whole, but it does not include comprehensive architectural services;

(9) "practice of land surveying" means any service or work the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related sciences, and the relevant requirements of law for adequate evidence of the act of measuring and locating land, geodetic and cadastral surveys for the location and monumentation of property boundaries, for the platting and planning of land and subdivisions, and for the preparation and perpetuation of maps, record plats, field note records and property descriptions that represent these surveys;

(10) "professional architect" means a person who has been legally registered as a professional architect by the board;

(11) "professional engineer" means a person who has been legally registered as a professional engineer by the board;

(12) "professional land surveyor" means a person who has been legally registered as a professional land surveyor by the board;

(13) "responsible charge" means the direct control and personal supervision of work. (§ 3 ch 179 SLA 1972)

Sec. 08.48.351. Short title. This chapter may be cited as the Architects, Engineers and Land Surveyors Registration Act. (§ 3 ch 179 SLA 1972)

**CHAPTER 36.  
STATE BOARD OF  
REGISTRATION FOR ARCHITECTS,  
ENGINEERS AND LAND SURVEYORS**

**Article**

1. Registration and Licensing
2. Rules of Professional Conduct
3. General Provisions

**ARTICLE 1.  
REGISTRATION AND LICENSING**

**Section**

10. Applications
20. Abandoned applications
30. Refund when application withdrawn
40. Reexamination application
50. Final filing dates
60. Eligibility for professional architect examination or architect's qualifying examination
62. Eligibility for fundamentals of engineering examination
63. Engineer education and experience requirements
64. Eligibility for fundamentals of land surveying examination
65. Eligibility for professional land surveyor examination
67. Date of experience
70. Postponements
80. Authorization to take examination
90. Waiver of fundamentals of engineering examination
100. Content of examination
105. Registration by comity
110. Treatise required for registration
120. (Repealed)
130. (Repealed)
140. (Repealed)
150. (Repealed)
160. Duplicate certificate
170. Fees
180. Seal
190. Testing laboratory reports

12 AAC 36.010. APPLICATIONS. (a) An application for registration or examination for registration must be typewritten and filed with the board on a form prescribed by the board, accompanied by the required fee and a recent, frontal photograph, 2" x 2½" in size.

(b) No candidate will be admitted to an examination or approved for registration until his qualifications are accepted by the board. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)  
AS 08.48.171  
AS 08.48.191  
AS 08.48.201

12 AAC 36.020. ABANDONED APPLICATIONS. (a) In the absence of special circumstances, the board will consider an examination application abandoned if

(1) the applicant fails to appear for examination at the time fixed without obtaining a postponement as set out in sec. 70 of this chapter;

(2) the applicant, after two postponements, fails to appear for examination at the time fixed.

(b) An applicant whose application is considered abandoned will have his application denied without prejudice and his application fee will be forfeited.

(c) An application is considered abandoned if 18 months have elapsed since correspondence was last received from the applicant. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)

12 AAC 36.030. REFUND WHEN APPLICATION WITHDRAWN. An applicant who withdraws his application before board action will be refunded his application fee except for five dollars. (Eff. 5/23/74, Reg. 50)

Authority: AS 08.48.101

12 AAC 36.040. REEXAMINATION APPLICATION. An applicant who has failed the examination may, within 18 months of notification of the failed examination, reapply for examination. Another examination fee is required. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.091  
AS 08.48.101(a)  
AS 08.48.171

12 AAC 36.050. FINAL FILING DATES. (a) The final filing date for applications for examination is 60 days before the examination

and will be advertised as such by the board at least 30 days before that date.

(b) Repealed. (9/30/78, Reg. 67)

(c) Whenever the final filing date for an examination falls upon a Saturday, Sunday or holiday, it will be extended to the next business day.

(d) If an application is filed with the board through the United States mail, it will be considered filed on the date shown by the Post Office cancellation mark stamped on the envelope containing it, or on the date mailed if satisfactory proof is made that the mailing occurred on an earlier date. (Eff. 5/23/74, Reg. 50)

Authority: AS 08.48.101

**12 AAC 36.060. ELIGIBILITY FOR PROFESSIONAL ARCHITECT EXAMINATION OR ARCHITECT'S QUALIFYING EXAMINATION.** To be eligible for the professional architect examination or the architect's qualifying examination, an applicant must meet the education and experience requirements adopted by the NCARB. An applicant for examination may receive a copy of the requirements upon submission of a written request to the board. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)  
AS 08.48.171  
AS 08.48.181

**12 AAC 36.062. ELIGIBILITY FOR FUNDAMENTALS OF ENGINEERING EXAMINATION.** To be eligible for the fundamentals of engineering examination, an applicant must

(1) have successfully completed at least 85 percent of the required courses leading to an undergraduate degree in an engineering curriculum accredited by ECPD; or

(2) have been engaged in engineering work acceptable to the board for a period of not less than four years; or

(3) submit to the board satisfactory evidence that his education or experience or both are equivalent to the requirements as set out in the

following EIT table of equivalent experience:

**ENGINEER IN TRAINING TABLE OF EQUIVALENT EXPERIENCE**

Classification	Education In Years	Experience In Years	Total Education And Experience
Graduate of ECPD accredited engineer curriculum 4 or 5 year course w/B.S.	4	-0-	4
Graduate of non-ECPD accredited engineer curriculum 4 or 5 year course w/B.S.	2	2	4
No formal education	-0-	6	6

(Eff. 9/30/78, Reg. 67)

Authority: AS 08.48.101  
AS 08.48.171

**12 AAC 36.063. ENGINEER EDUCATION AND EXPERIENCE REQUIREMENTS.** (a) To be eligible for a professional engineering examination, an applicant must

(1) have been approved for or have passed the fundamentals of engineering examination or had these requirements waived under sec. 90(a) of this chapter; and

(2) apply for examination in a branch of engineering recognized by sec. 250(17) of this chapter; and

(3) be a graduate of an engineering curriculum accredited by ECPD within the branch of engineering applied for and have been engaged in professional engineering work in the applicant's branch for at least four years and during that period have had direct personal supervision or responsible charge of professional engineering work as a supervisor or assistant under the supervision of a registered professional engineer in the applicant's branch, for not less than two years; or

(4) have been engaged in professional engineering work in the applicant's branch for a period of not less than 12 years and during that

period have had direct personal supervision or responsible charge of professional engineering work as a supervisor or assistant under the supervision of a registered professional engineer in the applicant's branch, for not less than two years; or

(5) submit to the board satisfactory evidence that his education or experience or both are equivalent to the requirements as set out in the following professional engineer table of equivalent experience:

**PROFESSIONAL ENGINEER TABLE OF EQUIVALENT EXPERIENCE**

(Education and experience for initial registration must be in the branch in which the applicant seeks registration for full credit to be given. If the education experience is not in the branch in which the applicant seeks registration, any credit in excess of 1/2 will be determined by the board.)

Classification	Education In Years	Experience In Years	Responsible Charge Under P.E.	Total Education And Experience
Graduate of ECPD accredited engineering curriculum with M.S. or Ph.D.	5	3	2	8
Graduate of ECPD accredited 4 or 5 year course w/B.S.	4	4	2	8
Graduate of non-ECPD accredited engineering curriculum 4 or 5 year course	2	6	2	8
No formal education	-0-	12	2	12

(b) For registration in more than one branch of engineering, professional work experience used in securing registration in one branch of engineering will be evaluated by the board in considering an application for registration in

another branch or field of engineering. (Eff. 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)  
AS 08.48.171  
AS 08.48.181

**12 AAC 36.064. ELIGIBILITY FOR FUNDAMENTALS OF LAND SURVEYING EXAMINATION.** To be eligible for the fundamentals of land surveying examination, an applicant must have four years of experience. The required experience may be any combination of the experience credit set forth in the professional land surveyor table of equivalent experience in sec. 65(a)(2) of this chapter. (Eff. 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)

**12 AAC 36.065. ELIGIBILITY FOR PROFESSIONAL LAND SURVEYOR EXAMINATION.** (a) To be eligible for the professional land surveyor examination, an applicant must

(1) have been approved for or have passed the fundamentals of land surveying examination; and

(2) submit to the board satisfactory evidence that his education or experience or both are equivalent to the requirements set out in the following professional land surveyor table of equivalent experience:

**PROFESSIONAL LAND SURVEYORS TABLE OF EQUIVALENT EXPERIENCE**

Classification	Education Credit Allowed In Years	Experience Credit Allowed In Years	Responsible Charge Under R.L.S. In a Land Surveying Capacity	Total Education And Experience Required
Graduate of a board approved surveying curriculum 4-year course	4	4	3	8
Graduate of a board approved surveying curriculum 2-year course	2	6	3	8

Classification	Education Credit Allowed In Years	Experience Credit Allowed In Years	Responsible Charge Under R.L.S. In a Land Surveying Capacity	Total Education And Experience Required
Graduate of an E.C.P.D. accredited curriculum in civil engineering or related engineering sciences	2	6	3	8
No formal education	-0-	12	3	12

(b) Responsible charge of professional land surveying work as a supervisor under the direct supervision of a registered land surveyor, and working in a land surveying capacity. The remainder of the required experience must be derived from office or field work involving the activities listed in AS 08.48.341(9). Partial completion of a curriculum leading to a degree in land surveying, civil engineering, or mining engineering will, in the discretion of the board, be considered by the board in determining applicable experience. (Eff. 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)  
AS 08.48.171  
AS 08.48.181

**12 AAC 36.067. DATE OF EXPERIENCE.** Computation of qualifying experience for admission to the examination as an architect, engineer, or land surveyor is up to the date of the examination. (Eff. 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)  
AS 08.48.171

**12 AAC 36.070. POSTPONEMENTS.** The board will, in its discretion, grant postponements, not to exceed two postponements for each type of examination given, to any applicant who, for reasonable cause, is prevented from appearing for the examination at the time fixed, if the applicant's request for postponement and the reason for it are filed with the board not later than 10 days immediately following the date of the examination. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)

**12 AAC 36.080. AUTHORIZATION TO TAKE EXAMINATION.** Notification of the applicant's authorization to take the examination will be made at least 30 days before the examination. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)

**12 AAC 36.090. WAIVER OF FUNDAMENTALS OF ENGINEERING EXAMINATION.** (a) An applicant for registration as a professional engineer who has not passed the fundamentals of engineering examination need not take that examination if satisfactory evidence is submitted to the board to verify 20 years of professional experience.

(b) An applicant for registration in any branch of engineering who holds a valid registration in another branch of engineering meeting this state's requirements will not be required to take the fundamentals of engineering examination. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)

**12 AAC 36.100. CONTENT OF EXAMINATION.** Except as provided in AS 08.48.191, an applicant for registration as an architect, engineer or land surveyor is required to take and pass an examination either as currently prepared by NCEE, NCARB, or for those cases where no national examination is prepared, as prepared or selected by the board. (Eff. 5/23/74, Reg. 50)

Authority: AS 08.48.101  
AS 08.48.171  
AS 08.48.181

**12 AAC 36.105. REGISTRATION BY COMITY.** (a) A person holding a certificate of registration to engage in the practice of engineering issued to him by a proper authority of a state or possession of the United States, the District of Columbia or any foreign country based on requirements that do not conflict with the provisions of AS 08.48 and were of a standard not lower than that specified in the applicable registration Act in effect in this state at the time that certificate was issued, will upon application be registered without further examination.

(b) A person, holding a valid certificate issued by the Committee on National Engineering

Certification of the National Council of Engineering Examiners, whose qualifications as evidenced by his council record meet the requirements of AS 08.48, will upon application be registered without further examination.

(c) A person holding a valid certificate of registration to practice land surveying issued on comparable qualification from a state, territory or possession of the United States, the District of Columbia or a foreign country with experience satisfactory to the board, is required to pass a written examination of not less than four hours' duration which includes questions on laws, procedures, and practices pertaining to land surveying in this state. The board will, in its discretion, require additional examination unless the examination requirements under which the applicant was initially registered, were equivalent to this state's examination requirements at the time of the initial registration.

(d) The board will not grant temporary registration under any circumstances.

(e) The board will not recognize or grant professional registration by eminence. (Eff. 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)  
AS 08.48.191

**12 AAC 36.110. TREATISE REQUIRED FOR REGISTRATION.** (a) An applicant for architectural registration must

(1) submit a treatise on construction under arctic and subarctic conditions acceptable to the board prior to the issuance of a certificate of registration; or

(2) have successfully completed either a course or seminar in arctic engineering approved by the board.

(b) An applicant for architectural registration by comity must also submit a treatise on seismic forces, except for an applicant

(1) registered in California in May, 1933 or later;

(2) registered by examination in Washington State in 1963 or later;

(3) registered by examination in any other state in 1964 or later.

(c) An applicant for engineering registration must

(1) submit a treatise on construction under arctic and subarctic conditions, emphasizing his specific branch, that is acceptable to the board; or

(2) have successfully completed either a course or seminar in arctic engineering approved by the board. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)  
AS 08.48.171

**12 AAC 36.120. EXPERIENCE CREDIT.**  
Repealed. (9/30/78, Reg. 67)

**12 AAC 36.130. DATE OF EXPERIENCE.**  
Repealed. (9/30/78, Reg. 67)

**12 AAC 36.140. ARCHITECTURAL CURRICULA APPROVED BY THE BOARD.**  
Repealed. (9/30/78, Reg. 67)

**12 AAC 36.150. ENGINEERING CURRICULA APPROVED BY THE BOARD.**  
Repealed. (9/30/78, Reg. 67)

**12 AAC 36.160. DUPLICATE CERTIFICATE.**  
Duplicate certificates will be issued by the board to registrants and corporations upon written request and payment of a \$10 fee. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)  
AS 08.48.211

**12 AAC 36.170. FEES.** Following are the prescribed fees:

(1) application by examination, \$50 per examination;

(2) reexamination fee, \$50 per examination;

(3) application by comity, \$50;

(4) application for corporate authorization, \$100;

(5) registration fee, \$15 per year for balance of biennial period;

(6) corporate authorization registration fee, \$50 per year;

(7) registration renewal, \$15 annually, payable biennially by December 31 of odd-numbered years;

(8) corporate authorization renewal, \$50 annually, payable biennially by December 31 of odd-numbered years;

(9) amendment to corporate authorization, \$20;

(10) delinquent renewal fee for reinstatement of expired registration, \$30;

(11) postponement of examination, \$20. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.01.100  
AS 08.48.091  
AS 08.48.101(a)  
AS 08.48.201(b)  
AS 08.48.231(b) and (c)  
AS 08.48.241(i)

12 AAC 36.180. SEAL. (a) The seal authorized for use by professional architects is of the following design:



(b) The seal authorized for use by professional engineers is of the following design:



and must reflect the branch of engineering authorized by the board. This identification is to be placed below the registrant's number on the seal as noted:

- EC - Chemical engineer
- CE - Civil engineer
- EE - Electrical engineer
- ME - Mechanical engineer
- EM - Mining engineer
- EP - Petroleum engineer

(c) The seal authorized for use by professional land surveyors is of the following design:



(Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)  
Authority: AS 08.48.101(a)  
AS 08.48.221

12 AAC 36.190. TESTING LABORATORY REPORTS. Reports issued by testing laboratories shall be prepared by or under the supervision of a registered engineer and signed or sealed by him whenever such reports go beyond the tabulation of test data (compositions of material, breaking stress, etc.) by

(1) interpreting the data to draw conclusions as to the characteristics of a civil engineering structure or parts of one;

(2) expressing engineering judgment in the form of recommendations derived from the results of the test; or

(3) performing design work in the preparation of plans, specifications and other instruments requiring registration as an engineer. (Eff. 5/23/74, Reg. 50)

Authority: AS 08.48.101

**ARTICLE 2.**

**RULES OF PROFESSIONAL CONDUCT**

**Section**

- 200. Integrity
- 210. Responsibility to the public
- 220. Conflict of interest
- 225. Public service
- 230. Solicitation of employment
- 235. Advertising
- 240. Improper conduct

12 AAC 36.200. **INTEGRITY.** An architect, engineer or land surveyor shall act with complete integrity in professional matters for each client or employer as a faithful agent or trustee and shall be honest and impartial in serving the public, his client and his employer. (Eff. 5/23/74, Reg. 50)

Authority: AS 08.48.101  
AS 08.48.111

12 AAC 36.210. **RESPONSIBILITY TO THE PUBLIC.** (a) In order to establish and maintain a high standard of integrity, skills, and practice in the professions of architecture, engineering and land surveying, and to safeguard the life, health, property and welfare of the public, the following rules of professional conduct are adopted and are binding upon every individual holding a certificate of registration as an architect, engineer, or land surveyor and upon all partnerships or corporations or other legal entities authorized to offer or perform architectural, engineering, or land surveying services in the state.

(b) Each architect, engineer, or land surveyor shall

(1) at all times recognize his primary obligation to protect the safety, health, property, and welfare of the public in the performance of his professional duties; if his professional judgment is overruled under circumstances where the safety, health, and welfare of the public are endangered, he shall inform his employer or client of the possible consequence and notify such other proper authority of the situation as may be appropriate; and

(2) undertake to perform assignments only when he or his associates, consultants, or employees are qualified by education, training, experience, and licensing in the specific technical branches or fields involved;

(3) be completely objective and truthful in all professional reports, statements, or testimony and shall include all relevant and pertinent information in such reports, statements, or testimony when the result of an omission would, or reasonably could, lead to a fallacious conclusion; and

(4) not affix his signature or seal to any plan or document dealing with professional services in which he is not qualified by virtue of education, experience, and licensing; and

(5) issue no statements, criticisms, or arguments on architectural, engineering, or land surveying matters connected with public interests which are inspired or paid for by his interested party or parties unless he has prefaced his comment by explicitly identifying himself by disclosing the identities of the party or parties on whose behalf he is speaking, and by revealing the existence of any pecuniary interest. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)  
AS 08.48.111

**12 AAC 36.220. CONFLICT OF INTEREST.**

(a) Each architect, engineer or land surveyor shall avoid conflicts of interest with his employer or client but, when unavoidable, the architect, engineer, or land surveyor shall promptly inform his employer or client of any business association, interests, or circumstances and identify any circumstances which could influence his judgment or the quality of his service to his employer or client.

(b) An architect, engineer, or land surveyor may not accept compensation, financial or otherwise, from more than one party for services on the same project or for services pertaining to the same project unless the circumstances are fully disclosed to and agreed to by all interested parties or their authorized agents.

(c) An architect, engineer, or land surveyor may not solicit or accept financial or other valuable consideration from suppliers for specifying their products.

(d) An architect, engineer, or land surveyor may not solicit or accept gratuities from other parties dealing with his client or employer in connection with the work for which he is responsible. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)(5)

**12 AAC 36.225. PUBLIC SERVICE.** When in public service as a member, advisor, or employee of a government body, an architect, engineer, or land surveyor may not participate in considerations or actions with respect to services provided by him or his organization. An architect, engineer, or land surveyor, in his capacity as an elected, retained, or employed public official, may not review or approve work that he has performed, whether it was under his direction or on behalf of another employer or client. (Eff. 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)(5)

**12 AAC 36.230. SOLICITATION OF EMPLOYMENT.** (a) An architect, engineer or land surveyor may not pay, solicit nor offer, directly or indirectly, any bribe or commission for professional employment with the exception of his payment of the usual commission for securing salaried positions through licensed employment agencies.

(b) Each architect, engineer, or land surveyor shall seek professional employment on the basis of qualifications and competence for proper accomplishment of the work. He may not knowingly solicit or submit proposals for professional services on the basis of competitive bidding.

(c) An architect, engineer or land surveyor may not falsify or permit misrepresentation of

his or his associates' academic or professional qualifications. He may not misrepresent or exaggerate his degree of responsibility in or for the subject matter of prior assignments.

(d) Brochures or other presentations incident to an architect's engineer's or land surveyor's solicitation of employment may not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or his or their past accomplishments with the intent and purpose of enhancing his qualifications and his work. (Eff. 5/23/74, Reg. 50)

Authority: AS 08.48.101  
AS 08.48.111

**12 AAC 36.235. ADVERTISING.** An architect, engineer, or land surveyor may not advertise his or her services in a deceptive, self-laudatorial, or untruthful manner. (Eff. 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)(5)

**12 AAC 36.240. IMPROPER CONDUCT.** (a) An architect, engineer, or land surveyor may not knowingly associate with or permit the use of his name or firm name in a business venture by any person or firm which he knows or has reason to believe is engaging in business or professional practices in a fraudulent or dishonest manner.

(b) If an architect, engineer, or land surveyor has knowledge or reason to believe that another person or firm may be in violation of the provisions of AS 08.48, or any of these rules of professional conduct, he or she shall present that information to the board in writing and shall cooperate with the board in furnishing such further information or assistance as may be required. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)

### ARTICLE 3. GENERAL PROVISIONS

#### Section 250.

#### Definitions

**12 AAC 36.250. DEFINITIONS.** For the purposes of this chapter and AS 08.48, unless the context requires otherwise

(1) "advanced courses" means courses in institutes of higher learning beyond the second academic year;

(2) "board" means the State Board of Registration for Architects, Engineers and Land Surveyors;

(3) "chemical engineering" means that branch of professional engineering which embraces studies and activities relating to applied chemistry, both industrial and nonindustrial, concerned with chemical materials, their composition, locations, transportation, and storage; chemical and physical-chemical processes naturally occurring or artificially operated, their matter and energy changes, the conditions of temperature, concentration and media for those changes including apparatus and analytical control; chemical products, their quality, quantity, applications, uses, and values; preparation of materials for public or industrial use including water supply, waste abatement, and pollution control;

(4) "civil engineering" means that branch of professional engineering which embraces studies and activities in connection with research, design, and construction of fixed works for irrigation, drainage, waterpower, water supply and treatment, flood control, inland waterways, harbors, municipal improvements, railroads, highways, tunnels, airports and airways, sewerage, refuse disposal, foundations, structures, or bridges;

(5) "design" means the original and unique application of basic aesthetic, mathematical and physical and chemical principles to provide an acceptable solution of a problem or project;

(6) "direct supervision" means personal control, at the working level, of the preparation of professional documents;

(7) "ECPD" means Engineers' Council for Professional Development;

(8) "electrical engineering" means that branch of professional engineering which embraces studies and activities relating to generation, transmission and utilization of electrical energy and to telecommunications

systems and facilities, including the design of electrical, electronic and magnetic circuits and components, and the technical control of their operation and of the design of electrical and telecommunications gear; it is concerned with the research, organizational and economic aspects of these studies and activities;

(9) "mechanical engineering" means that branch of professional engineering which deals with engineering problems relating to generation, transmission and utilization of energy in the thermal or mechanical form, and also with engineering problems relating to the production of tools, machinery and their products and to mechanical processes, heating, air conditioning, refrigeration and plumbing; it is concerned with the research, design, production, operational, organizational and economic aspects of these studies and activities;

(10) "mining engineering" means that branch of professional engineering which embraces studies or activities relating to the exploration, location, and recovery of mineral commodities; it is concerned with research, design, construction, and development of structures, devices, and facilities of production and the economic aspects related to these studies and activities;

(11) "NAAB" means the National Architectural Accrediting Board;

(12) "NCARB" means the National Council of Architectural Registration Boards;

(13) "NCEE" means the National Council of Engineering Examiners;

(14) "petroleum engineering" means that branch of professional engineering which embraces studies or activities relating to the exploration, location, and recovery of natural fluid hydrocarbons; it is concerned with research, design, production, and operations of devices, and the economic aspects of these studies and activities;

(15) repealed (9/30/78, Reg. 67);

(16) repealed (9/30/78, Reg. 67);

(17) "professional engineering" includes the branches of

- (A) chemical engineering;
- (B) civil engineering;
- (C) electrical engineering;
- (D) mechanical engineering;
- (E) mining engineering;
- (F) petroleum engineering;

(24) "registration by comity" means registration by recognition of the applicant's credentials accepted by another jurisdiction. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)  
Authority: AS 08.48.101(a)

(18) "professional work" means the time the applicant has been occupied in architecture, engineering or land surveying work of higher grade and responsibility than that of subprofessional work;

(19) "responsible charge of work in the field" means the direction of work, the successful accomplishment of which rested upon the applicant, where the applicant has to decide questions of methods of execution and suitability of materials without relying upon advice or instructions from his superiors and where the applicant has to supply solutions to deficiencies in plans or has to correct errors in designs without first referring them to higher authority for approval, except where the approval is a matter of form;

(20) "responsible charge" as it pertains to "work in the office" means undertaking investigations or carrying out assignments, which demand resourcefulness and originality, or making plans, writing specifications, and directing drafting and computations for the design of architectural, engineering or land surveying work with only rough sketches, general information and field measurements for reference;

(21) "state" means the State of Alaska;

(22) "subprofessional work" means time spent working as rodman, chainman, recorder, draftsman, clerk of works, instrument man, inspector, or similar work where personal responsibility and technical knowledge are slight;

(23) "speciality contractor" means a contractor registered to offer not more than two labor trades;

J

STATE OF ALASKA  
Board of Marine Pilots  
(October, 1979)

Findings

Review of the responsibilities and activities of the Board of Marine Pilots indicates that regulation of this profession is in the public interest and should be continued.

Observations made in the review are designed to enhance Board operation and efficiency.

The Board functions under AS 08.62 to license qualified applicants and regulate individuals within the profession. Support services are provided by the Department of Commerce and Economic Development, Division of Occupational Licensing.

I. General Information

A. Regulated Parties

1. Marine Pilots
2. Vessels subject to AS 08.62 must register with the Board

B. Definitions

"Pilotage waters" includes all inside Alaska waters, with exceptions noted in Board regulations (12 AAC 56.110).

C. Purpose of Regulation

AS 08.62.040 requires the Board to "provide for the maintenance of efficient and competent pilot service on all waters covered by this chapter to assure protection of shipping and the safety of human life and property..."

D. Nature and Composition of Board

1. Board members and terms:

Four-year term (no restrictions regarding consecutive terms or number of terms).

Charles R. Webber, Commissioner  
Department of Commerce & Economic Development (Chairman)

Capt. Donald Oldow	ends June 1, 1980
Capt. Jack Maroni	ends June 1, 1979
Charles Stover (Agent)	ends June 1, 1980
Marvin Taylor (Agent)	ends June 1, 1979
Kenneth Peavyhouse (public) (public member vacancy)	ends June 1, 1983

2. Representation:

Profession = 4  
State Government = 1  
Public = 2

3. Qualifications:

The Board "consists of two pilots licensed under this chapter who have been actively engaged in piloting on vessels subject to this chapter, two agents or managers of vessels subject to this chapter, two public members in accordance with AS 08.01.025, and the commissioner or his designee. Not more than one pilot and one agent or manager shall be from any one judicial district. All members of the board shall be residents of the state."  
(AS 08.62.010)

E. Licensing Data

Current licenses (effective September 30, 1979)

in-State = 36  
out-of-State = 16  
Total = 52

F. Fees

1. application fee	\$ 10.00
2. biennial license fee	200.00
3. temporary license fee	50.00

G. Board Revenues and Expenditures

	FY '76	FY '77	FY '78	FY '79
Receipts	\$ 990.00	\$11,122.10	\$1,830.00	\$10,722.00
- refunds	<u>-</u>	<u>-</u>	<u>50.00</u>	<u>-</u>
Total	990.00	11,122.10	1,780.00	10,722.00
Expenditures				
Transportation	865.50	2,444.46	1,648.74	3,549.00
Per Diem	1,313.75	2,271.68	1,692.00	3,105.75
Phone	32.98	42.12	49.96	463.56
Printing, Adver. & Postage	501.29	706.10	358.94	750.79
Fees & Services	-	35.00	-	70.00
Rents, Leases & Other	<u>-</u>	<u>15.75</u>	<u>70.00</u>	<u>173.57</u>
Total	<u>\$2,713.52</u>	<u>\$ 5,515.11</u>	<u>\$3,819.64</u>	<u>\$ 8,112.67</u>
Surplus	-	\$ 5,606.99	-	\$ 2,609.33
Deficit	\$1,723.52	-	\$2,039.64	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

H. Complaints

Cases received during FY '78 and FY '79	= 14
Cases closed during FY '78 and FY '79	= 16
Cases to litigation during FY '78 and FY '79	= 1
Cases pending closure before the Board	= 0
Cases on file for investigation	= 12

All twelve open cases were filed by members of the profession or industry; seven concern unlicensed activity, three pertain to failure to report accidents, and two are of an undetermined nature.

## II. Analysis

- A. To what extent has the Board of Marine Pilots operated in the public interest?

---

The Board assures competency of Marine Pilots through its qualifications for licensure as outlined in Board regulations. The Board meets in May and December of each year to pass on applicant qualifications, conduct examinations, and consider other Board business.

Temporary permits are available (pending full examination at a regular meeting) for qualified applicants for unlimited, limited or channel pilot licenses, subsequent to submission of qualifications and brief examination by two members of the Board. These two members have traditionally been either the pilot and agent from Southwest Alaska or the pilot and agent from Southeast Alaska. Authorization of the temporary permit is documented by these members and forwarded to the administrative agency for issuance of the permit.

Regular examinations held during Board meetings consist of written and oral testing. Content of the written exam is cited in 12 AAC 56.070 and appears to be similar in nature to the examination given for a license by the U.S. Coast Guard; a Coast Guard license is a prerequisite for a State license. Applicants are also tested orally by the Board regarding specific conditions and situations of vessels and maneuvers in the particular geographical area for which licensure is being sought. In view of the fact that there appears to be redundancy in the Coast

Guard and State tests, and the fact that applicants must have a Coast Guard license, the Board should consider eliminating some or all of the written portion of its examination.

Marine Pilot licenses are renewed biennially on December 31 of even-numbered years. Recent professional activity and certification of physical fitness are renewal requirements. Licentiates are required by regulations to file with the administrative agency quarterly reports on all vessels served; however, in many instances this has not been done on a consistent basis.

The Board has not kept a register of vessels, operators, agents or managers as required by AS 08.62.040(a)(3).

The Board has adopted substantive regulations pursuant to its mandate to provide for competent service in the protection of shipping and safety of human life and property.

B. To what extent has the operation of the Board of Marine Pilots been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

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As with all boards and commissions for which support services are provided by the Division of Occupational Licensing, this Board functions within strict budgetary and personnel limitations. Direct staff support is provided by a licensing examiner who is also responsible for two other boards. Fees and revenues for all boards and commissions under the jurisdiction of the Division of Occupational Licensing are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct board revenues and expenses may be determined. Revenues for this Board are not sufficient to support its operation.

The Board has encountered the same difficulties as have all other boards and commissions with respect to investigative services provided by the administrative agency. During FY'78 two investigator positions were vacant; as a result, one position was abolished by the Legislature. At the present time, two investigators are located in Anchorage with a Chief Investigator located in Juneau. An additional investigator position was approved in the FY '80 budget but will probably not be filled immediately due to vacancy factors incorporated into the personal service category of the budget. Procedural constraints of the administrative adjudication article of the Administrative Procedure Act (AS 44.62.330-630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

Although the Board of Marine Pilots usually holds two meetings each year, two additional special meetings were held early in 1979 relative to the statutory provision (AS 08.62.040(a)(4)) that the Board "regulate pilotage fees." One of the two Marine Pilot associations representing a portion of Alaska licensees had requested a hearing before the Board on a proposed tariff increase, which was finally denied by the Board in June of 1979 but has been scheduled again for the December, 1979 meeting. Representatives from the Southwest Alaska Pilots' Association, the shipping industry, the Department of Commerce and Economic Development, and the Department of Law, as well as most members of the Board, were actively involved in these hearings.

Because no definitive guidelines or procedure for tariff hearings have been established, there is a considerable amount of time consuming confusion related to this Board activity. A number of areas of concern

regarding tariff hearings have been cited by the Department of Law including possible antitrust suits arising from negotiated uniform fees to be charged by the association on behalf of "independent" pilots and the potential for conflict of interest in that the Board membership includes two pilots and two shipping agents who constitute a majority of the Board and without whom there could be no quorum (see Appendices A and B).

A number of suggestions were made by the Department of Law to establish hearing procedures and guidelines; however, this has not been done. Regulations proposed by the Department of Law (see Appendix C) addressing some of these problem areas were rejected by the Board at its last meeting.

We do not believe that a State board should involve itself in "labor negotiations" or in fee setting for industry and would recommend statutory amendments which would resolve the conflicts seen in present hearing procedures, whether it be specific authority to permit prehearing negotiations between pilots and shippers, reconstitution of the Board, delegation of tariff hearing authority, or complete disassociation as a State regulatory function.

If no statutory amendments are made, it is suggested that the Board immediately proceed in setting up specific hearing procedures. The Board should also reconsider its position on needed regulatory amendments.

C. To what extent has the Board of Marine Pilots recommended statutory changes which are generally of benefit to the public interest?

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Two public members were added to the Board in 1976; in 1979 penalties for unlicensed activity were increased from a minimum of \$500 and maximum of \$1,000 to a minimum of \$1,000 and maximum of \$5,000 (with Board approval).

Review of Board minutes for the past two years indicates no other recommended statutory changes: either specifically in the public interest or otherwise.

- D. To what extent has the Board of Marine Pilots encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy and availability of service which it has provided?

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Participation concerning Board affairs has come from the profession and related industries. No "public" interest in Board activities has been demonstrated. Efforts could be made by the Board to promote public awareness but probably would have minimal effect.

Public interests are furthered by a presence of public members on the Board. "In recent years a number of states have added one or more public members (citizens with no particular interest in the occupation or profession governed by the board) to licensing boards in an effort to ensure that the interests of the public would be represented in decision-making."<sup>1</sup> The State of California, which provides for a one-third public membership on health care boards and a public majority on others, has indicated that its experience with public members has been highly rewarding.

- E. How efficiently are public inquiries or complaints regarding the activities of the Board of Marine Pilots processed and resolved?

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<sup>1</sup>Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

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General inquiries regarding the activities of the Board are responded to by Department staff and by members of the Board. Indications are that these responses are both accurate and timely and that information disseminated is appropriate.

Efforts are being made by the Division of Occupational Licensing to further organize and expedite the complaint and investigation process for all boards and commissions.

F. To what extent does the Board of Marine Pilots present qualified applicants to serve the public?

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Regulations regarding licensure qualifications have been adopted to insure competency of pilots, and are adhered to by the Board. This process, in conjunction with viable enforcement provisions, functions to assure initial and on-going professional ability.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Marine Pilots in its own activities, and in its area of activity or interest?

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Board staff consists of the support services of a licensing examiner (also responsible to two other boards), employed by the Division of Occupational Licensing. This position and others, such as Division Director, Management Analyst, Regulations Specialist, etc., are hired through the State Personnel System and are subject to affirmative action requirements.

Examination and licensing privileges in this profession are based on specific criteria to which affirmative action requirements are not applicable.

H. To what extent are statutory, budgetary or other changes necessary to enable the Board of Marine Pilots to better serve the interests of the public?

---

Investigation and complaint procedures are being addressed by the administrative agency with emphasis being placed on magnitude of offense and public safety.

Board and administrative expenses outweigh revenues collected through regulation of this profession. Fees collected are not adequate to cover transportation and per diem for meetings and examinations, and Division of Occupational Licensing administrative overhead such as staff salaries, examination expenses, and investigative services.

AS 08.62.110 may be repealed as well as a portion of §120. Fees could be increased, particularly the \$10 application fee. Statutory terms such as "incompetent" and "misconduct" should be defined. The Board should revise its regulations with respect to quorums for the conduct of its business and, as a matter of general policy, follow through on advice given it by the Department of Law.

Significant decisions need to be made with regard to the Board's role in tariff hearings. Continued confusion or inaction is not a suitable alternative to the many potential problems faced by the Board in its present situation. It is hoped that clarification and direction will be provided as a result of Legislative consideration.

## Chapter 62. Marine Pilots.

### Article

1. Board of Marine Pilots (§§ 08.62.010-08.62.040)
2. Licensing (§§ 08.62.080-08.62.150)
3. General Provisions (§§ 08.62.160-08.62.200)

### Article 1. Board of Marine Pilots.

### Section

10. Creation and membership of board
20. Appointment and term of office
30. Meetings
40. Powers and duties

Sec. 08.62.010. Creation and membership of board. There is created the Board of Marine Pilots. It consists of two pilots licensed under this chapter who have been actively engaged in piloting on vessels subject to this chapter, two agents or managers of vessels subject to this chapter, two public members in accordance with AS 08.01.025, and the commissioner or his designee. Not more than one pilot and one agent or manager shall be from any one judicial district. All members of the board shall be residents of the state. (§ 2 ch 106 SLA 1970; am § 8 ch 258 SLA 1976)

Sec. 08.62.020. Appointment and term of office. The governor shall appoint the pilot and agent or manager members of the board, subject to confirmation by a majority of the members of the legislature in joint session, for terms of four years, or until their successors are appointed. The first members shall be initially appointed for one, two, three and four year terms. (§ 2 ch 106 SLA 1970)

Sec. 08.62.030. Meetings. The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman with prior approval of the governor. (§ 2 ch 106 SLA 1970)

Sec. 08.62.040. Powers and duties. (a) The board shall

(1) provide for the maintenance of efficient and competent pilot service on all waters covered by this chapter to assure protection of shipping and the safety of human life and property;

(2) consistent with the law, adopt regulations, subject to the Administrative Procedure Act (AS 44.62), establishing the qualifications of pilots and providing for the examination of pilots and the issuance of original or renewal pilot licenses to qualified persons;

(3) keep a register of licensed pilots, vessels, operators, agents, and managers;

(4) regulate pilotage fees;

(5) make available, upon request, copies of this chapter and the regulations adopted under it.

(b) The board may, by regulation, make any other provision for proper and safe pilotage upon the waters covered by this chapter and for the efficient administration of this chapter. (§ 2 ch 106 SLA 1970)

## Article 2. Licensing.

### Section

- 80. License requirement
- 90. Application
- 100. Qualifications
- 110. Previous licensure
- 120. Duration, renewal
- 130. Lapsed license
- 140. Fees
- 150. Denial, revocation or suspension

Sec. 08.62.080. License requirement. No person may pilot a vessel subject to this chapter unless he is licensed under this chapter. (§ 2 ch 106 SLA 1970)

Sec 08.62.090. Application. (a) A person who desires to be licensed under this chapter shall apply in writing to the department.

(b) The application shall provide the information and be made on a form prescribed by the board. (§ 2 ch 106 SLA 1970)

Sec. 08.62.100. Qualifications. A person is entitled to a license under this chapter if he

(1) is of good moral character;

(2) is a citizen of the United States;

(3) passes the examination given by the board; and

(4) qualifies under the regulation adopted under § 40(a)(2) and (b) of this chapter. (§ 2 ch 106 SLA 1970)

Sec. 08.62.110. Previous licensure. A license that was issued under AS 30.10 is considered as having been issued under this chapter. (§ 2 ch 106 SLA 1970)

Sec. 08.62.120. Duration, renewal. A license issued under this chapter shall be renewed biennially on dates set by the department. A license issued under AS 30.10 lapses at the end of calendar year 1970.

A license issued between May 7, 1970 and the end of 1970 shall be issued for a fee of \$100. A license shall be renewed without examination upon the payment of the biennial license fee. (§ 2 ch 106 SLA 1970)

Sec. 08.62.130. Lapsed license. A lapsed license may be reinstated without examination if it has not remained lapsed for more than two years. However, if the license is lapsed for less than two years and the board has reason to believe that the person applying for reinstatement of his license is incapable or incompetent to carry out the duties of a licensed marine pilot, the board may require the applicant to take and pass the examination given by the board. (§ 2 ch 106 SLA 1970; am § 1 ch 22 SLA 1973)

Sec. 08.62.140. Fees. The following fees shall be imposed under this chapter when applicable:

- |                               |       |
|-------------------------------|-------|
| (1) application fee.....      | \$ 10 |
| (2) biennial license fee..... | 200   |

(§ 2 ch 106 SLA 1970)

Sec. 08.62.150. Denial, revocation or suspension. (a) The board, after compliance with the Administrative Procedure Act (AS 44.62), may deny, revoke or suspend the license of a person who

- (1) is incompetent in the performance of his pilotage duties;
- (2) is habitually intoxicated;
- (3) illegally uses or sells narcotic or hallucinogenic drugs;
- (4) makes a false statement to obtain a license;
- (5) violates a provision of this chapter or a regulation adopted under it; or
- (6) is guilty of misconduct during the course of his employment.

(b) A license denied, revoked or suspended under (a) of this section may not be granted or reinstated until

- (1) the reason for the license denial, revocation or suspension has been remedied; and
- (2) the period of suspension has been served and all fines imposed under this chapter have been paid. (§ 2 ch 106 SLA 1970)

### Article 3. General Provisions.

#### Section

- 160. Mandatory employment of licensed pilots
- 170. Pilot's lien for compensation
- 180. Exemptions
- 185. Certain licensed pilots required for oil tankers
- 190. Penalty
- 200. Definitions

Sec. 08.62.160. Mandatory employment of licensed pilots. A vessel subject to this chapter navigating the inside coastal waters of Alaska as determined by regulation shall employ a pilot holding a valid license under this chapter. (§ 2 ch 106 SLA 1970)

Sec. 08.62.170. Pilot's lien for compensation. Each vessel, its tackle, apparel and furniture and the owner of the vessel are jointly and severally liable for the compensation of a pilot employed on the vessel and the pilot has a lien on the vessel, her tackle, apparel and furniture for his compensation. (§ 2 ch 106 SLA 1970)

Sec. 08.62.180. Exemptions. This chapter does not apply to

(1) vessels under enrollment, except as provided in § 185 of this chapter;

(2) fishing vessels registered in the United States or in British Columbia, Canada;

(3) motorboats as defined in sec. 1 of the federal Motor Boat Act of 1940 (54 Stat. 163; 46 U.S.C., sec. 526 et seq.);

(4) vessels of United States registry of less than 300 gross tons and tow boats of United States registry and vessels owned by the State of Alaska, engaged exclusively

(A) on the rivers of Alaska, or

(B) in the coastwise trade on the west coast of the United States including Alaska, Hawaii, and British Columbia, Canada;

(5) vessels of Canada, including Canadian cruise ships, engaged in frequent trade between British Columbia and Alaska, if reciprocal exemptions are granted by Canada to vessels owned by the State of Alaska and those of United States registry; and

(6) pleasure craft. (§ 2 ch 106 SLA 1970; am § 1 ch 43 SLA 1972; am § 2 ch 78 SLA 1977)

Sec. 08.62.185. Certain licensed pilots required for oil tankers.  
(a) Any oil tanker, whether enrolled or registered, of 50,000 dead weight tons or greater, shall, when navigating in state waters beyond Alaska pilot stations either

(1) employ a pilot licensed by the state under this chapter,  
or

(2) utilize a federally licensed pilot whose duty station has been on that tanker throughout that specific voyage.

(b) The pilot required in (a) of this section shall control the vessel during all docking operations. (§ 3 ch 78 SLA 1977)

Sec. 08.62.190. Penalty. A master or owner of a vessel required by this chapter to employ a licensed pilot who fails to do so when a licensed pilot is available, unless the perils or hazards of the sea prevent the employment of a pilot, is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than \$1,000 nor more than \$5,000. A person who violates any other provision of this chapter or a regulation adopted under it is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than \$1,000 nor more than \$5,000. (§ 2 ch 106 SLA 1970; am § 1 ch 34 SLA 1979)

Sec. 08.62.200. Definitions. In this chapter

(1) "board" means the Board of Marine Pilots;

(2) "commissioner" means the commissioner of the Department of Commerce and Economic Development;

(3) "department" means the Department of Commerce and Economic Development;

(4) "vessel" means all vessels not exempt under § 180 of this chapter. (§ 2 ch 106 SLA 1970; am § 48 ch 218 SLA 1976)

CHAPTER 56.  
BOARD OF MARINE PILOTS

## Article

1. Administration of Board
2. Licensing
3. Inside Waters
4. Rates
5. General Provisions

ARTICLE 1.  
ADMINISTRATION OF BOARD

## Section

10. Quorum
20. Meetings

12 AAC 56.010. QUORUM. (a) For the purpose of approving applications for examination and administering the examination for a temporary license, two members of the board are a quorum.

(b) For the purpose of board meetings, hearings, examinations and for conducting all other board business, three members are a quorum. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42)

Authority: AS 08.62.040(b)

12 AAC 56.020. MEETINGS. The annual meeting of the board shall be in December on the date, time and place designated by the chairman. Special meetings will be held at times and places designated by the chairman with approval of the governor and members of the board. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.030  
AS 08.62.040(b)

ARTICLE 2.  
LICENSING

## Section

30. Qualifications for unlimited pilot's license
40. Qualifications for limited pilot's license
50. Qualifications for channel pilot's license
60. Temporary license
70. Examinations
80. Biennial license renewal

12 AAC 56.030. QUALIFICATIONS FOR UNLIMITED PILOT'S LICENSE. An applicant for an unlimited pilot's license shall apply on a form provided by the Department of Commerce

(1) pay the required fee; and

(2) submit a full-sized, certified reproduction of a valid United States Coast Guard license as first-class pilot upon the waters for which applying; and

(3) submit a full-sized, certified reproduction of a valid United States Coast Guard license for master of steam or motor vessels of 500 gross tons or better including tow boat or freighting vessels, but excluding fishing vessels; and

(4) have practical knowledge of the navigation of vessels and of the conditions of navigation in the waters for which he is applying, which will be determined by oral and written examination before the board from topics listed in sec. 70 of this chapter; and

(5) have met the following requirements:

(A) have a minimum of one year as a master or pilot of a vessel in the waters for which applying, and have executed under the direct supervision of a pilot holding an unlimited pilot's license under AS 08.62.100 a minimum of 10 dockings and 10 undockings while holding a United States Coast Guard license as a first-class pilot upon the waters for which applying and a United States Coast Guard license for master of steam or motor vessels of 500 gross tons or better including tow boat or freighting vessels, but excluding fishing vessels. No more than five of the required dockings or undockings may have been under the direct supervision of the same supervisory pilot; or

(B) have executed under the direct supervision of a pilot holding an unlimited pilot's license under AS 08.62.100 a minimum of 20 dockings and 20 undockings while holding a United States Coast Guard license as a first-class pilot upon the waters for which applying and a United States Coast Guard license for master of steam or motor vessels of 500 gross tons or better including tow boat or freighting vessels, but excluding

fishing vessels. No more than five of the required dockings or undockings may have been under the direct supervision of the same supervisory pilot; and

(C) all dockings and undockings must be certified as having been made within two years prior to the date of application; and

(6) have satisfactorily completed a physical examination within 30 days of the date of application. The physical examination required of all pilots shall demonstrate that he is respects physically fit to perform his duties as a pilot and shall include an examination of his eyesight, hearing, blood pressure and anything else necessary in the opinion of the examining physician; and

(7) be at least 25 years of age. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42)

Authority: AS 08.62.040(a)(2)

12 AAC 56.040. QUALIFICATIONS FOR LIMITED PILOT'S LICENSE. (a) A limited pilot's license is a license to pilot vessels of 2,000 gross tons or less.

(b) An applicant for a limited pilot's license shall apply on a form provided by the Department of Commerce

(1) pay the required fee; and

(2) submit a full-sized, certified reproduction of a valid United States Coast Guard license for first-class pilot upon the waters for which applying; and

(3) submit a full-sized, certified reproduction of a valid United States Coast Guard license for master; and

(4) have practical knowledge of the navigation of vessels and of the conditions of navigation in the waters for which he is applying, which will be determined by oral and written examination before the board from topics listed in sec. 70(b) and (c) of this chapter; and

(5) have satisfactorily completed a physical examination within 30 days of the date of application; the physical examination required of all pilots shall demonstrate that he is in all respects physically fit to perform his duties as a pilot and shall include an examination of his eyesight, hearing, blood pressure and anything else necessary in the opinion of the examining physician; and

(6) be at least 25 years of age.

(c) An applicant for a limited pilot's license not meeting the requirements of (b)(2) and (3) of this section may be issued a limited license, if in the opinion of the board he has submitted sufficient proof of experience and knowledge for the area in which he is applying. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42)

Authority: AS 08.62.040(a)(2)

**12 AAC 56.050. QUALIFICATIONS FOR CHANNEL PILOT'S LICENSE.** A channel pilot's license is a license to pilot in main ship channels only. A channel pilot may perform docking and undockings only under the direct supervision of a pilot holding an unlimited pilot's license. An applicant for a channel pilot's license shall apply on forms provided by the Department of Commerce. An applicant shall

(1) pay the required fee; and

(2) submit a full-sized, certified reproduction of a valid United States Coast Guard license for first-class pilot upon the waters for which applying; and

(3) submit a full-sized, certified reproduction of a valid United States Coast Guard license for master of steam or motor vessel of 500 gross tons or better including tow boat or freighting vessels, but excluding fishing vessels; and

(4) have practical knowledge of the navigation of vessels and of the conditions of navigation in the water for which he is applying, which will be determined by oral and written examination before the board from topics listed in sec. 70(b) and (c) of this chapter; and

(5) have completed satisfactorily a physical examination within 30 days of the date of application; the physical examination required

of all pilots shall demonstrate that he is in all respects physically fit to perform his duties as a pilot and shall include an examination of his eyesight, hearing, blood pressure and anything else necessary in the opinion of the examining physician; and

(6) be at least 25 years of age. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am 6/19/74, Reg. 50)

Authority: AS 08.62.040(a)(2)

**12 AAC 56.060. TEMPORARY LICENSE.** (a) A temporary license may be issued to a person applying for an unlimited, limited or channel pilot's license upon

(1) submission of the required application; and

(2) submission of the temporary license fee of \$50; and

(3) submission of proof that he meets all requirements for the license for which he is applying except the examination requirement; and

(4) successful passing of a written examination consisting of 20 questions with a score of at least 75 percent; the questions will be taken from a list of 100 questions prepared previously by the board; this examination will not be considered as part of the oral and written examination given by the board under sec. 70 of this chapter, but will cover the same topics.

(b) A temporary license will be valid until the results of the next scheduled examination are received. If for a valid reason the applicant was unable to appear for the next scheduled examination, the board may extend the temporary license until the next scheduled examination after the one for which the applicant was unable to appear. The temporary license shall not be extended more than once nor shall a second temporary license be issued.

(c) An applicant for an extension of route may receive a temporary permit by appearing before two board members and taking a written and oral examination for the requested area. If the applicant passes the examination, a temporary extension of route permit will be issued which

will remain in effect until the next scheduled meeting of the board when the application will be reviewed for permanent licensure. The applicant need not appear at the scheduled meeting. If permanent licensure is approved, the area will be added to the license; if it is disapproved, the temporary permit is void as of the date of disapproval. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am 6/19/74, Reg. 50; am 6/30/78, Reg. 66)

Authority: AS 08.62.040(a)(2)

**12 AAC 56.070. EXAMINATIONS.** (a) The examination required by secs. 30, 40 and 50 of this chapter will be given at least once a year at the time and place designated by the chairman of the board with prior approval of the other board members. All applications for examination must be submitted to the board at least 60 days before the date of examination.

(b) Applicants must pass the written portion of the examination with a score of at least 75 percent in each topic with the exception of (1) of this subsection, inland and pilot rules, which must be passed with a score of at least 90 percent. The written examination may consist of, but not be limited to, the following topics:

- (1) inland and pilot rules;
- (2) aids to navigation;
- (3) courses, distances, and distances passed abeam at change of course points between given points;
- (4) important and essential cable areas;
- (5) dredged channel widths and depths;
- (6) bridge signals, widths, regulations, and closing periods;
- (7) ship handling, docking problems, seamanship by actual observation, use of tow boats and anchors;
- (8) Alaska Pilotage Act and rules of the board;
- (9) location of anchorages;
- (10) duties of a pilot;

(11) relationship between master and pilot;

(12) practical operation and use of marine radar, including use of maneuvering board;

(13) currents and tides;

(14) dock headings, lengths, depths of water alongside pier locations and berth numbers;

(15) U.S. Government Public Health Quarantine regulations;

(16) prohibited areas, restricted areas, explosive anchorages;

(17) chart knowledge, including chart symbols and abbreviations;

(18) use of navigational and bridge instruments;

(19) engine order and rudder commands for

(A) U.S. merchant vessels;

(B) U.S. naval vessels;

(C) foreign flag merchant vessels.

(c) An applicant for licensure as an unlimited, limited or channel pilot will be orally interviewed by the board on his safety record and elaboration of his seagoing background as listed on his application. In addition, the applicant must pass the oral examination required by secs. 30, 40 and 50 of this chapter with a score of at least 75 percent in the following topics:

(1) knowledge of the local harbor conditions and local regulations in the area applied for;

(2) signals; and

(3) rules of the road. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am 6/19/74, Reg. 50)

Authority: AS 08.62.040(a)(2)

**12 AAC 56.080. BIENNIAL LICENSE RENEWAL.** (a) All licenses expire on December 31 of even-numbered years. In order to renew the biennial license, all licensees must submit the renewal application with

(1) proof of having satisfactorily completed a physical examination within 30 days of the renewal date; and

(2) the biennial license fee of \$200.

(b) In addition, a licensee

(1) holding an unlimited pilot's license must submit proof of having worked in a licensed deck officer capacity for two months in the area for which he was licensed during the last biennial period;

(2) holding either a limited pilot's license or a channel pilot's license must have worked in a capacity which in the opinion of the board has kept him currently knowledgeable in the area for which his license was originally issued;

(3) who has not worked during the last two biennial periods in an area for which he was licensed shall petition the board to determine that he has sufficient knowledge and experience to resume pilotage in that area and is restricted from doing so until such a determination has been made. (Eff. 6/11/71, Reg. 38; am 6/19/74, Reg. 50; am 5/12/78, Reg. 66)

Authority: AS 08.62.040(a)(2) and (b)

### ARTICLE 3. INSIDE WATERS

#### Section

- 90. General rule for determining boundaries of inside waters of Alaska
- 100. Established boundaries of inside waters of Alaska
- 110. Exclusions for entering inside waters of Alaska
- 120. Pilot stations or pickup points

12 AAC 56.090. GENERAL RULE FOR DETERMINING BOUNDARIES OF INSIDE WATERS OF ALASKA. At all buoyed entrances from seaward to bays, sounds, rivers, or other estuaries for which specific lines are not described in this chapter, the waters inshore of a line drawn approximately parallel with the general trend of the shore, drawn through the outermost buoy or other aid to navigation of any system of aids, are inside waters. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(a)(1) and (b)

12 AAC 56.100. ESTABLISHED BOUNDARIES OF INSIDE WATERS OF ALASKA. (a) The boundaries for Southeastern inside waters are as follows: A line drawn from Cape Spenser Light due south to a point of intersection which is due west of the southernmost extremity of Cape Cross; thence to Cape Edgecumbe Light; thence through Cape Bartolome Light and extended to a point of intersection which is due west of Cape Muzon Light; thence due east to Cape Muzon Light; thence to a point which is one mile, 180° true, from Cape Chacon Light; thence to Barren Island Light; thence to Lord Rock Light; thence to the southernmost extremity of Garnet Point, Kanagunut Island; thence to the southeasternmost extremity of Island Point, Sitklan Island. A line drawn from the northeasternmost extremity of Point Mansfield, Sitklan Island, 40° true, to where it intersects the mainland.

(b) The boundaries for Southwestern inside waters are as follows:

(1) Prince William Sound. All waters of Prince William Sound inside a line drawn from Cape Puget to Point Elrington; thence to Cape Clear; thence Zaikof Point to Cape Hinchinbrook Light; thence Point Bentinch Light to Point Whitshed;

(2) Resurrection Bay. The waters of Resurrection Bay north of latitude 59° 59.0' north;

(3) Cook Inlet. All waters of Cook Inlet inside a line drawn from Cape Douglas (latitude 58° 51.2' north, longitude 153° 14.9' west) through Cape Elizabeth Light at latitude 59° 08.9' north, longitude 151° 52.5' west to the Kenai Peninsula shoreline. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(a)(1) and (b)

12 AAC 56.110. EXCLUSIONS FOR ENTERING INSIDE WATERS OF ALASKA. Vessels are excluded from the use of a licensed marine pilot for inside waters only when proceeding directly from points outside Alaska inside waters to an established pilot station or pickup point. These exclusions are as follows:

(1) Southeastern Alaska:

(A) travel via Clarence Strait to Guard Island at a point located at latitude 55° 26.7' north, longitude 131° 52.8' west;

(B) travel via Clarence Strait to a point located approximately one mile east of Point McCartney Light at latitude 55° 06.8' north, longitude 131° 42.3' west;

(C) travel via Cape Bartolome in Bucareli Bay to Cabras Island located at latitude 55° 20.3' north, longitude 133° 23.4' west;

(D) travel via Cape Ommaney in Chatham Strait to a point in the vicinity of Point Retreat located at latitude 58° 25.0' north, longitude 134° 59.0' west;

(E) travel via Sitka Sound to a vicinity close aboard Eckholms Light at latitude 57° 00.6' north, longitude 135° 21.4' west. This exclusion applies only to those vessels going to the port of Sitka; and

(2) Southwestern Alaska:

(A) travel via Prince William Sound to the Cordova Pilot Station located approximately two miles south of Sheeps Point at latitude 60° 37.0' north, longitude 146° 00.0' west;

(B) travel via Prince William Sound to the Valdez Pilot Station located approximately 2.3 miles north of Busby Island Light (60° 53.8' north, 146° 48.9' west);

(C) travel via Prince William Sound to the Whittier Pilot Station located approximately one mile south of Pigot Point Light (60° 48.1' north, 148° 21.3' west);

(D) travel via Cook Inlet to the Homer Pilot Station located approximately one mile south of Homer Spit Light on Coal Point (59° 36.2' north, 151° 24.5' west); and

(E) travel to the Kodiak City or Womens Bay Pilot Station located approximately one mile eastward of St. Paul Harbor lighted buoy No. 14 (57° 44.5' north, 152° 24.3' west). (Eff. 6/11/71, Peg. 38; am 6/1/72, Reg. 42)  
Authority: AS 08.62.040(a)(1) and (b)

PICKUP POINTS. (a) The established pilot stations for Southeastern Alaska are as follows:

(1) Guard Island (55° 26.7' north, 131° 52.8' west);

(2) Point McCartney – located approximately one mile east of Point McCartney (55° 06.8' north, 131° 42.3' west);

(3) Cabras Island, Bucareli Bay (55° 20.3' north, 133° 23.4' west);

(4) Sitka Sound – to a point close aboard Eckholms Light (57° 00.6' north, 135° 21.4' west);

(5) Point Retreat – to a point in the vicinity of Point Retreat (58° 25.0' north, 134° 59.0' west); and

(6) repealed. (6/30/78, Reg. 66)

(b) The established pilot stations for Southwestern Alaska are as follows:

(1) Cordova – located approximately two miles south of Sheeps Point (60° 37.0' north, 146° 00.0' west);

(2) Valdez – located approximately 2.3 miles north of Busby Island Light (60° 53.8' north, 146° 48.9' west);

(3) Whittier – located approximately one mile south of Pigot Point Light (60° 48.1' north, 148° 21.3' west);

(4) Seaward – located one mile southeasterly from Caines Head Light (59° 59.0' north, 149° 23.1' west);

(5) Cook Inlet – located near Homer approximately one mile south of Homer Spit Light on Coal Point (59° 36.2' north, 151° 24.5' west);

(6) Kodiak (city) or Womens Bay – located approximately two miles 100° true from St. Paul Harbor entrance light (57° 44.4' north, 152° 25.7' west);

(7) Cold Bay – located approximately three miles southward of Cold Bay entrance buoy No. 1 (55° 05.6' north, 162° 31.8' west);

12 AAC 56.120. PILOT STATIONS OR

(8) Dutch Harbor – located one mile east of Ulakta Head Light (53° 55.5' north, 166° 30.4' west); and

(9) Adak – located two miles east of Gannet Rocks Light (51° 52.1' north, 176° 36.4' west).

(c) For those areas not having an established pilot station or pickup point, pickups will be made only by specific arrangement with the ship's agent and pilots. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am 5/12/78 and 6/30/78, Reg. 66)

Authority: AS 08.62.040(a)(1) and (b)

#### ARTICLE 4. RATES

##### Section

- 130. General rule for determining rates
- 140. Consent to rate deviation
- 150. Rate adjustment

12 AAC 56.130. GENERAL RULE FOR DETERMINING RATES. If no rate for an area has been established, the rate mutually agreed on by the parties will be used until a rate is established by the board. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(a)(4) and (b)

12 AAC 56.140. CONSENT TO RATE DEVIATION. If parties to a piloting contract are dissatisfied with the rates established for an area, the parties may agree to a higher rate. This rate mutually agreed upon must be submitted to the board for approval. No deviations from the published rate may be used until approved by the board. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(1)(4)(a) and (b)

12 AAC 56.150. RATE ADJUSTMENT. Any party having a material interest in the rate structure desiring a rate change for an area must file a request for a rate adjustment at least 60 days before the next meeting of the board. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(a)(4) and (b)

#### ARTICLE 5. GENERAL PROVISIONS

##### Section

- 160. Duties of pilots
- 170. Physical incapacitation
- 180. Registration of operators
- 190. Definitions

12 AAC 56.160. DUTIES OF PILOTS. (a) A pilot shall be on duty piloting the vessel at all times when the vessel is in transit in pilotage waters.

(b) Passenger vessels in transit of the inside waters of Southeast Alaska except as set forth in sec. 110 of this chapter are required to carry two pilots on board for continuous alternating duty.

(c) In any case where a vessel being piloted by a state licensed pilot goes aground, collides with another vessel or dock, or meets with any casualty, or is injured or damaged in any way, the pilot shall, within ten days thereafter, make written report thereof to the board, and the board may thereupon, either with or without complaint being made against the pilot, investigate the matter reported upon. In any case of apparent damage being sustained or caused by a vessel under his charge the pilot shall file his report as soon as possible after returning to shore.

(d) Pilots will report to the Aids to Navigation officer of the United States Coast Guard, all changes in lights, range lights, buoys, and any dangers to navigation that may come to their knowledge.

(e) Any pilot who fails, neglects or refuses to make a report to the board as required by the pilotage laws of the state, or by this chapter, for a period of ten days after the date when the report is required to be made, is subject to having his license suspended at the discretion of the board.

(f) Pilots when so notified in writing shall report in person to the board at any meeting specified in the notice.

(g) Any pilot summoned to testify before the board shall appear in accordance with the summons and shall answer, under oath, any questions put to him which deal with any matter connected with the pilot service, or of the pilotage waters over which he is licensed to act. He is entitled to have his attorney or advisor present during any such appearance and testimony.

(h) A pilot on boarding a ship, if required by the master, shall exhibit his state license or photostatic copy of it.

(i) Pilots on board passenger vessels shall be provided access to an operable radio on the bridge at all times to use on frequency 2182 kHz for security purposes.

(j) Repealed. (5/12/78, Reg. 66)

(k) All pilots shall report on a quarterly basis

the names of all vessels served that were subject to the services of a licensed pilot. (Eff. 6/11/71, Reg. 38; am 6/19/74, Reg. 50; am 5/12/78, Reg. 66)

Authority: AS 08.62.040(a)

12 AAC 56.170. **PHYSICAL INCAPACITATION.** Any pilot who is physically incapacitated as a pilot for a period of 90 days or more shall not return to service as an active pilot until he has passed a physical examination by a physician approved by the board. (Eff. 6/11/71, Reg. 38; am 8/2/73, Reg. 47)

Authority: AS 08.62.040(a)(1) and (2)  
AS 08.62.040(b)

12 AAC 56.180. **REGISTRATION OF OPERATORS.** All ship owners, operators and agents of owners and operators whose vessels are subject to AS 08.62 must register with the board and keep the board advised of any changes of names and addresses. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(a)(3)

12 AAC 56.190. **DEFINITIONS.** For the purpose of this chapter "pilotage waters" means all inside waters of Alaska except those described in sec. 110 of this chapter. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(b)

TO: Charles Webber, Chairman,  
Board of Marine Pilots  
Commissioner, Commerce &  
Economic Development

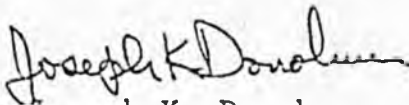
DATE: February 8, 1979

FILE NO:

TELEPHONE NO.

FROM: AVRUM M. GROSS  
ATTORNEY GENERAL

SUBJECT: Applicability of AS 44.62  
to the rate-making proceeding;  
Participation of Absent Board  
Members in the proceeding;  
Ex Parte Contacts.  
Our File: J-66-458-79

By:   
Joseph K. Donohue  
Assistant Attorney General

You have requested our advice generally concerning the proper conduct of the rate-making proceeding presently designated the Proposed Tariff Increase filed by Southwest Alaska Pilots Association, BMP Rate Case No. 78-1. This office has reviewed the course of the proceeding thus far and wishes to give the board members several general instructions concerning the proper conduct of a rate-making proceeding. Many of these rules of conduct are of general application and the Director of the Division of Occupational Licensing should instruct members of other boards along similar lines whenever he deems it appropriate.

1. Applicability of AS 44.62.330 - .620

The Southwest Alaska Pilots Association filed a request for rate adjustment prior to the December 5th meeting of the Board of Marine Pilots in accordance with 12 AAC 56.150. \*/ In doing so, they initiated a rate making proceeding under the Board's general authority to "regulate pilotage fees." AS 08.62.040(a)(4). The hearing was subsequently continued until January 30, 1979. The question arises as to whether the administrative adjudication provisions of the Administrative Procedure Act (APA), AS 44.62.330 - .630 apply to a rate-making proceeding. AS 44.62.330(a)(33) expressly states that the Board of Marine Pilots is subject to this article of the APA. A review of those provisions clearly demonstrate that they are designed to establish the proper procedure for license revocation proceedings. There can be no question but that the Board is subject to the APA in any case involving the denial, suspension or revocation of a marine pilot's license.

However, it is also clear that the accusation, notice of defense and other provisions of the APA are not readily adapted

\*/ That regulation provides that "[a]ny party having a material interest in the rate structure desiring a rate change for an area must file a request for rate adjustment at least 60 days prior to the next meeting of the board."

to a rate-making proceeding. Each of the regulatory commissions created under state law -- the Alaska Public Utilities Commission, AS 42.05, the Alaska Pipeline Commission, AS 42.06, and the Alaska Transportation Commission, AS 42.07, provide entirely separate procedures for the filing of tariffs and for protesting rate increases by interested parties. These procedures which are implemented by statutory provisions and regulations enacted by those commissions insure procedural due process in the context of a hearing which is both adversary and legislative in nature. \*/

A review of the tariff filing and protest procedures by other rate-making or regulatory commissions demonstrates the inapplicability of the administrative adjudication provisions of the Administrative Procedure Act to this particular function of the Board of Marine Pilots. It is therefore the opinion of this office that the present rate-making hearing before the board need not be held in strict compliance with those latter provisions. However, the board must conduct its rate-making hearing in a fair and equitable manner which utilizes the APA provisions as appropriate guidelines, wherever possible, and which benefits from rate-making procedures of those agencies assigned comparable regulatory responsibilities with regard to determination of rates.

In light of the foregoing, this department recommends that the Board of Marine Pilots take all appropriate steps to promulgate procedural regulations and regulations setting forth the substantive criteria which it will consider in formulation of pilotage fees as soon as possible. In the meantime, the board should take every action within its authority to insure the parties to the instant proceedings are afforded ample opportunity to fully present their case and argue their position.

## 2. Participation of Absent Members

The Board of Marine Pilots is presently composed of seven members -- the Commissioner of Commerce and Economic Development, two shipping agents (one from Southeastern Alaska and one from Southwestern Alaska), two marine pilots (also one from Southeastern Alaska and one from Southwestern Alaska) and two public members. Presently one of the public member positions is vacant. At the January 30, 1979, hearing only four members were in attendance i.e. the Commissioner, both pilot members and the shipping agent from Southwestern Alaska. At that hearing, the board issued an order requiring document production and setting a briefing schedule. At the next board meeting in April, the board intends to deliberate

\*/ It is legislative to the extent that the commissions are independently charged with setting just and reasonable rates.

and issue a decision with regard to the request for rate adjustment. The question arose whether the absent members would be able to participate in those deliberations should they attend the April meeting.

Traditionally, it has been the common judicial practice for a judge or commissioner to refuse to participate in a decision unless he has heard all of the testimony and been given an opportunity to review the entire record in the proceeding. This concept is expressly incorporated in AS 42.05.171 which states that a commissioner of the Alaska Public Utilities Commission "who has not heard the testimony, including the argument, may not participate in making a decision of the commission." See also AS 42.06.180 (APC). This should be compared with the present practice of the Alaska Supreme Court with regard to members of the panel who are absent during oral argument of an appeal. It is the practice of our state court to notify the parties that the absent justice has requested the parties' consent that he be allowed to participate in the proceeding upon his review of the tapes of the oral argument. The question is presented in such a way as to indicate that an objection by either party to the appeal would automatically be upheld and thus disqualify the absent member.

This office feels that this latter procedure adequately comports with the idea of a fair and impartial hearing on the record and that no party to the proceeding would be prejudiced by its adoption. Thus, any absent member of the board who wishes to participate in the rate-making decision should make his desire known formally by letter to the chairman with copies to all interested parties to the proceeding. The interested parties would thus have an opportunity to object to the participation of any of the absent members. Obviously, if there are no objections, the absent members can participate in subsequent deliberations assuming they have had an opportunity to review the tapes of the hearing held on January 30, 1979, and otherwise review the entire written record before the Board.

The conflict of interest question should be addressed in the same context. That is, is there a duty of a board member to disqualify himself in the face of an obvious conflict of interest? The pilot member from Southwest Alaska clearly stood to materially benefit from the rate-making decision before the board should that tariff increase be approved. It is equally true that the board member representing the shipping interests of Southwest Alaska had a direct interest in the case.

The Administrative Procedure Act expressly addresses this particular problem. AS 44.62.450(c) states in relevant

part:

A hearing officer or agency member shall voluntarily disqualify himself and withdraw from a case in which he cannot accord a fair and impartial hearing or consideration. A party may request the disqualification of a hearing officer or agency member by filing an affidavit, before the taking of evidence at a hearing, stating with particularity the grounds upon which it has claimed that a fair and impartial hearing cannot be accorded. . . . No agency member may withdraw voluntarily or be disqualified if his disqualification would prevent the existence of a quorum qualified to act in the particular case.

Again, we feel that the Administrative Procedure Act has incorporated a sound rule which comports with the due process notions guaranteed by the state and federal constitutions and that that guideline should be observed in this hearing and in future hearings. It could be also argued that the statutory composition of the board contemplates a conflict of interest and attempts to balance that conflict by requiring that there be a pilot member and shipping industry representative from each pilotage region of the state. However, this office has in the past and reiterates here that in the interest of a fair and impartial hearing that unless necessary for a quorum, members with conflicts should disqualify themselves. This was the advice given the board by the undersigned in response to a similar question at its meeting on April 21, 1976. See Minutes of Meeting Board of Marine Pilots, April 20 and 21, 1976.

Thus, in the context of the January 30, 1979, hearing at which the statutory quorum was in attendance, it was proper for the two members from Southwest Alaska to refuse to voluntarily disqualify themselves from the hearing. Likewise, they would not have been susceptible to a motion to disqualify, had such a motion been made, given the fact that their absence would have rendered the board unable to act.

### 3. Ex parte contacts

As a final cautionary matter, this office hereby advises each member of the Board of Marine Pilots that, in his capacity as a board member, he is serving in a quasi-judicial capacity in reviewing the tariff application of the Southwest Alaska Marine Pilots Association. Therefore, each member should refrain from communications with any interested party concerning the merits of the case. If any interested party

or his attorney \*/ approaches a member of the board, the board member should merely refrain from discussing any matter pertinent to the proceeding and request that the interested party refrain from discussing the case. Ex parte contacts between board members and parties interested in the outcome of the litigation arguably violate constitutional due process rendering that member subject to disqualification and possibly invalidating the entire proceeding. See Moss v. CAB, 430 F.2d 891 (D.C. Cir. 1970); Sangamon Valley v. United States, 269 F.2d 221 (D.C. Cir. 1959).

A corollary of the rule prohibiting ex parte contacts is the rule concerning the confidentiality of the board's deliberation process. The importance of flexible and open debate in such closed session is expressly recognized and promoted in AS 44.62.310. That section provides two general exceptions to the open meeting requirement for board meetings. First, certain topics which are carefully delimited in subsection (c) may be discussed in executive session e.g. matters which would prejudice the reputation of any person. Second, subsection (d) exempts meetings of judicial or quasi-judicial bodies holding a meeting to make a decision in any adjudicatory proceeding e.g. in rate-making proceeding. In both cases, the matters discussed should be confidential. Obviously, no one is prejudiced by this confidentiality since the board cannot act in the absence of a public decision with related findings and conclusions supported by the record.

This office requests strict compliance with these latter rules of conduct. This advice is of general application to any member of a professional licensing board participating in, or likely to review the result of, an adjudicative proceeding involving licensing, rates etc.

JKD:mll

cc: All Board Members

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\*/ Such ex parte contacts by an attorney would in most cases be deemed an unethical practice. See Code of Professional Responsibility, Canon 7; EC 7-35.

TO: Don Hostak, Director  
Division of Occupational  
Licensing  
Department of Commerce and  
Economic Development


DATE: February 5, 1979

FILE NO:

TELEPHONE NO:

FROM: AVRUM M. GROSS  
ATTORNEY GENERAL

SUBJECT: Meeting and Necessary  
Quorum for the Board of  
Marine Pilots  
Our File: J-66-458-79

By:   
Joseph K. Donohue  
Assistant Attorney General

On January 30, 1979, I attended a Board of Marine Pilots meeting at which two technical procedural questions were raised. The first question relates to the proper manner in which to call a special meeting of the Board. AS 08.62.030 provides that the Board shall hold a regular annual meeting and in addition the Board may hold special meetings "at the call of the chairman with prior approval of the Governor". I inquired as to whether or not former Commissioner Hubbard had obtained the prior approval of the Governor when he called the meeting scheduled for January 30th. You indicated that you were uncertain as to whether that formality had been observed. In order to avoid any questions being raised in the future concerning this question, I would recommend that you prepare a form letter for the Governor's signature indicating his approval of each special meeting of the Board as well as a form letter for the Commissioner of Commerce and Economic Development's signature indicating that he has obtained the prior approval of the Governor and calling the special meeting for the specific dates involved. These letters could be entered into the record and minutes of each meeting to indicate that the Board had been properly convened.

You also inquired concerning the proper quorum requirements of the Board of Marine Pilots and what majority of that quorum was necessary for a resolution to pass and be duly approved by the Board. AS 08.62.010 creates a seven member board consisting of the Commissioner of Commerce and Economic Development, two marine pilot members, two shipping agent members and two public members. AS 08.01.030 provides that a majority of a membership of a board constitutes a quorum unless otherwise provided. There being no different quorum requirement established by AS 08.62 four members of the Board must be present at the meeting before the Board of Marine Pilots can conduct business. In turn, a majority of that quorum is necessary for the Board to take binding legal action. Thus the idea of the quorum is to establish a threshold number of the members of the board which when present at the meeting are competent to transact business in the name of the Board but in the absence of the other members. It is traditionally defined as a majority of the membership of the Board unless otherwise provided by statute. On the other hand, it takes only a

majority of that quorum to bind the Board as a whole. Benintendi v. Kenton Hotel, 60 N.E. 2d 829, 831 (New York 1945). This will at times be a minority of the entire membership of the Board.

In this context, I wish to bring to the attention of the Board its regulation 12 AAC 56.010 which states:

(a) For the purpose of approving applications for examination and administering the examination for a temporary license, two members of the board are a quorum.

(b) For the purposes of board meetings, hearings, examinations and for conducting all other board business, three members are a quorum.

Prior to 1976 subsection (b) was a correct statement of the law. In 1976 with the addition of two public members, the quorum requirement of the Board of Marine Pilots was increased to four members. (see sec. 8, ch. 258 SLA 1976) Thus this regulation has been superseded by a statutory amendment and is no longer valid.

With regard to subsection (a) it appears as though the proper authority for that subsection is found in AS 08.62.040(a)(2) which states that the Board can by regulation provide for the examination of pilots and the issuance of pilot licenses to qualified persons. Under that provision it would appear that the Board would have the discretion to provide for issuance of a temporary license on the basis of the approval of two members of the Board. Thus strictly speaking it does not appear to be a quorum requirement or it is a quorum requirement limited exclusively to the Board's examination and licensing authority. In any event, the Board should consider making these minor revisions outlined above in its next set of proposed regulations.

JKD:mll

TO: [

Joseph K. Donohue  
 Assistant Attorney General  
 AGO  
 Juneau, Alaska

DATE: April 17, 1979

FILE NO.

TELEPHONE NO.

FROM

H.R.M.S.  
 H. Russ McKeever  
 Paralegal  
 AGO  
 Juneau, Alaska

SUBJECT: Marine Pilots Regulations

Per your request, I have examined the material available in AS 08.62.010 - 08.62.190 as well as the regulations promulgated by the Board of Marine Pilots pursuant to the Alaska Administrative Procedure Act and contained in 12 AAC 56.010 - 56.190. I have also reviewed similar laws and regulations from the United States Coast Guard and the states of Washington, Oregon, and California. Following are my observations and suggestions which the Alaska Board of Marine Pilots may wish to consider.

The board, composed of representatives of marine pilots and shipping companies establishes pilotage tariffs which determine the salaries received by the pilots and the costs incurred by shipping companies. The board relies to a great degree on the information provided by the pilots whenever they anticipate altering the tariff rate. It is of extreme importance that the information be accurate, be provided on a regular basis and disclose all potential sources of income and conflicts-of-interest on the part of the pilots. The operations of the pilots individually, as well as the operation of their respective associations (Southwest Pilots Association and Southeast Pilots Association) should be open to maximum scrutiny by the Board. I would recommend that the Board consider adopting the following provisions relating to reporting income and pilotage activities and requiring disclosure of related interests and sources of income.

12 AAC 56.161. CONFLICT OF INTEREST. Without express written authority of the board, no pilot shall either

(1) own, or have any fiduciary interest in, any shipping or marine transportation business or concern;

(2) own an interest in, or have any fiduciary interest in, any boats used as pilot boats; or

(3) accept any form of compensation from the owner or operator of any pilot boat.

Authority: AS 08.62.040

12 AAC 56.162. REPORT OF FINANCIAL AND BUSINESS INTERESTS. A licensed pilot shall file a statement giving his income sources and business interests, under oath and on penalty of perjury, no later than April 15, or 15 days after the pilot files his federal income tax return in each year.

Authority: AS 08.62.040

12 AAC 56.163. CONTENTS OF STATEMENT. (a) Each statement shall be an accurate representation of the financial affairs of the pilot and shall contain the same information for each member of his family, as specified in (b) of this section. An asset or liability under \$500, household goods, and personal effects need not be identified.

(b) Each statement filed by a pilot under this chapter shall include:

(1) The source of all income over \$500 including capital gains, whether or not taxable, received by him or his spouse or dependent child of his or non-dependent child who is living with him, during the preceding calendar year;

(2) The identity by name and address, of each business in which he or his spouse or dependent child of his or non-dependent child of his who is living with him was a stockholder, owner, officer, director, partner, proprietor, or employee during the preceding calendar year,

(3) The identity and nature of each interest owned by him or his spouse or dependent child of his or non-dependent child of his who is living with him in any business during the preceding calendar year. <sup>1/</sup>

Authority: AS 08.62.040

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1/ Both 12 AAC 56.162 and 163 are taken in part from AS 39.50.020 and 030 which deals with public officers and employees.

Although the matter of conflict-of-interest and financial accountability have not been previously addressed by the Boards of Marine Pilots either in Alaska or the other Western states, it is not without some precedent in Alaska law. To cite just a few examples; AS 27.05.020 Officials of the Department of Natural Resources, AS 21.06.040 Executives/ Employees of Division of Insurance, AS 24.20.291 Legislative Finance and Audit Personnel, AS 39.50.020 Public Officials, etc.

12 AAC 56.164. PILOTS TO FILE QUARTERLY REPORTS.

(a) Every pilot shall file with the board not later than the tenth of January, April, July and October of each year a report for the preceding quarter. The report shall contain an account of all moneys received for pilotage by him or by any other person for him or on his account or for his benefit. The report shall contain:

- (1) the name of each vessel piloted;
- (2) the name of the vessel's master;
- (3) The name of each vessel for which pilotage has been charged or collected;
- (4) the amount charged to or collected from each;
- (5) any rebates made and allowed and for what amounts;
- (6) where the vessel is registered;
- (7) whether the vessel was inward or outward bound;
- (8) the depth of each vessel's draft and its highest gross tonnage; and
- (9) the name of the pilot boat used.

(b) In addition, each report shall contain a daily work log setting forth the following:

- (1) All transportation and subsistence charges;
- (2) Amount of time spent on pilot boats in travel to or from vessels;
- (3) Actual piloting time aboard these vessels.<sup>2/3/</sup>

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2/RCW 88.16.110 Pilots to File Quarterly Report

Contents. Every pilot licensed under this chapter shall file with the board not later than the tenth day of January, April, July and October of each year a report for the preceding quarter. Said report shall contain an account of all moneys received for pilotage by him or by any other persons for him or on his account or for his

12 AAC 56.166. AUDIT. The marine pilots associations shall have their records audited annually by a certified public accountant approved by the board and submit the audit report to the board.

Authority: AS 08.62.040

In the "definitions" sections under both AS 08.62.200 and under 12 AAC 56.190 there is no reference to the word "pilots". I would suggest amending §190 with the addition of . . .

"pilot" means a marine pilot licensed under the provisions of this chapter.

Section 12 AAC 56.010 dealing with a board quorum appears to be in some need of revision. It seems more appropriate that (a) of that section should be placed under Article 2, Licensing.

12 AAC 56.065 Application and Temporary Licenses. § 10(a).

Since I believe the quorum requirements specified in 12 AAC 56.010 appear to be out of keeping with requirements imposed by other Western states, I would suggest the complete rewriting of this section to read:

12 AAC 56.010. Quorum. (a) For the purpose of board meetings, hearings, and conducting all other board business, except under (b) of this section, four members are a quorum as long as one member is a pilot, one member is an agent of managers of vessels subject to this chapter, and one is a public member.

(b) For the purpose of fixing pilotage rates, six

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benefit. Said report shall state the name of each vessel piloted, the amount charged to and/or collected from each vessel, the port of registry of such vessel, its dead weight amount so received, collected, or charged is in full payment of pilotage and such other information as the board shall by regulation prescribe.

A similar report is required of California pilots.

3/ Adoption of 12 AAC 56.164 would necessitate repeal of 12 AAC 56.160(k).

members is a quorum.

For comparison purposes, the state of California has three board members and two are required to transact any business. The state of Washington specifies that five of the seven members must be present for all matters. Oregon has five members on the board with a simple majority required as long as one pilot and one ship owner representative are included. The state of Oregon specifies further that for consideration of pilotage rates, the entire board must be in attendance.

Also, for your information I have attached copies of excerpts of California, Oregon, and Washington laws or regulations dealing with the subject of board hearings and license suspension or revocation.

HRMc :nnk



STATE OF  
WASHINGTON

Doug Lee Ray  
Governor

## DEPARTMENT OF TRANSPORTATION

Washington State Ferries, Seattle Ferry Terminal  
Seattle, Washington 98104 Tel. 161-800

## BOARD OF PILOTAGE COMMISSIONERS

October 23, 1979

Ms. Elaine Garrett  
Department of Commerce & Economic  
Development  
Division of Occupational Licensing  
Pouch D  
Juneau, AK 99811

Dear Ms. Elaine Garrett:

This letter responds to your telephone inquiry as to how pilotage tariffs are set in Washington State.

The Board of Pilotage Commissioners is charged with the annual setting of pilotage fees (RCW 88.16.035(4)). A copy of the current pilotage act is attached. For many years it has been the practice that the pilots associations, and the Puget Sound Steamship Operators Association (their pilotage committee) will negotiate a level of fees to which both sides ultimately come to an agreement. With previous communication, as the negotiations progress, the Board will set a hearing date to hear testimony and ask questions of the two sides as to how the agreement was reached. Because of the agreement between the parties, the Board is usually inclined to adopt the rates as proposed. The rate hearings are therefore usually very short in duration and when completed the usual monthly meeting is commenced (the hearing is set on the day of the regular meeting).

Last year the Grays Harbor pilots received a 7% increase; the Puget Sound pilots received a rate increase of 8.3%, covering an 18 months period. Negotiations are commencing now for the next round.

As you can see the Board spends very little time in the actual tariff making process. We feel this is better handled by the parties directly involved, i.e., the ones providing the services and the ones paying the bills.

Copies of the two current tariffs are attached along with copies of minutes of the two hearings at which they were adopted.

We hope this information will be of assistance to you in your efforts to establish your next set of tariff changes. If any members of the Commission or your staff are interested, our Board meetings are held the second Thursday of each month. We would be delighted to have you attend so as to exchange matters of mutual interest and concern.

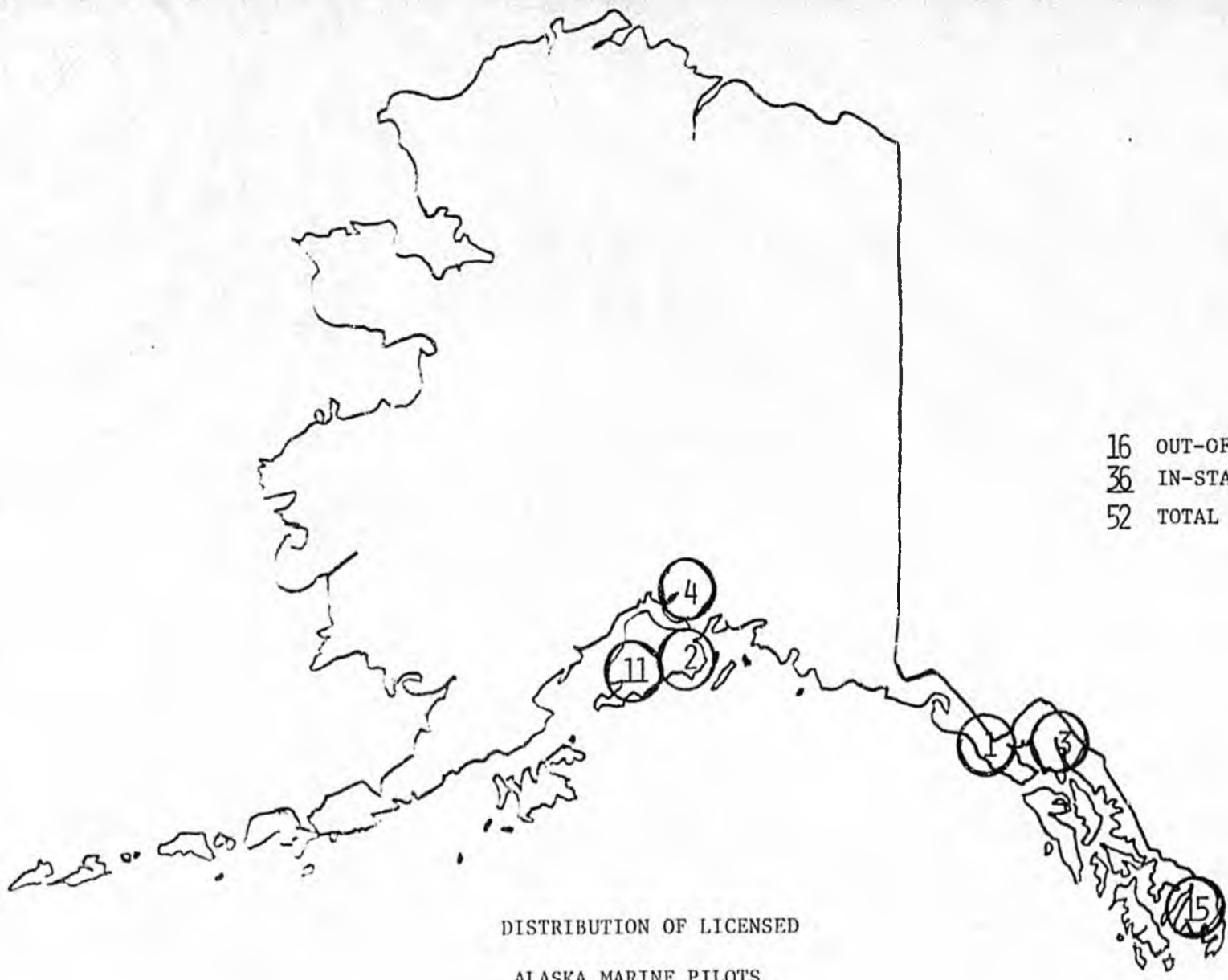
Please let us know if we can be of further assistance.

Sincerely,

BOARD OF PILOTAGE COMMISSIONERS

*Richard A. Berg*  
Richard A. Berg  
Chairman

RAB: ht  
enc.



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